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Legal Status of Women in Missouri: Part I

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LEGAL STATUS OF WOMEN IN MISSOURI.

PART I.

The rights, duties, capacities or incapacities, which determine a given person to a given class, constitute his status or condition¹; or status may be viewed as the relation which a person as a member of a class sustains to the state, to other persons in general, or to one or more in particular. The status examined in this article is that of women. In as much as all minors have the same status irrespective of sex and are equal before the law, the word woman as used by the writer signifies a female person who has attained her majority and is therefore eighteen years of age or upward. Women may be divided into two classes, single women, or *femes sole*, be they spinsters, widows or divorcees, and *femes covert*, whether they live with or apart from their husbands. Each of these classes may be subdivided into domiciled residents and alien residents. As to the status of the latter no inquiry will be undertaken.

As a general rule women possess the same rights and immunities, the same legal capacities and privileges which are enjoyed by men. A study of a status is a study of differences rather than of similarities and parallels; and, therefore, a clear notion of the status of women can best be had by a consideration of their incapacities,—that is, of the rights and privileges withheld from them by the law. The incapacities to be considered are sex and coverture. The former limits women's political rights; the latter, their property and parental rights and, to some extent, their liability for torts and crimes.

¹Austin's *Jurisprudence*, par. 973.

The political right of paramount importance to every citizen of a state having a representative form of government is that of voting at public elections. Strictly, suffrage is not an inherent natural right, but a privilege which is derived primarily from the state² and which may be granted or withheld by constitutional provision or legislative enactment at the pleasure of the people or the General Assembly;³ and a denial of the privilege is not a violation of either the fourteenth or fifteenth amendments to the federal constitution.⁴ The constitution of Missouri grants the right to vote at elections by the people to male citizens only,⁵ and therefore the women of Missouri have no voice at the polls in the making of the laws under which they live, or in the selections of the officers who interpret and execute them. It will presently appear that there are many public offices for which women are qualified, but the right to hold office without the right of suffrage is as barren as a legal right without a remedy. Justice to the women demands the erasure of the word male from the above cited section of the constitution of Missouri.

To most, if not to all, of the citizens of the state the right to hold public office is as precious and as essential as the right of suffrage. The state has the power to fix the qualifications for holding public office; and if the constitution is silent the test of eligibility may be fixed by the statute.⁶ Our constitution contains a general provision that all persons appointed or elected to any office, civil or military, must be citizens of the United States and must have resided in the state one year next previous to their appointment or election.⁷ Every woman born or naturalized in the United States and subject to the jurisdiction thereof is a citizen of the United States and of the state wherein she resides.⁸ The Supreme Court of Missouri has decided that any woman qualified by citizenship and residence may hold any public office in this state, if duly appointed or elected thereto, unless she be barred therefrom by express terms in the statute or constitutional provision which fixes the qualifications therefor.⁹ Under this decision women, even though not qualified voters, may be judges of the Supreme Court, if they are learned in the law;¹⁰ of the Courts of

²Mason v. Missouri, 179 U. S. 328.

³Blair v. Ridgely, 41 Mo. 63.

⁴State ex rel. v. Hostetter, 137 Mo. 636.

Minor v. Happersett, 21 Wall. 162, affirming 53 Mo. 58.

United States v. Reese, 92 U. S. 214.

⁵Art. VIII, Sec. 2.

⁶State ex rel. v. Woodson, 41 Mo. 227.

⁷Art. VIII, Sec. 12.

⁸Const. of U. S., XIV Amend., Sec. 1.

⁹State ex rel. v. Hostetter, 137 Mo. 636.

¹⁰Const., Art. VI, Sec. 6.

Appeal;¹¹ of probate courts,¹² justice of the peace courts,¹³ and county courts.¹⁴ A woman may be a county superintendent of schools,¹⁵ clerk of a circuit court,¹⁶ sheriff or coroner,¹⁷ and a member of the police force in cities containing five thousand inhabitants or more.¹⁸ The Board of Examination and Registration of Nurses consists of five members, all of whom may be women, three of whom must be chosen from trained nurses actually engaged as such.¹⁹ Two of the six members of the State Board of Charities and Corrections,²⁰ and three of the six members of a Board of County Visitors²¹ must be women. The Board of Control of the Industrial Home for Girls shall consist of four men and two women, and all of the officials and help for the internal management shall be women, unless the Board order otherwise.²² And women shall not be disqualified from holding the position of Deputy Probation Officer in the Juvenile Court.²³ In deciding that a woman is not disqualified on account of her sex from being a county clerk, Barclay, J., said: "Women in Missouri have been licensed as attorneys at law by the Supreme Court. They have for years been recognized as eligible to office as notaries public.²⁴ A woman now (1896) holds the responsible office of State Librarian by appointment of the Supreme Court."²⁵

For some offices women are ineligible because of their sex; for others, because they are not qualified voters. For the first reason a woman cannot be Governor or any other executive officer of the state;²⁶ or a representative or senator in the general assembly;²⁷ or serve as a grand or petit juror.²⁸ For the second reason a woman cannot be a judge of a circuit court,²⁹ or a member of a Board of

¹¹Const., Art. VI. Sec. 13, and Amendment of 1884. Stats., Sec. 3843.

¹²There are no qualifications specially provided for these officers. In all such cases the constitutional provision, Art. VIII, Sec. 12, governs.

¹³Sec. 7370. (All citations by section only are to the 1909 Missouri statutes.)

¹⁴No special qualifications prescribed.

¹⁵Sec. 10, 929.

¹⁶Sec. 2661.

¹⁷Const., Art. IX, Sec. 10.

¹⁸Laws of 1915, p. 327, Sec. 1.

¹⁹Sec. 10, 186.

²⁰Sec. 1316.

²¹Sec. 1329.

²²Secs. 1544, 1547.

²³Secs. 4107, 4132.

²⁴Sec. 10177 expressly authorizes the appointment of women as notaries

²⁵State ex rel. v. Hostetter, 137 Mo. 636.

²⁶Const., Art. V, Secs. 5, 15, 19.

²⁷Const., Art. IV, Secs. 4, 6.

²⁸Sec. 7259.

²⁹Sec. 3843.

Common School Directors.³⁰ An administrator or executor is not a public officer,³¹ and a woman may act as such, if she be unmarried.³²

The capacities and incapacities for the enjoyment of the foregoing political privileges are shared in by all women alike; but in respect to property rights and business and family relations coverture separates women into classes of unequal status. The status of the *feme sole* can be briefly described. She is liable for all of her torts and crimes and breaches of contract. She can make contracts; carry on business, sue and be sued; acquire, possess and dispose of all kinds of property, execute wills, and change her domicile at pleasure. In short, barring the political incapacities already discussed, her status is co-equal with that of her brother or father.

Marriage affects the status of a woman more profoundly and prejudicially than does her sex. This effect of marriage is attributable chiefly to the common law doctrine that the legal identity of a wife is merged in that of her husband. This doctrine has been abrogated by statute so largely that there are to-day but few substantial differences between the status of a *feme covert* and that of her unmarried sister. However, the status of a married woman domiciled in Missouri can best be delineated by stating her common law incapacities and pointing out the extent to which they have been removed, modified or left unchanged by the acts of the General Assembly and the decisions of the courts.

In the eye of the law the husband is the head of the family, and his wife is in duty bound to live with him, so long, at least, as he reasonably performs his duty to her. He may select his domicile and change it at will. "Whither thou goest I will go," is the duty of his wife, and therefore his domicile is her domicile. She cannot acquire a separate domicile, even though she live apart from her husband. This common law rule remains unchanged in Missouri.³³

At common law a married woman is liable for her antenuptial torts, and, during coverture her husband is jointly liable with her.³⁴ The Married Women's Act has not modified the wife's liability for such torts, but it has exempted from execution therefor all of the husband's property except what he derived from her by virtue of

³⁰Sec. 10847. State ex rel. v. McSpaden, 137 Mo. 628.

³¹Stevens v. Larwill, 110 Mo. App. 140.

³²Sec. 14.

³³Comerford v. Coulter, 82 Mo. App. 362.

Schuman v. Schuman, 93 Mo. App. 99.

³⁴Long on Dom. Rels., Sec. 201.

their marriage.³⁵ So, at common law a wife is liable for her post-nuptial torts, except those committed by her in the presence of her husband and by his direction or coercion.³⁶ A recent statute abrogates this rule, making the wife liable for all of her post nuptial torts, and relieving her husband from all liability therefor, unless he would be liable as a joint tortfeasor, as if the marriage relation did not exist.³⁷ And a married woman is liable for torts committed by her in the management of her property, even though the title thereto be in a trustee.³⁸

A married woman is punishable in any case of treason and murder committed by her independently or jointly with her husband,³⁹ and probably for robbery and those offenses which from their nature are generally committed by women, such as keeping a bawdy house;⁴⁰ and also for all other crimes, except those committed by her in the presence of her husband and under his coercion. The common law as to married women's crimes still obtains in Missouri,⁴¹ but that portion of it which relates to crimes committed by women in the presence of their husbands ought to be abolished. The command or coercion of a parent is no defense for a child guilty of a crime, and the command or coercion of the husband ought not to shield a guilty wife. Justice does not demand such a defense and it is beneath the dignity of womanhood to be allowed it. It is no longer permitted in Minnesota.⁴²

Under the common law a married woman cannot enter into a binding obligation either with her husband or others. Omitting the elements of domicile and of real or presumed coercion in torts and crimes committed in the husband's presence, incapacity to contract, with what depends upon it, is substantially all that coverture alone effects in differentiating the status of a married woman from that of men and single women.⁴³ The reasons usually ascribed for this disability are the unity of husband and wife and the husband's right to reduce to his possession and ownership all of his wife's earnings, personal property, and rents and profits of her real estate, thus leav-

³⁵Sec. 8310.

³⁶*Flesh v. Lindsay*, 115 Mo. 1.

³⁷*Taylor v. Pullen*, 152 Mo. 434.

³⁸*Laws*, 1915, p. 269, Sec. 1. See *Boutell v. Shellaberger*, 174 S. W. 384 (Mo.), L. R. A. 1915, D. 847, which so decides without reference to said statute.

³⁹*Merrill v. St. Louis*, 83 Mo. 244.

⁴⁰*Kelley's Crim. Law of Missouri*, Sec. 17.

⁴¹*Clark's Crim. Law*, Sec. 40.

⁴²*Miller v. State*, 162 Mo. 253.

⁴³*Pen. Code of Minn.*, Sec. 22.

⁴⁴*Bishop on Mar. Women*, Sec. 706.

ing her no subject of contract and nothing wherewith to satisfy her obligations. Furthermore, capacity to contract was deemed unnecessary, for her husband was charged with her protection and support during his life and she was allowed dower if she survived him. Such was the law, and the supposedly sacred and incontrovertible reasons therefor, in this state until 1889,⁴⁴ when the General Assembly swept the reasons into the rubbish heap of law and logic and in a large measure destroyed the legal unity of husband and wife by empowering her to contract and be contracted with as a *feme sole*.⁴⁵ The power thus given is broad in scope and is not confined to any particular class of contracts or to any species of property.⁴⁶ Under this power a married woman may contract as freely with her husband as with any one else,⁴⁷ and join with him in contracts with others.⁴⁸ She may make and indorse negotiable paper and sign as a surety, even for her husband,⁴⁹ give a recognizance for the appearance of herself as a witness,⁵⁰ appoint agents,⁵¹ and ratify their unauthorized acts.⁵²

Unrestricted power to contract would seem to imply the power to carry on business; but the married woman's right in this particular has not been left to implication, for she is expressly empowered by statute to carry on and transact business on her own account as a *feme sole*.⁵³ Although under a statute which enables a married woman to contract and carry on business on her own account she may enter into a business partnership with another woman's husband, the decided weight of authority appears to be that she cannot do so with her own, unless the statute authorize it in express terms.⁵⁴ The reasons advanced for such an interpretation of the statute are applicable to other contracts between husband and wife, and the decisions show how difficult it is for the courts to yield to the pro-

⁴⁴Bragg v. Israel, 86 Mo. App. 338.

O'Reilly v. Kluender, 193 Mo. 576.

⁴⁵Sec. 8304.

⁴⁶Brown v. Dressler, 125 Mo. 589.

Huss v. Culver, 70 Mo. App. 514.

⁴⁷Rice, Stix & Co. v. Sally, 176 Mo. 107.

O'Day v. Meadows, 194 Mo. 588.

⁴⁸Niemeyer v. Niemeyer, 70 Mo. App. 609.

⁴⁹Granby v. Campbell, 78 Mo. App. 502.

Grimes v. Reynolds, 184 Mo. 679.

White v. Smith, 174 Mo. 186.

⁵⁰Sec. 5037.

⁵¹Long v. Martin, 152 Mo. 668.

Carthage Marble Co. v. Bauman, 44 Mo. App. 386.

⁵²Kirkpatrick v. Pease, 202 Mo. 471, 490.

Matthews v. French, 194 Mo. 553.

⁵³Sec. 8304.

⁵⁴Gilkerson-Sloss Commission Co. v. Salinger, 56 Ark. 294, and note thereon in 16 L. R. A., 526.

gressive spirit of the times. Whether our Supreme Court will follow the majority or minority line of decisions when the question comes before it is at least problematical, in view of its unqualified holding that a married woman may contract as freely with her husband as with any one else.⁵⁵ A wife may employ her husband as her agent,⁵⁶ clerk or manager of her business,⁵⁷ and may be his preferred creditor.⁵⁸ A married woman may have a general deposit account in a bank and her deposits therein must be held for her exclusive benefit, free from the control or liens of all persons whomsoever, except her own creditors.⁵⁹

The husband's common law right to his wife's earnings and the property purchased therewith has been abolished in Missouri. Our statute invests her with the full ownership and control of her earnings outside of her domestic labor for the family, and protects them from execution for her husband's debts.⁶⁰ If her husband has absconded, or is insane, she is also entitled to the earnings of her minor children.⁶¹ And when engaged in any other than domestic labor for the family she may recover damages for a diminution of earning power caused by the defendant's wrongful act.⁶²

At common law a married woman has no standing in a court of justice as a litigant unless her husband is joined with her as a party plaintiff or defendant. Under our Married Women's Act she may sue and be sued as a *feme sole*, enforce and have enforced against her property such judgments as may be rendered for or against her, and the joinder of her husband as a party is permissible but not necessary.⁶³ A husband may sue his wife as a *feme sole* either in a court of law or equity,⁶⁴ and she may institute an action against him in a court of law;⁶⁵ or in equity for maintenance,⁶⁶ for the enjoyment and protection of her separate estate,⁶⁷ and for the establishment of a resulting trust in lands purchased in his name with her money.⁶⁸

⁵⁵See cases cited in note 47, *supra*.

⁵⁶Christian v. Smith, 85 Mo. App. 117.

⁵⁷Gruner v. Scholz, 154 Mo. 415; Bank of Tipton v. Adair, 172 Mo. 156.

⁵⁸Balz v. Nelson, 171 Mo. 682; Wellman v. Kaiser Inv. Co., 262 Mo. 285.

⁵⁹Sec. 1153.

⁶⁰Sec. 8309. Christian v. McDermott Estate, 123 Mo. App. 448.

⁶¹Sec. 8299. State to use v. Mertz, 14 Mo. App. 55; Harris v. Bohle, 19 Mo. App. 529.

⁶²Nelson v. Ry. Co., 113 Mo. App. 659.

⁶³Sec. 8304.

⁶⁴Abramsky v. Abramsky, 261 Mo. 117.

⁶⁵Rice, Stix & Co. v. Sally, 176 Mo. 107.

⁶⁶Sharpe v. Sharpe, 134 Mo. App. 278.

⁶⁷Sec. 8305. Rosenberger v. Mallerson, 92 Mo. App. 27.

⁶⁸Hudson v. Wright, 204 Mo. 413.

She may maintain an action for her earnings,⁶⁹ for the alienation of her husband's affection,⁷⁰ for personal injuries to herself,⁷¹ and to quiet title to her lands;⁷² and she may release a cause of action,⁷³ or assign it directly to her husband.⁷⁴ The right of a married woman to bring an action does not start the running of the statute of limitations until the termination of the marriage relation,⁷⁵ a rule for which there is no longer any sound reason.

A married woman's property is held by her by a title which is either legal or equitable. Property acquired directly in her own name is denominated her legal estate, and that in which she has the beneficial interest, the title being in the name of another as trustee, is known as her equitable estate. These equitable estates are of two kinds: first, those created by terms which specifically prohibit the husband from enjoying or controlling them; and, second, those in which he is not so prohibited by the terms of the trust. As to the first class, the wife's equitable rights and remedies are unaffected by the Married Women's Act;⁷⁶ but the second class is by this Act put on the basis of the wife's legal estate. The married woman's Statutory Estate is her legal estate, and her equitable estate of the second class, discharged of the husband's common law marital rights thereto.

When a man takes to himself a wife the common law gives him the right to the possession and disposal of all of her personal property, including the use, rents and profits of her real estate. Her personal property is, by her marriage, lost to her and her heirs forever. This right of the husband has been totally swept away by a statute which secures to the wife complete and sole ownership, control and disposition of all her personal estate, including the rents and profits of her lands, whether acquired before or after marriage.⁷⁷ The object of the statute is to protect the wife's personal property from the common law rights of her husband,⁷⁸ and against his debts and wrongful acts.⁷⁹ A wife can not be made personally liable for necessaries purchased by her husband for the family, but her personal

⁶⁹*Eisiminger v. Stanton*, 129 Mo. App. 413.

⁷⁰*Clow v. Chapman*, 125 Mo. 101; *Nichols v. Nichols*, 147 Mo. 387; *Claxton v. Pool*, 183 Mo. App. 13.

⁷¹*Nelson v. Ry. Co.*, 113 Mo. App. 659.

⁷²*Gardner v. Robertson*, 208 Mo. 605.

⁷³*Blair v. Ry. Co.*, 89 Mo. 383.

⁷⁴*Rossier v. Wabash Ry. Co.*, 115 Mo. App. 515.

⁷⁵*Lindell & Co. v. Lindell*, 142 Mo. 61; *Linck v. Vorhauer*, 104 Mo. App. 368.

⁷⁶*Woodward v. Woodward*, 148 Mo. 241.

⁷⁷Sec. 8309.

⁷⁸*Long v. Martin*, 152 Mo. 668; *Nunn v. Carroll*, 83 Mo. App. 135.

⁷⁹*McCoy v. Hyatt*, 80 Mo. 130.

property may be seized for the payment of such debts.⁸⁰ She may, by a duly executed writing, transfer to her husband, subject to her own creditors' claims, her personal property or any portion thereof for his own use and disposal;⁸¹ but an indorsement and delivery to her husband of negotiable paper is not such an assent in writing as the statute contemplates.⁸² Such an indorsement merely makes her husband an agent for the collection of the paper.⁸³

In respect to her real estate a married woman's status is commensurate with if not superior to that of her husband. She has absolute control and management of her statutory real estate,⁸⁴ and it can not be subjected to the payment of her husband's debts, not even those incurred by the purchase of necessaries for the family.⁸⁵ She may make a valid contract for the sale of her land whether it be her legal or equitable estate,⁸⁶ and may convey a full equitable fee held in trust for her.⁸⁷ A wife may convey by deed directly to her husband,⁸⁸ and to others without her husband joining in her deed,⁸⁹ but not to the prejudice of his right of curtesy.⁹⁰ If, however, a husband convey lands directly to his wife, the conveyance invests her with an equitable estate only, the legal title being still in him as trustee.⁹¹ A husband can not acquire an adverse interest in his wife's land,⁹² his possession of her land is her possession.⁹³

A conveyance of land in fee to a husband and wife creates an estate by entirety.⁹⁴ The Married Women's Act has destroyed the unity of husband and wife with respect to property owned by the wife, but that Act has no application to estates owned by entirety.⁹⁵ The husband is entitled to the possession, rents and profits of the estate during his life, but the wife may sue alone for possession against everybody but her husband.⁹⁶ An estate by entirety may be

⁸⁰*Megraw v. Woods*, 93 Mo. App. 647; *Latimer v. Newman*, 69 Mo. App. 76; *Gabril v. McMullen*, 111 Mo. 119.

⁸¹Sec. 8309.

⁸²*Hurt v. Cook*, 151 Mo. 416; *Case v. Espenschied*, 169 Mo. 215; *McMahon v. Welsh*, 132 Mo. App. 593.

⁸³*Stone v. Bank*, 81 Mo. App. 9.

⁸⁴*Jones v. Ry. Co.*, 86 Mo. App. 134.

⁸⁵*Harned v. Shores*, 75 Mo. App. 500.

⁸⁶*Clay v. Mayer*, 183 Mo. 150.

⁸⁷*Ball v. Woolfolk*, 175 Mo. 278.

⁸⁸*Glascock v. Glascock*, 217 Mo. 362.

⁸⁹*Bank v. Hageloken*, 165 Mo. 443.

⁹⁰*Meyers v. Hansbrough*, 202 Mo. 495.

⁹¹*Stark v. Kirchgraber*, 186 Mo. 633; *Rutledge v. Rutledge*, 177 Mo. App. 469.

⁹²*Kohle v. Hobson*, 215 Mo. 213.

⁹³*Stark v. Zehnder*, 204 Mo. 442.

⁹⁴*Gibson v. Zimmerman*, 12 Mo. 385.

⁹⁵*Frost v. Frost*, 200 Mo. 474.

⁹⁶*Holmes v. Kansas City*, 209 Mo. 513; *Ewen v. Hart*, 183 Mo. App. 107.

sold by the husband's creditors for his debts, but the sale will become void as to the wife on her husband's death, if she survive him.⁹⁷ A divorce gives the wife an absolute moiety in such an estate, she and her divorced husband becoming tenants in common, and she may bring an action for partition.⁹⁸

The statutes provide that certain specified articles of personal property and the family homestead shall be exempt from execution sale for the payment of the owner's debts. An enumeration of the personal property exemptions, and a description of the homestead must be omitted,⁹⁹ and also a widow's rights thereto. Unmarried women are entitled to the same exemptions allowed to unmarried men. Exemptions can not be claimed by both husband and wife. In the law relating to exemptions the husband is the head of the family, and he may claim exemptions or waive the right to do so. In case of a several judgment against a wife, she may claim exemptions out of her own property, if she be the head of the family; as when her husband has abandoned his family; and she may have such exemptions when the judgment is against both her and her husband and he has not claimed exemptions.¹⁰⁰ And when the judgment is against the husband only, she may claim exemptions for the family if he has absconded from the state,¹⁰¹ or is in the penitentiary.¹⁰²

Prior to 1865 a married woman could not make a will unless the right to do so was secured to her by her marriage contract. This incapacity has been removed, and a married woman may dispose of her property, real and personal, by her last will and testament,¹⁰³ and may make a joint will with her husband.¹⁰⁴ A wife can not by will defeat her husband's right of curtesy,¹⁰⁵ or, if she died childless, his right to one-half of her real and personal property.¹⁰⁶ The probate of a will may be contested within two years thereafter; but this statute of limitations does not begin to run against a married woman until the termination of her coverture.¹⁰⁷ Wills of *femes sole* are revoked by their marriage.¹⁰⁸

(To be concluded in the next issue.)

⁹⁷Hall v. Stephens, 65 Mo. 676.

⁹⁸Russell v. Russell, 122 Mo. 235.

⁹⁹See Secs. 2179, 2180, 2183 and 6704-6715.

¹⁰⁰Sharp v. Stewart, 185 Mo. 518; White v. Smith, 104 Mo. App. 199; Bank v. Redlinger, 95 Mo. App. 279.

¹⁰¹Griffith v. Bailey, 79 Mo. 472; Lindsey v. Dixon, 52 Mo. App. 291.

¹⁰²Bank v. Morkamp, 130 Mo. App. 118.

¹⁰³Sec. 536.

¹⁰⁴Bower v. Daniel, 198 Mo. 289.

¹⁰⁵Sec. 536. Soltan v. Soltan, 93 Mo. 307; Casler v. Gray, 159 Mo. 538.

¹⁰⁶Waters v. Herboth, 178 Mo. 166; Spurlock v. Burnett, 183 Mo. 524.

¹⁰⁷Sec. 557.

¹⁰⁸Sec. 540.