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The Legal Status of Women in the United States of America

JUL 12 1966

REPORT FOR
COLORADO
as of May 1, 1966

The report for Colorado was prepared by Kenneth E. W. Foster
and reviewed by Edward J. W. Foster, under the general direction
of John A. Merson, Chief, Division of Legislation and
Statistical Women's Bureau, U. S. Department of Labor.



WOMEN'S BUREAU BULLETIN 157-5 (Revised)

UNITED STATES DEPARTMENT OF LABOR

W. WILLARD WIRTZ, *Secretary*

WOMEN'S BUREAU

MARY DUBLIN KEYSERLING, *Director*

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The Legal Status of Women in the United States of America

REPORT FOR
COLORADO

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The report for Colorado was prepared by Kermitt E. Wheeler and reviewed by Laura Lee Spencer, under the general direction of Alice A. Morrison, Chief, Division of Legislation and Standards, Women's Bureau, U.S. Department of Labor.

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CONTENTS

	Page
Introduction.....	1
Civil rights.....	3
Contracts and property.....	3
1. Age of majority.....	3
2. Contractual powers of a minor.....	3
3. Property exemptions from seizure for debt.....	4
A. Respective rights of man and woman.....	4
B. Homesteads.....	5
4. Ownership and control of property owned at marriage.....	6
5. Contractual powers of a married woman.....	6
6. Earnings of a married woman.....	7
7. Liability for family support.....	7
8. Right of a married woman to engage in a separate business.....	8
9. Rights of a married woman with respect to separate property.....	8
10. Property acquired by joint efforts of husband and wife.....	8
11. Damages for injury to person, property, or character.....	8
12. Damages for injury by spouse to person or property.....	8
13. Competency of husband or wife to testify for or against each other.....	9
14. Right to dispose of separate property by will.....	9
15. Inheritance rights in deceased spouse's estate.....	10
16. Provisions for survivors during administration of estate.....	10
17. Right of husband or wife to disinherit the other by will.....	11
Marriage and divorce.....	11
18. Age of consent to marriage.....	11
19. Common-law marriage.....	11
20. Premarital requirements.....	12
21. Interstate cooperation in marriage-law enforcement.....	12
22. Annulment.....	12
23. Divorce.....	13
Parents and children.....	14
24. Parents' right to services and earnings of a minor child.....	14
25. Guardianship of a minor child.....	14
26. Appointment of testamentary guardian for a minor child.....	15
27. Inheritance—child.....	15
28. Child born out of wedlock.....	15
29. Inheritance—child born out of wedlock.....	16
Political rights.....	17
30. Domicile of a married woman.....	17
31. Public office—eligibility of women.....	17
32. Jury service—eligibility of women.....	17
Supplement.....	17

CONTENTS

1	1. General provisions of the law
2	2. Property acquired from a woman
3	3. A woman's right of man and woman
4	4. The woman
5	5. Ownership and control of property owned by a woman
6	6. The woman's right to a married woman
7	7. The woman's right to a woman
8	8. The woman's right to a woman
9	9. The woman's right to a woman
10	10. The woman's right to a woman
11	11. The woman's right to a woman
12	12. The woman's right to a woman
13	13. The woman's right to a woman
14	14. The woman's right to a woman
15	15. The woman's right to a woman
16	16. The woman's right to a woman
17	17. The woman's right to a woman
18	18. The woman's right to a woman
19	19. The woman's right to a woman
20	20. The woman's right to a woman
21	21. The woman's right to a woman
22	22. The woman's right to a woman
23	23. The woman's right to a woman
24	24. The woman's right to a woman
25	25. The woman's right to a woman
26	26. The woman's right to a woman
27	27. The woman's right to a woman
28	28. The woman's right to a woman
29	29. The woman's right to a woman
30	30. The woman's right to a woman
31	31. The woman's right to a woman
32	32. The woman's right to a woman
33	33. The woman's right to a woman
34	34. The woman's right to a woman
35	35. The woman's right to a woman
36	36. The woman's right to a woman
37	37. The woman's right to a woman
38	38. The woman's right to a woman
39	39. The woman's right to a woman
40	40. The woman's right to a woman
41	41. The woman's right to a woman
42	42. The woman's right to a woman
43	43. The woman's right to a woman
44	44. The woman's right to a woman
45	45. The woman's right to a woman
46	46. The woman's right to a woman
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49	49. The woman's right to a woman
50	50. The woman's right to a woman
51	51. The woman's right to a woman
52	52. The woman's right to a woman
53	53. The woman's right to a woman
54	54. The woman's right to a woman
55	55. The woman's right to a woman
56	56. The woman's right to a woman
57	57. The woman's right to a woman
58	58. The woman's right to a woman
59	59. The woman's right to a woman
60	60. The woman's right to a woman
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89	89. The woman's right to a woman
90	90. The woman's right to a woman
91	91. The woman's right to a woman
92	92. The woman's right to a woman
93	93. The woman's right to a woman
94	94. The woman's right to a woman
95	95. The woman's right to a woman
96	96. The woman's right to a woman
97	97. The woman's right to a woman
98	98. The woman's right to a woman
99	99. The woman's right to a woman
100	100. The woman's right to a woman

The Legal Status of Women in the United States of America

INTRODUCTION

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

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

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

Material considered in Women's Bureau Bulletin 157 series centers largely around women in the marriage relation, since the legal status of the unmarried woman is practically identical with that of the unmarried man. To increase the usefulness of the material, more attention has been given in the current revision to differences in the legal treatment of men and women.

The United States Summary of the Legal Status of Women in the United States of America, Bulletin 157, last brought up to date as of January 1, 1953, is being revised. The revised summary will be compiled from the reports for the 50 States and the District of Columbia.

The President's Commission on the Status of Women (established by Executive Order 10980, December 14, 1961) appointed a Committee on Civil and Political Rights to review the civil and political rights of women. The Commission's report, submitted in October 1963, presented findings and made recommendations for constructive action.

In November 1965, as this report goes to press, Governors' Commissions on the Status of Women have been established in 45 States. They are actively concerned with the improvement of the civil and political rights of women in their States.

SOURCES

Constitution of Colorado
Colorado Revised Statutes, 1963
Colorado Reports
Pacific Reporter
Pacific Reporter (Second Series)

EXPLANATORY NOTE

Bulletin 157-5 presents a digest of the State constitutional and statutory provisions affecting the legal status of women in Colorado. It includes pertinent statutory changes enacted in that State up to May 1, 1966, and supersedes the previous report for Colorado as of January 1, 1959.

References to the State constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation "Const.," as "(Const., art. II, sec. 23)," placed after the related subject matter.

References to the code sections are likewise in parentheses, as "(sec. 77-2-5)."

Case citations definitely construing statutes or declaring judicial policy in the absence of express statutory provision are indicated by footnote references. Cases showing historical development of a statute or policy are followed by the abbreviation "Hist." Other abbreviations are:

Colorado Reports—Colo.

Pacific Reporter—Pac.

Pacific Reporter (Second Series)—Pac. (2d)

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

COLORADO

CIVIL RIGHTS

Contracts and Property

1. Age of majority

All persons of the age of 21 years are considered of full age (sec. 153-1-1).

2. Contractual powers of a minor

A minor's contracts, other than those for necessities, are not binding on him. Where necessities are sold and delivered to a minor, he must pay a reasonable price therefor. Necessaries are defined as goods suitable to the condition in life of the minor and to his actual requirements at the time of delivery to him (sec. 121-1-2).

A bank may operate a deposit account for, or lease a safe deposit box to, a minor with the same effect upon its liability as if the minor were of full age, unless and until his guardian directs otherwise (secs. 14-3-5, 14-4-4). Shares in a credit union may be issued and deposits received in the name of a minor or in trust in such manner as the bylaws may provide (sec. 38-1-13).

A minor of 15 years of age or over is bound by an application and certificate of insurance in a fraternal benefit society to the same extent as though the age of majority had been attained at the time of the application (sec. 72-7-8).

A savings and loan association may issue stock or shares to a minor of any age or sex. Such minor is entitled to withdraw, transfer, or pledge any shares owned by him or her and to receive delivery or payment of same. The minor's receipt or acquittance is a valid release of the association for the payment of such money (sec. 122-3-15).

The disability of minority of any person otherwise eligible for guaranty or insurance of a loan under the Servicemen's Readjustment Act of 1944, as amended, and of the minor spouse of such person, irrespective of his or her age, is removed for the purpose of this Act (sec. 144-8-1).

Persons under the age of 17 years are not qualified for appointment as executors or administrators of estates (sec. 153-7-7).

3. Property exemptions from seizure for debt

A. RESPECTIVE RIGHTS OF MAN AND WOMAN

Every debtor may hold exempt from attachment for debt his stock in trade, supplies, tools, fixtures, and other materials used to carry on business to a value of \$500, and one or more motor vehicles used to carry on a gainful occupation not exceeding an aggregate value of \$300. A professional man may hold exempt his library used to carry on his profession to a value of \$500. (This is not in addition to the stock in trade exemption.)

A single person may claim exempt from seizure for debt necessary wearing apparel to a value of \$250; watches and jewelry to a value of \$100; library, family pictures, and schoolbooks to a value of \$200; burial lot; household goods to a value of \$250; provisions and fuel on hand to a value of \$100. A single person engaged in agriculture or in livestock or poultry raising as his principal occupation may have up to \$750 exempted for the livestock and poultry, and \$500 for wagons and tools. (This is not in addition to the stock in trade exemption.)

The head of a family is entitled to hold exempt for seizure for debt specified articles, including the necessary wearing apparel of each member of the family to a value of \$250 for each person; watches and jewelry to a value of \$100 for each person; the library, family pictures, and schoolbooks of the family to a value of \$500; burial lot; household goods used by the family to a value of \$750; provisions and fuel for the use of the family to a value of \$300. (A "head of the family" is defined by statute as any person who supports or who by law is responsible for the necessities of life of one or more dependents. The status of a head of a family is not affected by the fact that members of the family do not reside together.)

A head of the family engaged in agriculture or in livestock or poultry raising as his principal occupation is entitled to an exemption from seizure of the livestock and poultry to a value of \$1,500; and horses, wagons, implements, and tools of a value of \$1,000. (This is not in addition to the stock in trade exemption.)

A house trailer or trailer coach is exempt to a value of \$2,500 while it is used and occupied as a place of residence by the head of a family and one or more members of the family.

The benefits of life insurance policies are exempt from seizure for debt to the extent of \$5,000. The proceeds from insurance for loss or damage to property which would have been exempt are exempt. The proceeds of any claims for damages for personal injuries suffered by any debtor, except obligations incurred for treatment of any such injuries or collection of such damages, are exempt.

All money received by any person as pension, compensation, or allowance for any purpose on account or arising out of the services of such person, as a member of the Armed Forces of the United States in time of war or armed conflict, is exempt, whether in the actual possession of the recipient thereof or deposited or loaned by him or her. There is a like exemption to the unmarried widow and the children of such person who receive a pension, compensation, or allowance of any kind from the United States on account or arising out of such service by a deceased member of such Armed Forces. When a debtor entitled to exemption under this subsection dies or leaves his or her family, the exemption extends to the dependents of said debtor (sec. 77-2-2).

None of the property described in section 77-2-2 is exempt from levy and sale on writ of attachment or writ of execution for the purchase price of such property (sec. 77-2-3).

Seventy percent of the earnings from health, accident, or disability insurance, and pension or retirement benefits due the head of a family at the time of garnishment is exempt; in the case of a single person, such amount is 35 percent (sec. 77-2-4).

No property is exempt from seizure for debt for the payment of any taxes legally assessed (sec. 77-2-5).

B. HOMESTEADS

Every householder in the State who is the head of a family is entitled to a homestead exemption not exceeding \$5,000 in value (sec. 77-3-1) as long as he, or his or her family, occupies the property as such homestead (sec. 77-3-3). The homestead may consist of a house and lot or lots in any town or city, or a farm consisting of any number of acres, but the value may not exceed \$5,000 (sec. 77-3-5).

Formal entry of the homestead must be made by the owner with the clerk and recorder of the county in which the property is located, as prescribed by law. If either husband or wife owning the homestead fails to make the entry, the other spouse may do so (sec. 77-3-2).

The surviving spouse or minor children of any person who dies in possession of a homestead are entitled to the homestead (sec. 77-3-4).

The homestead exemption is in addition to, but not in lieu of, an allowance granted from a decedent's estate for support of the widow and minor children (sec. 77-3-11).

To convey or encumber a homestead, both husband and wife must join in the conveyance or encumbrance of their respective interests (sec. 118-6-18).

The homestead is subject to execution or forced sale to satisfy the demands of a creditor who believes that the property is of a greater value than \$5,000. If the proceeds of the sale plus proper costs and

expenses are more than the exemption, the surplus is applied to satisfy the demand of the creditor, and the exempt amount is paid to the owner or person entitled to such exemption (sec. 77-3-6).

The proceeds received from the sale are exempt from attachment for 1 year provided the proceeds are kept separate from other money so that they can be identified (sec. 77-3-7).

The purpose of the homestead laws is to preserve a right of occupancy for those who stand in the relation of head of a family. The heir or devisee who succeeds to the title of the home property takes it subject to that limitation.¹

4. Ownership and control of property owned at marriage

The property, real and personal, which any woman owns at the time of her marriage, as well as the rents, issues, profits, and proceeds from it, continues to be her sole and separate property after marriage. It is not subject to her husband's disposal, nor is it liable for his debts (sec. 90-2-1).

The husband, however, is liable for the debts and liabilities of the wife contracted before marriage to the extent of the real and personal property he may receive with or through her or the proceeds derived from the sale or rent of her lands (sec. 90-2-5). Such liability is not extinguished by the wife's death (sec. 90-2-6).

5. Contractual powers of a married woman

A married woman may bargain, sell, and convey her real and personal property, and make any contract in reference to it as if she were unmarried (sec. 90-2-9).

Either husband or wife may convey property directly to the other.²

A wife may contract debts in her own name and upon her own credit. She may execute promissory notes, bonds, bills of exchange, and other instruments in writing, and may enter into any contract as if she were unmarried. Execution or other legal process under judgment against her may be enforced against her as if she were unmarried (sec. 90-2-10).

No married person residing with the other spouse can make a valid assignment of his or her future wages, or of any sum to become due the assigner after the date of assignment, without the joinder and signature of the other spouse, acknowledged before a notary public or other proper official (sec. 80-15-4).

No sale or mortgage of household goods used by the family is valid unless the transaction is evidenced by a written instrument executed

¹ *Wallace v. First National Bank of Colorado Springs* (1952), 125 Colo. 584; 246 Pac. (2d) 894.

² *Well v. Caywood* (1877), 3 Colo. 487 (Hist.).

by the husband and wife jointly. This provision does not apply if the husband and wife are not residing together or the mortgage is a purchase money mortgage) a mortgage executed simultaneously with sale of property in order to have purchase money) (sec. 21-1-2).

In all cases where an administrator of an estate is to be appointed, the surviving spouse has preference for appointment, if willing and qualified to serve. But application for such appointment must be made within 20 days from the death of the intestate (sec. 153-7-1).

A married woman may contract with her husband to do work for him apart from her regular household duties, and such contract is not against public policy but is enforceable by her.³

6. Earnings of a married woman

The earnings of any married woman from her trade, business, labor, or services are her sole and separate property, and may be used and invested by her in her own name (sec. 90-2-3).

The services of a married woman as a housewife belong to her husband, and she is not entitled to any monetary compensation for them.⁴

7. Liability for family support

A married woman may contract debts in her own name and upon her own credit, and is liable under such contracts as if unmarried (sec. 90-2-10). However, her capacity as a feme sole does not affect the husband's statutory liability for necessities purchased by her.⁵

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation to such liability they may be sued jointly or separately (sec. 43-1-10). However, this joint liability does not apply when the parties are not living together as a family in fact.⁶ The prime liability of the father to support his minor child always exists during minority.⁷

A man who willfully neglects, fails, or refuses to support his wife and legitimate or illegitimate children under 16 years of age, as provided by law, may be convicted of a felony unless such failure is due to physical disability or other good cause (sec. 43-1-1). The commitment of a child to a State institution does not relieve the parents or the legal guardian from responsibility for the support of the child (sec. 43-3-1).

³ *Tuttle v. Shutts* (1908), 43 Colo. 534; 96 Pac. 260.

⁴ *Denver & Rio Grande R.R. Co. v. Young* (1902), 30 Colo. 349; 70 Pac. 688.

⁵ *Hardenbrook v. Harrison* (1887), 11 Colo. 9; 17 Pac. 72 (Hist.).

⁶ *Denver Dry Goods Co. v. Jester* (1915), 60 Colo. 290; 152 Pac. 903.

⁷ *Garvin v. Garvin* (1941), 118 Pac. (2d) 768.

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

A married woman may carry on any trade or business on her sole and separate account. The earnings from her trade, business, labor, or services are her sole and separate property. Any property acquired by her trade, business, and services is subject to be taken on any execution against her (sec. 90-2-3).

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

The property, real and personal, which any woman in this State may own at the time of her marriage, as well as rents, issues, profits, and proceeds from it and any property received by her by inheritance under a will or as a gift from any person except her husband, remains her separate property during the marriage. Such property is not subject to the husband's disposal nor liable for his debts. The statute includes as the wife's separate property certain classes of gifts from her husband, such as jewelry, silver, tableware, watches, money, and wearing apparel (sec. 90-2-1).

The separate deed of the husband can convey no interest in the wife's lands (sec. 90-2-8). (See also number 6.)

10. Property acquired by joint efforts of husband and wife

Property acquired by joint efforts of husband and wife during the marriage belongs to the husband by rule of common law unless the parties have provided for joint ownership.

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

A married woman may sue and be sued in all matters relating to her property, person, or reputation, in the same manner as if she were unmarried (sec. 90-2-2).

All civil causes of action for breach of promise to marry, alienation of affections, criminal conversation, and seduction are abolished (sec. 41-3-1).

No contract to marry operates to give rise, either within or without the State, to any cause or right of action for the breach of it. Nor does any contract to marry made in any other State give rise to any cause of action within this State for the breach thereof (sec. 41-3-2).

In all tort actions by a married woman she shall have the same right to recover for loss of consortium of her husband as is afforded husbands in like actions (sec. 90-2-11).

12. Damages for injury by spouse to person or property

A married woman may sue her husband for damages for personal injuries caused by his negligence.⁸

⁸ *Rains v. Rains* (1935), 97 Colo. 19; 46 Pac. (2d) 740.

A husband has a right to maintain an action against his wife to recover property belonging to him.⁹

13. Competency of husband or wife to testify for or against each other

Neither husband nor wife can be examined as a witness for or against the other without the consent of the other spouse. Neither can husband or wife, during the marriage or afterward, be examined without the consent of the other as to any communications made by one to the other during the marriage. However, this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other (sec. 154-1-7).

In proceedings or prosecutions under the nonsupport statutes, the wife is a competent witness against the husband, with or without his consent (sec. 43-1-5).

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under the Uniform Reciprocal Enforcement of Support Act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage (sec. 43-2-22).

14. Right to dispose of separate property by will

Every person of sound mind and memory, who is at least 18 years of age, may dispose of his or her real and personal property or any interest therein by will (sec. 153-5-1).

A will is revoked by the subsequent marriage of the testator, or by the burning, tearing, or obliterating of the will by the testator or as otherwise stated. The subsequent divorce of a testator revokes all of the provisions in the will in favor of the divorced spouse, the effect of the revocation being the same as if the divorced spouse had died at the time of the divorce. The annulment of the testator's marriage has the same effect as a subsequent divorce. However, a will executed in contemplation of the marriage, divorce, or annulment of the existing marriage of the testator, to or from a person named in the will, is not revoked if the will expressly so provides (sec. 153-5-3).

A will is not revoked by the birth of a child after the will is made unless the will shows that it was the intention of the testator to disinherit such child. However, the devises and legacies by such will are reduced in equal proportions to raise a portion for such child in an amount equal to the share he would have received had the testator died without a will (sec. 153-5-6).

⁹ *Hedlund v. Hedlund* (1930), 87 Colo. 607; 290 Pac. 285.

15. Inheritance rights in deceased spouse's estate

Dower and tenancy by curtesy are abolished. Neither husband nor wife has any share in the estate of the other upon the death of one intestate except that provided by statute. Under the statute, one-half the real and personal property of an intestate person who leaves a surviving husband or wife descends and is distributed absolutely, after payment of debts, to the spouse, and the residue goes to any surviving children or their descendants. If no children or their descendants survive, the living spouse takes the entire net estate absolutely (sec. 153-2-1).

(For descent of homestead see number 3B.)

16. Provision for survivors during administration of estate

Upon application, a surviving spouse may be allowed to retain, as his or her sole and separate property, cash and assets of a total value of \$3,500. If there is no surviving spouse, the decedent's minor children receive the same allowance provided for a surviving spouse. If the minor children are not the children of the surviving spouse or are not residing with such spouse, then the court takes into consideration the needs of the surviving spouse and of all the minor children of the decedent, and makes such order, apportioning and dividing the allowance between them as is just. This allowance is exempt from attachment, execution, and other process (sec. 153-12-16).

If the personal estate of the decedent is not sufficient to pay the allowance, the real estate may be sold for such payment (sec. 153-12-19).

In lieu of ordering such real estate sold, an award of the property to the surviving spouse and/or minor children may be made by the court according to statutory requirements (sec. 153-12-20).

Any claim for an allowance must be filed within 6 months of the issuance of letters of administration (sec. 153-12-12).

If the total personal estate of a decedent is less than \$1,500, or if there is a widow or minor child who would be entitled to an allowance during the administration of an estate less than \$3,500, the court may order the personal estate distributed without administration (sec. 153-7-4).

This allowance to a widow is independent of her distributive share in her husband's estate.¹⁰ It is also independent of her claim of homestead and for a different purpose.¹¹ (NOTE.—These cases were decided prior to a 1965 law applicable to both spouses, whereas previously

¹⁰ *Williams v. Pollard* (1937), 101 Colo. 262; 72 Pac. (2d) 476.

¹¹ *Wallace v. First National Bank of Colorado Springs* (1952), 125 Colo. 584; 246 Pac. (2d) 894.

only the widow could receive an allowance. It is not known to what extent the new law will affect these decisions.)

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

Notwithstanding the provisions of a testator's will, the surviving spouse may accept the provisions of the will or take the amount to which the spouse would be entitled under intestate succession, which is one-half of the real and personal estate. If he or she rejects the will, such election must be filed with the court in written form within 6 months from the time the will is admitted to probate. However, if the survivor petitions the court at least 30 days before the 6 months expire to make a prudent determination, the court, upon finding that the petition is true, may extend the time 6 more months (sec. 153-5-4).

Joint tenancies in real or personal property are not destroyed by will or any other testamentary disposition (secs. 153-15-1, 153-15-4).

Marriage and Divorce

18. Age of consent to marriage

If the male is under the age of 21 years or the female under the age of 18 years, a license to marry may not be issued unless the written consent, verified under oath, of the parent or guardian of the person under age is filed as part of the application for the license. Such application must show the actual ages of the parties to the intended marriage, if either is under the age of consent (sec. 90-1-4).

When a license has been refused by the clerk and extraordinary circumstances are shown to exist, which justify a waiver of statutory requirements, the court may order a license to be issued (sec. 90-1-11).

A marriage contracted by a party under the age of 18 years is voidable (sec. 46-3-1).

A marriage is prohibited if either party is under 16 years of age. Any such marriage is void unless approved by a court decree (sec. 90-1-2).

19. Common-law marriage

The law of Colorado recognizes the validity of common-law marriages. A marriage entered into simply by agreement of the parties, followed by cohabitation as husband and wife, and such other attendant circumstances as are necessary to constitute what is termed a common-law marriage, may be valid and binding.¹²

¹² *Klipfel's Estate v. Klipfel* (1907), 41 Colo. 40; 92 Pac. 26.

20. Premarital requirements

Each applicant for a license to marry must file a physician's certificate with the licensing official, showing that in the opinion of the physician the applicant is not infected with syphilis or other venereal disease, or, if so infected, that the disease is not in such state as to be communicable. The physician's certificate must be based upon a prescribed examination and standard serological test given within 30 days prior to the date the license is issued. No marriage may be performed unless the required certificate is attached to the marriage license.

An exception to those requirements may be granted only upon written consent of the State Board of Health, given when the Board finds it advisable under existing circumstances to authorize the marriage (sec. 90-1-4).

The following types of marriage are void: those of parties within specified degrees of kinship; bigamous or polygamous marriages; marriages void in the place where contracted (secs. 40-9-4, 46-3-3); and where either party is under 16 years of age, unless license to marry was issued by court order (sec. 90-1-2).

21. Interstate cooperation in marriage-law enforcement

All marriages contracted outside the State that are valid by the laws of the country where contracted are valid in Colorado. However, this provision may not be construed so as to allow bigamy or polygamy in the State (sec. 90-1-3).

Under this statute marriages performed in other jurisdictions, even though not allowed to be performed in this State, are valid so long as they meet the requirements of the jurisdiction where they are performed.¹³

22. Annulment

A marriage may be annulled on the following grounds: (a) nonage; (b) fraud or misrepresentation affecting essence of the marriage; (c) duress exercised by either party or a third party; (d) marriage entered into on jest or dare; (e) one or both parties under influence of alcohol or drugs so as to be incapable of voluntary consent; (f) mental incapacity to give consent; (g) physical incapacity to perform marital act. In order to annul a marriage on the ground of nonage, the suit must be instituted before the party under age reaches his or her 19th birthday (sec. 46-3-1).

Any child born as issue of a void or voidable marriage shall be the legitimate child of his parents (sec. 46-3-5).

¹³ *Spencer v. People* (1956), 133 Colo. 196; 292 Pac. (2d) 971.

Custody, support, property division, attorney fees, and costs

During an action for annulment, and after the annulment has been granted or the marriage has been declared void, the court may make such orders as the circumstances of the case warrant for the care, custody, and support of the children dependent upon the parents for support, and for suit money, court costs, and attorney fees. In addition, after the annulment decree has been granted or the marriage has been declared void, the court may make such orders as are fair and equitable concerning the division of property acquired during the marriage, other than by gift or inheritance, and any other matters in controversy between the parties raised by the pleadings. The court may also require security to insure the enforcement of any orders issued, in addition to other methods of enforcing orders as prescribed by statute or rules of civil procedure (sec. 46-3-6).

23. Divorce

A marriage may be dissolved and a divorce granted for any one or more of the following reasons: (a) impotency at marriage or occurring in consequence of immoral conduct committed after marriage; (b) adultery; (c) willful desertion without reasonable cause for at least 1 year immediately preceding the filing of a divorce action; (d) extreme and repeated cruelty resulting in mental suffering or bodily violence; (e) failure of the husband, being in good health, to reasonably provide for his family for a period of 1 or more years; (f) habitual drunkenness or drug addiction for at least 1 year immediately preceding the filing for divorce; (g) conviction of a felony after marriage; or (h) adjudgment as insane, mentally ill, deficient, or incompetent for at least 3 years prior to the divorce action (husband granted a divorce on this ground not relieved thereby from his liability for support of such divorced spouse unless she has sufficient property or means to support herself); (i) parties living separate and apart for 3 consecutive years under a court decree (sec. 46-1-1).

Except as to divorce actions on the grounds of adultery or extreme cruelty, where the offense was committed within the State, no person may be granted a divorce unless he or she has been a bona fide resident and citizen of the State during the 1 year immediately preceding the filing of the suit (sec. 46-1-3).

No trial for an action for divorce shall be had until at least 90 days after service of process; upon motion of either party, the court shall continue said trial for an additional 30 days. Furthermore, the court, upon motion of either party or upon its own motion, may grant other and additional continuances from time to time. Any action for divorce which shall not have been tried within 1 year from the com-

mencement of the action shall be dismissed with prejudice on motion of the court or of either party, except for good cause shown (sec. 46-1-6).

A woman suing for divorce, who shows the court that she is poor and unable to pay the expenses of the suit, is allowed by the court to prosecute her suit without costs. In such cases no fees are charged by the officers of the court (sec. 46-1-9).

A divorce does not affect the legitimacy of the children of the marriage nor the children's right to inherit the property of their father or mother (sec. 46-1-1).

An action may be maintained by a wife for separate maintenance (divorce from bed and board): (a) upon any ground provided by law for divorce; (b) where she has been abandoned by her husband without just cause or excuse, and a reconciliation is not probable; or (c) upon any ground generally recognized in equity (sec. 46-2-1).

A decree granting separate maintenance does not bar either of the parties from subsequently bringing and maintaining an action for divorce (sec. 46-2-2).

Alimony and maintenance

Pending a divorce action, the court has the discretion to grant alimony and counsel fees, as the circumstances of the case may warrant, providing for the care, custody, and maintenance of the minor children. When a divorce has been granted, the court may make such orders providing for payment of alimony and maintenance of the complainant and minor children as may be reasonable and just, and may require security for such payment. It is also within the discretion of the court to decree a division of the property of the parties. Remarriage of the party entitled to alimony relieves the other party from further payment of alimony, but nothing in the law precludes the parties from providing otherwise by written agreement or stipulation (sec. 46-1-5).

Parents and Children

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

Every married woman is the joint guardian of her children with her husband and has equal rights with respect to them (sec. 153-17-3).

A father or mother or the sole surviving parent may maintain an action for the wrongful death of a child. Where the father and mother maintain the action, each has an equal interest in the judgment (sec. 41-1-1).

25. Guardianship of a minor child

Every married woman is the joint guardian of her children with her husband and has equal powers, rights, and duties with respect to

them (sec. 153-17-3). When a guardian is appointed, preference is given to the child's father or mother unless the best interests of the child require otherwise; if both parents of the child are dead, to any person previously designated by the surviving parent, or either parent, in a properly prescribed instrument or by last will; to any person designated by a minor over 14 years of age, or others as specified (sec. 153-9-1).

If the court finds that the conservation of the ward's estate so requires, it may appoint a temporary guardian without notice, or with such notice as it shall direct, to perform such acts and to act for such period of time as the court may find necessary and may direct. The temporary guardian must act strictly in accordance with the court's direction (sec. 153-9-1).

Parents are liable for actual damages up to \$300 plus court costs when a minor, under the age of 18 years and living with them, maliciously or willfully destroys property (sec. 41-2-7).

26. Appointment of testamentary guardian for a minor child

Upon the death of either father or mother, the surviving parent, whether of full age or a minor, of a child likely to be born or of a child under the age of 21 years and unmarried, may by deed or last will dispose of the custody and tuition of such child during his minority, or for any less time, to any proper person (sec. 153-17-3).

Guardianship invests all the rights and powers in the person appointed, and subjects him to all the duties and obligations of a guardian of the person of such minor. The rights, powers, duties, and obligations of such guardian may be restrained and regulated by the parent making the deed or will (sec. 153-17-4).

The surviving parent, or either parent, may designate a guardian of the estate of a minor by will or deed. Such designated person will be appointed guardian by the court upon the death of both parents unless the best interests of the child require otherwise (sec. 153-9-1).

27. Inheritance—child

If a person dies intestate, leaving neither a spouse nor descendants, his real and personal estate, after payment of debts, is taken by his father and mother in equal portions. If either parent is dead, the survivor takes the entire net estate (sec. 153-2-1).

28. Child born out of wedlock

Any single woman when pregnant or delivered of a child born out of wedlock may make complaint to a justice of the peace against the alleged father to determine the paternity of the child. Such pro-

ceeding, however, may not be instituted after the child is 12 months old. If the man is found to be the father upon a proper trial, the jury may assess damages for the support of the child and direct payment annually or otherwise for any term of years not exceeding 18. A fair proportion of the sum so recovered must be appropriated to the support, maintenance, and education of the child. If the mother does not prove her case, she must pay the costs of the suit (secs. 22-6-1—22-6-6).

Any man who willfully neglects, fails, or refuses to provide reasonable support and maintenance for his illegitimate child or children under 16 years of age is guilty of a felony. One who willfully fails, refuses, or neglects to provide proper care, food, and clothing in case of sickness for such illegitimate child or children, or the mother of his illegitimate child during childbirth and attendant illness, is also guilty of a felony. Upon conviction he is subject to imprisonment in the penitentiary for not more than 5 years, unless it is shown that he is unable to furnish the required support due to physical incapacity or other good cause. However, in lieu of this penalty, the court may accept a bond with sufficient surety, not to exceed \$1,000, conditioned upon his compliance with the law or orders of the court (sec. 43-1-1).

29. Inheritance—child born out of wedlock

The property of any person born out of wedlock, dying intestate in the State and leaving an estate therein, passes to the surviving spouse and/or children as does the property of any other person. (See number 15.) If no spouse or children survive the illegitimate person, the mother takes one-half of the estate, and her children and their descendants take the other half. However, the property of an illegitimate person entitled to inherit from his father, as set forth in the statutes, is distributed in the same manner as the property of a person born in wedlock (sec. 153-2-11).

Children born out of wedlock inherit in the same manner as those born in wedlock if the parents subsequently intermarry and if, after such intermarriage, the children are recognized by the father as his. If the father in writing, by his conduct, or otherwise acknowledges such children as his own and has regularly contributed to their support for a reasonable time, they inherit from his estate. Illegitimate children inherit from their mother the same as those born in wedlock (sec. 153-2-8).

POLITICAL RIGHTS

30. Domicile of a married woman

In the absence of affirmative evidence to the contrary, the wife's domicile is presumed to merge in that of the husband. She is presumed to live with her husband in his home.¹⁴

In actions for divorce, the wife shall not be considered to have the residence of her husband based merely on the marriage relationship (sec. 46-1-3).

The wife of any person who would be presumed to be a resident under this section (for inheritance tax purposes) shall also be presumed to be a resident and her estate subject to the payment of an inheritance tax, unless said wife has a domicile separate from her husband. Residence for the purposes of this article shall be determined exclusively in the proceedings provided in this article, and orders relating to residence previously entered in the probate proceedings shall not be conclusive for the purposes of this article (sec. 138-3-5).

31. Public office—eligibility of women

There are no statutory restrictions on women's right to be elected or appointed to public office.

32. Jury service—eligibility of women

The right of any person to serve on any jury may not be denied or abridged on account of sex (Const., art. II, sec. 23).

Women are eligible for jury duty on the same terms as men. An exemption may be allowed to any person whose presence, in the opinion of the presiding judge, is necessary for the care of other persons; or on whom jury duty would cause undue hardship; or who has requested relief from duty for other good cause.

An exemption may be granted also to members of a religious sisterhood of any denomination (sec. 78-1-1).

SUPPLEMENT

New Trends in Family and Property Law

Marriage counseling

Counseling services are available through the district courts of the State as specified to spouses involved in domestic difficulties. Counsel

¹⁴ *Colorado Fuel and Iron Co. v. Industrial Commission* (1933), 93 Colo. 188; 24 Pac. (2d) 1117.

THE LEGAL STATUS OF WOMEN

fees as set by the judge are to be paid by either or both spouses, as determined by the court. However, under certain circumstances, if the court is satisfied that the parties are indigent, counseling fees may be paid from the county general fund. If prolonged or more specialized type of counseling is necessary, either spouse or both are referred to the proper physician, psychiatrist, psychologist, social service agency, or clergyman for assistance.

The use of counseling services is not to be construed as a condonation of either spouse of acts that may constitute a divorce. All counseling proceedings, whether oral or written, are privileged and confidential and are not admissible or usable for any purpose in any divorce or other proceeding (secs. 46-5-1—46-5-7).

Family planning and birth control

Subject to prescribed regulations in these sections, the governing body of a county or city may provide and pay for and offer family planning and birth control services to every parent who is a public assistance recipient and to any other parent or married person who might have interest in, or benefit from such services, which include interviews with trained personnel, distribution of literature, referral to a licensed physician for consultation, examinations, tests, medical treatment, prescription, necessary medical preparations, and contraceptive devices and similar products (secs. 36-20-1—36-20-7).

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State and Fed. and Gen. E. Industrial Commission (1953), 22 Code Ann. 21-111.