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

REPORT FOR  
**NEBRASKA**  
as of May 1, 1964

The report for Nebraska was prepared by Josephine A. Linn  
and reviewed by James Lee Spencer under the general direction  
of Alice A. Morrison, Chief, Division of Legislation and Standards,  
Women's Bureau, U. S. Department of Labor.



WOMEN'S BUREAU BULLETIN 157-26 (Revised)

UNITED STATES DEPARTMENT OF LABOR  
W. WILLARD WIRTZ, *Secretary*

WOMEN'S BUREAU  
MARY DUBLIN KEYSERLING, *Director*

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U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1964

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Washington, D.C., 20402 - Price 15 cents

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

## INTRODUCTION

Any conclusion bearing on women'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.

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 laws governing property and family rights and political status.

In general, it has been the rule that in the absence of a specific statute abrogating common-law principles, the common law applies. In the century just past, many 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 50 States and the District of Columbia.

The President's Commission on the Status of Women, established December 14, 1961, by Executive Order 10980, 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, presents its findings and makes recommendations for constructive action. A considerable number of States already have established Governors' Commissions on the Status of Women to implement the recommendations made in the report of the President's Commission.



## SOURCES

Constitution of Nebraska  
Revised Statutes of Nebraska, 1961 Cumulative Supplement  
Commissioner's Opinion, No. 2, "not to be officially reported"  
Nebraska Reports  
Northwestern Reporter  
Northwestern Reporter, Second Series

## EXPLANATORY NOTE

Bulletin 157-26 presents a digest of the State constitutional and statutory provisions affecting the legal status of women in the State of Nebraska. It includes pertinent statutory changes enacted in that State up to May 1, 1964, and supersedes the previous report for Nebraska of January 1, 1956.

References to the State constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation "Const.," as "(Const., art. VI, sec. 1)," placed after the related subject matter.

References to the code sections are likewise in parentheses, as "(sec. 38-101)."

Other abbreviations used are:

Commissioner's Opinion, No. 2, "not to be officially reported"—  
Unof.

Nebraska Reports—Nebr.

Northwestern Reporter—N.W.

Northwestern Reporter, Second Series—N.W. (2d)

Case citations definitely construing statutes or declaring judicial policy in the absence of express statutory provision are indicated by footnote references.

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 the subject heading "Earnings of a married woman."

# NEBRASKA

## CIVIL RIGHTS

### *Contracts and Property*

#### **1. Age of majority**

The age of majority is 21 years for both sexes, unless a woman marries before attaining that age. In that event, her minority ends for purposes other than voting (Const., art. VI, sec. 1) (sec. 38-101).

#### **2. Contractual powers of a minor**

The contract of a minor for other than necessities is not void but voidable at his option after attaining majority.<sup>1</sup>

Where necessities are sold and delivered to an infant, he must pay a reasonable price for them. Necessaries are goods suitable to the condition in life of such infant, and to his actual requirements at the time of delivery (sec. 69-402).

A minor may own shares of stock in a building and loan association or in a Federal savings and loan association in the same manner and with the same binding effect as though he were of full age, except that he or his estate shall not be bound on his subscription to stock except to the extent of payments actually made (sec. 8-318).

The endorsement or assignment of a negotiable instrument by an infant passes the property involved, notwithstanding that, from what of the infant's capacity to contract, the corporation or infant may incur no liability thereon (sec. 62-122).

The disability of minority of any veteran, otherwise eligible for a loan, guaranty, or insurance of a loan under the Servicemen's Readjustment Act of 1944, as amended, and as it may be amended, or of the minor spouse of any eligible veteran, does not affect the binding effect of any obligation incurred by such eligible person or spouse, including incurring of indebtedness and acquiring, encumbering, selling, releasing, or conveying property, or any interest therein, if all or part of any such obligation is guaranteed or insured by the Federal Government or the Veterans' Administration (sec. 80-701).

<sup>1</sup> *First National Bank of Wymore v. Guenther et al.* (1934), 125 Nebr. 807; 252 N.W. 395.

### 3. Property exemptions from seizure for debt

#### A. RESPECTIVE RIGHTS OF MAN AND WOMAN

##### Personal property

All heads of families who have neither lands, town lots, nor houses subject to exemption as homestead are entitled to select, as exempt from execution personal property, to the value of \$500 exclusive of wages (sec. 25-1552).

Any person resident in the State and head of a family is entitled to exempt certain articles of personal property enumerated in the statute, including wearing apparel of the debtor and his family; library; a pew in a house of worship; necessary household and specified furniture and furnishings; other household furniture not listed and not exceeding \$100 in value; necessary livestock and equipment for farming as listed if debtor is engaged in that occupation, and other farming implements not exceeding \$50 in value; 6 months' supply of provisions and fuel for family needs; and the equipment for carrying on the debtor's trade or profession (sec. 25-1556).

##### Wages

Wages of persons who are heads of families or married women are exempt from attachment, execution, and garnishment to the extent of 90 percent of the amount of such wages before and after such wages are due. The remaining 10 percent of a married woman's wages are liable only for payment of debt for necessities furnished the family after execution against her husband for such indebtedness has been returned unsatisfied.

The term "head of a family" includes within its meaning: first, the husband when the claimant is a married person; second, every person who has, residing on the premises with him or her, and under his care and maintenance, either (a) his or her minor child or the minor child of his or her deceased wife or husband, (b) a minor brother or sister, or the minor child of a deceased brother or sister, (c) his or her father, mother, grandfather, or grandmother, (d) the father, mother, grandfather, or grandmother of a deceased husband or wife, (e) an unmarried sister or any other relative mentioned in this section, who has attained the age of majority and is unable to take care of or support himself or herself (sec. 40-115).

#### B. HOMESTEADS

The head of a family is entitled to an exemption not exceeding \$2,000 in value for a homestead, consisting of the dwelling in which the claimant resides, its appurtenances, and the land on which it is



situated, but not exceeding 160 acres if it is outside the city limits or two adjoining lots if it is in a town or city (secs. 40-101, 40-115).

The homestead may be selected from the separate property of the husband or from that of the wife with her consent. An unmarried claimant who is the head of a family may select the homestead from any of his or her property (sec. 40-102).

The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife (sec. 40-104).

#### **Inheritance rights in homestead**

If the homestead was selected from the separate property of either husband or wife, the homestead right terminates upon the death of the person from whose property it was selected, if no spouse, minor children, or dependent adult blood relative survive the decedent. In all other cases, on the death of the person from whose property it was selected, the homestead vests in the surviving spouse for life, and afterwards in the decedent's heirs forever. In case a surviving spouse willfully fails to provide a suitable home and maintenance for the minor children of the decedent or elects to partition the homestead premises, the homestead right of the survivor shall then terminate, and the homestead descends as other real property which the decedent owned at the time of death (sec. 40-117).

#### **4. Ownership and control of property owned at marriage**

(See number 9.)

#### **5. Contractual powers of a married woman**

A married woman may bargain, sell, or convey her real and personal property and enter into any contract pertaining to it in the same manner and to the same extent and with like effect as a married man. The obligations of her contracts are the same as those of a married man (sec. 42-202).

Any mortgage, sale, or transfer of household goods, or any interest therein owned by a husband or wife, or by both, and used by them in their dwelling house, or purchased or held by them or either of them for family use is void unless executed and acknowledged by both husband and wife in the same manner as prescribed by law for the conveyance of real estate (sec. 36-301). Special provision is made for such mortgage, sale, or transfer, where one spouse is insane or incapable of executing the instrument (sec. 42-501).

A married woman may give her husband a power of attorney authorizing him to convey her separate estate.<sup>2</sup>

<sup>2</sup> *Benschoter v. Atkins* (1889), 25 Nebr. 645 ; 41 N.W. 639.



The property of the husband is not liable for any debts contracted by the wife before marriage (sec. 42-206).

**Right to sue and be sued**

A married woman may sue and be sued in the same manner as if she were unmarried (sec. 25-305).

A married woman may contract with her husband; and one spouse can sue the other to enforce contract and property rights.<sup>3 4</sup>

If a husband and wife are sued together, the wife may defend for her own right, and if her husband neglects to defend, she may defend for his right also (sec. 25-306).

**Liability—joint deed with husband**

A married woman is not bound by any covenant (a promise of legal validity) in a joint deed entered into by herself and husband (sec. 42-207). A wife joining with her husband in the conveyance of his property in order to release the contingent interest she may have as a wife is not liable in damage suits for breach of covenant of warranty.<sup>5</sup> A wife also is not liable on the covenants in a mortgage which she signed to release her dower rights.<sup>6</sup> However, a wife is liable on the covenant of warranty in the conveyance of her separate estate though the husband joins in such conveyance.<sup>7</sup>

**Wage assignments**

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 purchase of government bonds, contributions to charity, payment of union dues, insurance, pension assessments, to credit unions, or for savings plans (sec. 36-213). No assignment of or order for wages to secure a loan or advancement by a married man or woman is valid unless the written consent of the husband or wife is attached thereto (sec. 45-144).

**Fiduciary position**

A married woman may act as executrix or administratrix. The widow of a person who dies intestate, if competent and suitable, has first preference in being granted the administration of her deceased husband's estate (secs. 30-302, 30-315).

<sup>3</sup> *May v. May* (1879), 9 Nebr. 16; 2 N.W. 221.

<sup>4</sup> *Trayer et al. v. Setzer*, (1904), 72 Nebr. 845; 101 N.W. 989.

<sup>5</sup> *Pauley v. Knouse et al.* (1923), 109 Nebr. 716; 192 N.W. 195.

<sup>6</sup> *Pochin v. Conley et al.* (1905), 74 Nebr. 429; 104 N.W. 878.

<sup>7</sup> *Real v. Hollister* (1885), 17 Nebr. 661; 24 N.W. 333.

## 6. Earnings of a married woman

The earnings of a married woman from her trade, business, labor, or services are her separate property and may be used and invested by her in her own name (sec. 42-203). Earnings of a married woman as a laundress and seamstress for others do not belong to her husband.<sup>8</sup>

## 7. Liability for family support

When execution against the husband has been returned unsatisfied for want of goods and lands on which levy could be made, the property of the wife not exempt by law from sale under execution or attachment is liable for the payment of debts contracted for necessities furnished her family. Ninety percent of a married woman's wages are specifically exempt from forced payment of family debts (sec. 42-201). However, no personal liability is imposed on her where she has no separate estate.<sup>9</sup>

(See number 25.)

A husband remains primarily liable for expenses of the last illness and burial of his wife.<sup>10</sup> A father's legal duty to support his child ordinarily ceases when the child becomes of age.<sup>11</sup> A husband is not bound without his consent to a contract made by his wife relating to a subject other than necessities.<sup>12</sup>

Necessaries include medical expenses of a husband when he is actually living with the family and is temporarily incapacitated by illness and in need of medical attention. In such case, the wife is liable as surety for the necessities furnished the family, including the husband's medical expenses. However, her separate estate is not bound until after execution, on a judgment obtained against the husband for such indebtedness, is returned unsatisfied.<sup>13 14</sup> Property acquired by the wife after divorce is not liable for debts contracted for family necessities by her husband prior to the divorce.<sup>15</sup>

Whoever, without good cause, abandons and willfully neglects or refuses to provide for his wife, or whoever abandons and willfully neglects or refuses to provide for his or her minor child under 16 years of age, including a child born out of wedlock, upon conviction thereof, is deemed guilty of desertion and is subject to a jail or prison sentence as specified (secs. 28-446, 28-446.01).

<sup>8</sup> *Riley v. Lidtke* (1896), 49 Nebr. 139; 68 N.W. 356.

<sup>9</sup> *Dreamer v. Oberlander* (1932), 122 Nebr. 335; 240 N.W. 435.

<sup>10</sup> *In re White's Estate* (1948), 150 Nebr. 167; 33 N.W. (2d) 470.

<sup>11</sup> *Waldbaum v. Waldbaum* (1961), 171 Nebr. 625; 107 N.W. (2d) 407.

<sup>12</sup> *Lincoln v. Knudsen* (1956), 163 Nebr. 390; 79 N.W. (2d) 716.

<sup>13</sup> *Leake v. Lucas* (1903), 65 Nebr. 359; 91 N.W. 374, 93 N.W. 1019.

<sup>14</sup> *Small et al. v. Sandall* (1896), 48 Nebr. 313; 67 N.W. 156.

<sup>15</sup> *C. N. Deitz Lumber Co. v. Anderson* (1927), 116 Nebr. 205; 216 N.W. 667.

Whoever willfully fails, refuses, or neglects to provide proper food, clothing, shelter, or, in case of sickness, to care for his wife and/or minor child; or, being able to work and contribute to such support, refuses to seek or neglects to work, or refuses such work when found or offered; or willfully conducts himself so as to be discharged from work for the purpose of avoiding the support of his family, upon conviction thereof, is guilty of a misdemeanor or felony and is subject to a jail or prison sentence as provided (sec. 28-449).

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

A married woman may carry on a trade or business in her own name, perform any labor or services on her sole and separate account, and enter into any contract with reference to such trade or business in the same manner as if she were unmarried (sec. 42-203).<sup>16 17</sup>

The word "business" is applicable to any particular employment, occupation, or profession followed as a means of livelihood.<sup>18</sup>

A married woman may enter into a business partnership with another as part of her own trade or business, and when she does, she becomes bound as a partner and is liable for partnership debts whether contracted by herself or another member of the firm.<sup>19</sup>

A wife is not bound by her husband's covenant not to acquire a competitive business.<sup>20</sup> A husband may act as agent in managing his wife's business.<sup>21</sup>

(See number 6.)

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

The wife's separate estate consists of the property, real and personal, which she owns at the time of marriage, and the rents, issues, profits, or proceeds from it; also any property of any character which she acquires by inheritance, will, or gift from any person except her husband, or by purchase, or otherwise.

This separate property is not subject to the control of her husband nor liable for his debts, except that any portion of it, no matter how acquired, not exempted from execution by statute, is liable for the husband's debts contracted for necessities furnished the family when his own property is insufficient to satisfy the indebtedness (sec. 42-201).<sup>22</sup>

Any woman who was married out of this State and whose husband

<sup>16</sup> *Shortel v. Young et al.* (1888), 23 Nebr. 408; 36 N.W. 572.

<sup>17</sup> *Farm Mortgage and Loan Co. v. Beale et ux.* (1925), 113 Nebr. 293; 202 N.W. 877.

<sup>18</sup> *Mergenthaler Linotype Co. v. McNamee et al.* (1933), 125 Nebr. 71; 249 N.W. 92.

<sup>19</sup> *Plattsmouth State Bank v. John Bauer & Co. et al.* (1937), 133 Nebr. 35; 274 N.W. 204.

<sup>20</sup> *Adams v. Adams et al.* (1953), 156 Nebr. 778; 58 N.W. (2d) 172.

<sup>21</sup> *Harris et al. v. Weir-Shugart Co.* (1897), 51 Nebr. 483; 70 N.W. 1118.

<sup>22</sup> *Dreamer v. Oberlander* (1932), 122 Nebr. 335; 240 N.W. 435.



thereafter becomes a resident of this State enjoys all rights as to property acquired by the laws of any other State, territory, or country, or by virtue of any marriage contract or settlement made out of the State (sec. 42-204).

### 10. Property acquired by joint efforts of husband and wife

Property acquired after marriage by the joint efforts of the husband and wife belongs to the husband by rule of common law, unless other arrangement is made by private contract, such as a joint deed or joint bank account.

A community-property law enacted in 1947 was repealed in 1949, and the community-property interest is perpetuated only by notice of a claim filed within 1 year of the date of repeal (secs. 42-603, 42-617).

Notwithstanding that any property may in fact be community, a husband or wife has the power to receive, manage, control, and dispose of, or otherwise deal with property standing in his or her name and under his or her management or control, in such manner as he or she would be entitled to deal with such property by law had the community-property law (chapter 156, Laws 1947) never been enacted (sec. 42-618).

#### Joint tenancy

The rights of a wife with respect to property held in joint tenancy are not different from those of her husband. Where a wife is a joint tenant of property, she may exercise her rights with respect to consenting or objecting to proposed special assessments independent of her husband.<sup>23</sup> The common-law rule of estate by entirety does not prevail in Nebraska,<sup>24</sup> that is, each owner possesses the undivided whole of the estate.

A bank deposit made in the name of two or more persons deliverable or payable to either or to their survivor or survivors may be delivered or paid to either of said persons or to the survivor or survivors in the course of business (sec. 8-167). Bank deposits made by a husband in the name of himself and his wife, whether expressly as joint tenants with right of survivorship or not, pass title to the surviving wife.<sup>25</sup>

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

A married woman sues in her own name for injuries to her person.<sup>26</sup>

Either husband or wife has a right of action for damages against any person intentionally disturbing the harmonious relation between

<sup>23</sup> *Bonner et al. v. City of Imperial et al.* (1948), 149 Nebr. 721; 32 N.W. (2d) 267.

<sup>24</sup> *Kerner v. McDonald* (1900), 60 Nebr. 663, 84 N.W. 92.

<sup>25</sup> *Scriven et al. v. Scriven et al.* (1951), 153 Nebr. 655; 45 N.W. (2d) 760.

<sup>26</sup> *Graves v. Peck* (1926), 114 Nebr. 745; 209 N.W. 617.



them, so that the affections, comfort, aid, society, and companionship are alienated.<sup>27</sup>

A married woman may recover for loss of her earning capacity.<sup>28</sup>

A married woman also may recover for loss of future earnings from her labor through permanent injury, though not engaged in business at present.<sup>29</sup>

The married woman's act does not deprive her husband of his right of action for loss of his wife's services.<sup>30</sup>

## 12. Damages for injury by spouse to person or property

The statute which empowers a married woman to sue (sec. 25-305) does not authorize her to sue her husband for personal injuries. The statute was apparently designed to remove disabilities of women so as to place the sexes in equal position before the law. The husband may not sue the wife for her wrongful acts against him and thus both sexes have the same disability.<sup>31</sup>

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

Husband and wife are incompetent to testify concerning any communication made by one to the other during the marriage, whether called to testify during the marriage relation or afterward, except as otherwise expressly provided by law (secs. 25-1201, 25-1204).

Neither husband nor wife can be a witness against the other except in a criminal proceeding for rape, adultery, bigamy, incest, or a crime committed by one against the other. However, a wife is a competent witness against her husband in cases of prosecution for abandonment of wife and child. Either spouse is competent to testify against the other in any suit either may bring against a third person, relating to the marriage relationship between the husband and wife, or the interruption of or interference with such relationship, as in a suit for alienation of affections, or adultery; and any divorce decree by one against the other is competent evidence in any such action. Either husband or wife may be a witness for the other in all criminal prosecutions (sec. 25-1203).

Laws attaching a privilege against disclosure of communications between husband and wife are inapplicable to proceedings under the Uniform Reciprocal Enforcement of Support Act. Husband and

<sup>27</sup> *Baltzly v. Gruenig* (1934), 127 Nebr. 520; 256 N.W. 4.

<sup>28</sup> *Montgomery v. Miller* (1909), 83 Nebr. 625; 120 N.W. 197.

<sup>29</sup> *Bliss v. Beck et al.* (1907), 80 Nebr. 290; 114 N.W. 162.

<sup>30</sup> *Omaha and Republican Valley Railway Co. v. Chollette* (1894), 41 Nebr. 578; 59 N.W. 921.

<sup>31</sup> *Emerson v. Western Seed and Irrigation Company* (1927), 116 Nebr. 180; 216 N.W. 297.

wife are competent and compellable witnesses to testify to any relevant matter, including marriage and parentage (sec. 42-718).

#### **14. Right to dispose of separate property by will**

Every person of full age and sound mind may dispose of all his real and personal property by will in writing. Any married woman may dispose of any of her real and personal property by will, and may alter or revoke such will in the same manner as a person under no disability (secs. 30-201, 30-202).

However, neither husband nor wife may dispose of his or her estate by will so as to defeat the right of the other to a statutory share in it, since the survivor may elect to abide by the will or take under the intestate statute (secs. 30-105, 30-108).<sup>32</sup>

(See numbers 15 and 17.)

#### **15. Inheritance rights in deceased spouse's estate**

##### **Real property**

Dower and curtesy have been abolished (sec. 30-104).

Real estate which decedent possessed at any time during marriage or an interest in realty possessed at decedent's death, not devised, lawfully conveyed, or sold under court proceedings, descends to the living spouse, subject to decedent's debts, and the homestead rights, as follows:

- (a) One-fourth, if one or more descendants of the deceased survive and the living spouse is not the parent of all the decedent's children;
- (b) One-third, if two or more descendants of the deceased survive and the living spouse is the parent of all the decedent's children;
- (c) One-half, if only one child or the issue of such child survives;
- (d) One-half, if there are no surviving descendants of the decedent;
- (e) The entire net real estate, if no blood relatives of the decedent survive (sec. 30-101).

The surviving spouse has a life estate in a homestead that was selected from the separate property of a decedent. After the death of such survivor, the homestead property passes absolutely to the heirs of the spouse who died first, provided he or she did not dispose of the remaining interest by will (sec. 40-117).

The right of a surviving spouse to inherit a part or all of the real estate of which his or her spouse was seized (legally possessed) of an estate of inheritance at any time during the marriage may be barred by a conveyance executed by both spouses, or by the one seized of such property if either such husband or wife is not a resident of the State, or by the sale of the real estate under court order during the lifetime

<sup>32</sup> *Richardson v. Johnson et al.* (1915), 97 Nebr. 749; 151 N.W. 314.

of the owner, or by executing a valid antenuptial contract disposing of such rights (secs. 30-105, 30-106).

However, a husband or wife is not empowered to make an antenuptial conveyance of property in fraud of the marital rights of the other.<sup>33</sup>

A conveyance of real estate by a husband without joining his wife in the deed will convey all of the interest in the estate except the marital rights of the wife, if she survives him.<sup>34</sup>

Where a husband does not join in the contract of his wife conveying real property, his marital rights are not divested.<sup>35</sup>

Postnuptial contracts (contracts made during marriage) entered into by husband and wife while a complete marriage relation exists, which settle their property rights, including their respective rights of inheritance in the property of the other, are invalid.<sup>36</sup>

### Personal property

Personal property of the deceased spouse not disposed of by will is distributed as follows:

After payment of the statutory allowances and the debts and charges against the estate of the decedent, the remaining portion of the personal estate, if it amounts to more than \$500, is distributed in the same proportions and to the same persons as prescribed for the real estate (sec. 30-103).

## 16. Provision for survivors during administration of estate

### Provision for surviving spouse and minor children

All of the estate of the testator, real and personal, shall be liable to be disposed of for payment of his debts and expenses of administration. The court may make reasonable allowances for maintenance of the surviving spouse and minor children out of the personal estate, or the income of the real estate, during progress of settlement of the estate, but no longer than 1 year after the grant of administration, or until their shares of the estate are assigned to them; except that where both parents are dead, leaving children under 14 years of age, an allowance is made for the support of such children until they reach the age of 14 years, out of the personalty and the income of the realty the parent would have inherited had he or she been living (secs. 30-103, 30-229).

Whether or not a decedent left a will, the surviving husband or wife, or if there is none, the surviving child, is allowed all the wearing

<sup>33</sup> *Stansberry v. Stansberry et al.* (1918), 102 Nebr. 489; 167 N.W. 563.

<sup>34</sup> *Zvacek v. Posvar* (1929), 118 Nebr. 163; 223 N.W. 792.

<sup>35</sup> *Hughes v. De Barberi* (1961), 171 Nebr. 780; 107 N.W. (2d) 747.

<sup>36</sup> *Focht v. Wakefield et al.* (1945), 145 Nebr. 568; 17 N.W. (2d) 627.



apparel, ornaments, and household furniture of the deceased, all the property and articles that were exempt to the deceased from execution or attachment at the time of death, and other personal property not exceeding \$200 in value, to be selected by the survivor (sec. 30-103).

#### Small estates

If the estate is only \$500 or less, the court may assign the whole of it for the use and support of the surviving spouse and children, or either of them, after payment of funeral charges and expenses of administration (sec. 30-103).

When the value of the entire estate, consisting solely of personal property, or both real and personal property, less liens and encumbrances, does not exceed \$700; when 40 days have elapsed since the decedent's death; and when no petition for the appointment of a personal representative is pending or has been granted, the surviving spouse, if any, otherwise those entitled to share in the estate have the defeasible right (a right which may be defeated) to the personal property upon presenting proof of such right, as prescribed, to the person having custody or acting as transfer agent of such personal property. The defeasible right referred to herein is subject to any proceedings to administer the estate or probate the will, or to the superior rights of any other person to such personal property (sec. 30-341).

Provision is made for summary settlement of estates that consist of property not subject to attachment, execution, or other mesne process (process issued during pendency of suit) and not liable for decedent's debts (secs. 30-334, 30-336). Also regular administration of estates of persons who die owning property under guardianship or conservatorship where the fiduciary has only enough property to pay expenses of the last illness, funeral expenses not over \$350, and unpaid costs in closing the guardianship or conservator proceedings may be dispensed with as provided (sec. 30-339).

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

The surviving husband or wife for whom the deceased spouse has made provision by will is entitled to an election to take under the will or to take his or her statutory interest in the estate. The survivor may not take both the statutory interest and the provision by will, unless such is the evident purpose of the testator or testatrix (sec. 30-107).

The surviving spouse is deemed to have elected to take under the provisions of the will unless, within 1 year after the issuance of letters testamentary, he or she files a written refusal to accept the provisions of the will and a declaration of intention, executed and acknowledged the same as a deed of conveyance of real estate, to take by inheritance and descent and distribution. Special provision is made where the



surviving spouse is insane or otherwise incompetent to make such election (sec. 30-108).

## ***Marriage and Divorce***

### **18. Age of consent to marriage**

Men and women at 21 years of age may marry without parental consent (secs. 38-101, 42-104). Men at 18 and girls at 16 years of age may marry with the written consent of the parent, parents, or guardian, presented to the county judge prior to the issuance of a license. The mother has equal right with the father to authorize the marriage of their minor child (secs. 42-104, 42-105).

Marriage below the ages of 18 for males and 16 for females may be permitted when the female is pregnant and after satisfactory evidence has been submitted, with the required consent of the parents or guardian and the consent of the county judge (sec. 42-102).

### **19. Common-law marriage**

No marriage contracted since 1923 is recognized as valid unless a license has been obtained and the marriage solemnized by a legally authorized person (sec. 42-104).<sup>37</sup>

The statute was clearly intended to prohibit and make invalid any marriage in the State unless a license is first obtained and the marriage solemnized by an authorized person.<sup>38</sup>

### **20. Premarital requirements**

Each applicant for license to marry must file a certificate from a licensed physician or other person, authorized by the State of Nebraska, showing that the applicant has been given proper examination and standard serological test for discovery of syphilis within 30 days of the date of application. A license may not be issued unless the certificate shows that in the opinion of the physician the applicant either does not have syphilis, or does not have it in a communicable stage. Waiver of this requirement is authorized only upon authority of the county judge in a case of proved pregnancy or of imminent death of one of the parties. The Department of Health is charged with responsibility to follow up any such exceptional cases to take necessary measures for protection of the public health (secs. 42-121-42-125).

No person who has been adjudged an imbecile, feeble-minded, or afflicted with hereditary epilepsy or hereditary insanity may marry in

<sup>37</sup> *Harrison v. Cargill Commission Co.* (1934), 126 Nebr. 185; 252 N.W. 899.

<sup>38</sup> *Collins v. Hoag & Rollins, Inc.* (1932), 122 Nebr. 805; 241 N.W. 766.

this State until after he or she has submitted to an operation for sterilization (sec. 42-102).

## 21. Interstate cooperation in marriage-law enforcement

All marriages contracted outside the State of Nebraska, if valid where contracted, shall be valid in Nebraska (sec. 42-117), even though the parties go elsewhere to evade the Nebraska law and return after marriage to Nebraska to live.<sup>39</sup>

Residents of Nebraska cannot enter into common-law marriage by temporary sojourns in another State without intending to enter into a common-law marriage in the other State, or changing their domicile or residence to the other State.<sup>40</sup>

## 22. Annulment

Marriages are void between persons within prohibited degrees of kinship when either party is already legally married or when either party is mentally incompetent to enter into the marriage relation (sec. 42-103).

Other grounds for annulment are: nonage, if there is no subsequent voluntary cohabitation as man and wife; consent obtained by force or fraud, if there is no subsequent voluntary cohabitation of the parties; or physical incapacity, if suit is begun within 2 years from the date of marriage (secs. 42-118, 42-330, 42-334).

### Children

If there are children born of a marriage annulled because of force or fraud, the court shall decree their custody to the innocent party, and may also decree provision for their education and maintenance out of the estate of the guilty party (sec. 42-333).

(See also number 23.)

## 23. Divorce

The aggrieved party may obtain an absolute divorce for any of the following causes: adultery, impotency, sentence to imprisonment for 3 years or more or for life, willful abandonment, utter desertion for 2 years, habitual drunkenness, incurable insanity and legal confinement in an institution for the insane for at least 5 years, and extreme cruelty.

In addition, a divorce may be decreed on the complaint of the wife when the husband, being of sufficient ability to provide suitable mainte-

<sup>39</sup> *State v. Hand et al.* (1910), 87 Nebr. 189; 126 N.W. 1002.

<sup>40</sup> *Binger et al. v. Binger et al.* (1954), 158 Nebr. 444; 63 N.W. (2d) 784.

nance for her, grossly or wantonly and cruelly refuses or neglects to do so (secs. 42-301, 42-302).

**Divorce from bed and board**

A divorce from bed and board may be decreed to a husband or wife for extreme cruelty or utter desertion. A like divorce may be decreed to a wife for her husband's failure to provide suitable maintenance for her when able to do so as specified previously under "Divorce" (sec. 42-302).

A divorce from bed and board forever or for a limited time may be revoked at any time upon the joint application of the parties and satisfactory evidence of reconciliation (sec. 42-338).

**Provisions for children**

When the husband and wife separate for any cause, the wife may petition the court for custody of children under 12 years of age (sec. 38-119). If it appears that the mother is able to provide for the maintenance of such children and under the evidence should be awarded their custody, the court may decree that the children remain with the mother, provided that she is not the defendant in the suit (sec. 38-120).

On application of either party in suits for divorce or annulment, the court may make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance during the pendency of the suit, as is deemed proper and necessary for the benefit of the children (sec. 42-310).

Upon granting a decree of nullity or divorce, whether absolute or from bed and board, the court may make such further decree as it shall deem just and proper concerning the care, custody, and maintenance of the minor children, and may determine with which of the parents the children or any of them shall remain. In case no decree of nullity or divorce is granted, the court may award the custody, care, and maintenance of the minor children in such manner as shall seem advisable (sec. 42-311). If the circumstances of the parties change, or if it is in the best interests of the children, the court, on its own motion or on petition of either parent, may revise or alter the decree so far as it concerns the care, custody, and maintenance of the children (sec. 42-312).

**Alimony**

On absolute divorce for any cause except adultery of the wife and upon every divorce from bed and board for any cause, if the estate and effects restored or awarded to the wife are insufficient for support and maintenance of herself and the children in her care and custody,



the court may further decree to her a share of the personal estate of the husband and alimony, having regard to the ability of the husband and the character and situation of the parties (sec. 42-318). The husband may be required to give security for alimony or other allowances decreed to his wife or children, and on his default a receiver for his property may be appointed (sec. 42-323). A decree for alimony or other allowance for wife and/or children may be revised at any time upon petition of either party insofar as the unmaturing portion of the decree is concerned (sec. 42-324).

When a divorce is granted on the ground of incurable insanity, the court may make orders for support and maintenance of the insane person, having due regard to property and the income of the parties, and may require the party to whom the divorce is granted to file bond or other security for such support (sec. 42-318.01).

The temporary alimony that a husband may be required to pay his wife during pendency of a divorce suit is a matter within the discretion of the court.<sup>41</sup>

#### Property settlement

Upon annulment or absolute divorce, or when the husband is sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife is entitled to the immediate possession of all her real estate (sec. 42-313), and the court may restore to her the whole or part of the personal estate that may have come to the husband by reason of the marriage or award her the value thereof to be paid by the husband in money (sec. 42-314).

In determining property rights, no distinction is made between a suit for absolute divorce and a divorce from bed and board.<sup>42</sup>

When a divorce is granted because of the wife's adultery, the husband may hold such of her personal estate as the court may deem just and reasonable (sec. 42-322).

When a marriage is dissolved by an absolute divorce, the innocent party is not entitled to a distributive share or any other interest in the real estate of the party adjudged guilty of the cause for divorce, unless the decree of divorce awards such share or interest in express terms (sec. 42-321).

Property settlement agreements between husband and wife, made after and in consequence of the severance of the marital relation and permanent separation, providing for division of property and release of rights and obligations thereto, will be enforced, but will be scrutinized closely without regard to formal rules of pleading and pro-

<sup>41</sup> *Brasch v. Brasch* (1896), 50 Nebr. 73; 69 N.W. 392.

<sup>42</sup> *Kehr v. Kehr* (1962), 173 Nebr. 532; 114 N.W. (2d) 26.



cedure to see that no unconscionable advantage is taken through fraud intimidation, ignorance, passion, or improvidence.<sup>43</sup>

#### **Court costs and restraint on personal liberty**

In suits for divorce or separation, the court may require the husband to pay sums necessary to enable the wife to carry on or defend the suit, and may decree costs against either party or may direct such costs to be paid out of any property sequestered either in the power of the court or in the hands of receivers (sec. 42-308).

In suits for divorce whether from bonds of matrimony or from bed and board, or annulment, the court on petition of the wife may prohibit the husband from imposing any restraint upon her personal liberty during pendency of the suit (sec. 42-309).

#### **Restoration of wife's former name**

There is no statutory provision for restoration of a wife's previous name after a divorce is granted.

#### **Restrictions on remarriage**

Neither party to a divorce may remarry until the decree becomes final, which is 6 months after the decree is granted, provided no appeal or other action thereon is pending (sec. 42-340). (NOTE.—On the death of the husband before a divorce decree becomes final, the wife is restored to her marital and property rights in the husband's estate.<sup>44</sup>)

### **Parents and Children**

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

The father and mother are entitled equally to the services and earnings of their minor children (sec. 38-107).

#### **25. Guardianship of a minor child**

The father and mother are the natural guardians of their minor children. If the parents are competent to transact their own business and are not otherwise unsuitable, they are equally entitled to the custody, services, earnings, and the direction of the education of the children. If either parent dies or is disqualified from acting as guardian or has abandoned his or her family, the guardianship devolves upon the other (sec. 38-107).

Both parents, if living, are the natural guardians for their children, and this natural guardianship cannot be transferred to other persons

<sup>43</sup> *Hiett v. Hiatt* (1905), 74 Nebr. 96; 103 N.W. 1051.

<sup>44</sup> *In re Waller's Estate* (1928), 116 Nebr. 352; 217 N.W. 588.

without the consent of the parents in a manner provided by law, unless the children have been voluntarily abandoned or the parents are unfit to be guardians.<sup>45</sup>

If a minor has no father or mother living competent to have the custody and care of the education of such minor, the guardian appointed shall have the custody and tuition of his ward (sec. 38-108). Every guardian appointed, as provided by law, shall have the care and management of the minor's estate until the minor reaches the age of 21, or until the guardian is discharged according to law (sec. 38-109).

A guardian appointed by the court in case of necessity or convenience is not entitled to the custody of the ward's person unless both parents are dead, incompetent, or unsuitable.<sup>46</sup>

The probate court may appoint a guardian for a minor under the age of 14 years. A minor above the age of 14 years may appoint his own guardian, subject to the approval of the court. If the guardian nominated by such minor is not approved by the court, or if the minor resides out of the State or neglects to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of 14 years (secs. 38-104, 38-105).

The appointment of a guardian for a minor does not relieve his parent or parents or other persons liable for his support from their obligation to provide for such minor (sec. 38-111).

#### **Small estates**

If the personal estate of a minor is \$200 or less in value, the county court, in its discretion, may authorize the proceeds to be deposited or invested as specified without the appointment of a guardian or giving of bond. When the instrument that represents the authorized investment of the minor's personal property is not a postal savings certificate, it shall be payable to the natural guardian of the minor, with joint control of the investment reserved in the court, or such instrument may be made payable to the minor upon his attaining the age of majority (sec. 38-121). If the personal estate of a minor under guardianship is \$200 or less in value, and the ward owns no real estate, the court may order the assets invested in the manner provided, and the guardian may thereupon be discharged (sec. 38-123).

#### **Parents' liability for destruction of property by a minor**

The parents are jointly and severally liable for willful and intentional destruction of real and personal property by their minor or

<sup>45</sup> *Tiffany et al. v. Wright* (1907), 79 Nebr. 10; 112 N.W. 311.

<sup>46</sup> *In re Application of Thomsen* (1901), 1 Nebr. Unof. 751; 95 N.W. 805.

unemancipated children residing with them, or placed by them under the care of other persons (sec. 43-801).

## **26. Appointment of testamentary guardian for a minor child**

The surviving parent may appoint by last will and in writing a guardian who is competent to transact his or her own business and otherwise suitable, for any of the children, whether born at the time of making the will or afterwards. Such guardian shall have the same powers and duties with regard to the person and estate of the ward as if appointed by the court (sec. 38-112).

## **27. Inheritance—child**

### **Inheritance from parent**

If no spouse survives a decedent, the distributable estate, both real and personal property, goes in equal shares to the surviving children, and to the lawful issue of any deceased child by right of representation.

### **Inheritance from child**

If a decedent leaves neither a spouse nor issue surviving, the distributable estate, both real and personal property, goes to the decedent's father and mother, or to the survivor of them (secs. 30-102, 30-103). (See number 15.)

## **28. Child born out of wedlock**

### **Paternity**

The paternity of a child born out of wedlock may be established: by a paternity proceeding (civil in character), instituted by the mother or by the guardian or next friend, in any district court where the child is domiciled or found, either during pregnancy or within 4 years after birth; or by acknowledgment by the father in writing that he is the father of the child, or his performance of acts, such as furnishing support, which reasonably indicate that he considers himself to be the father (secs. 13-109, 13-111).

### **Support**

The father of a child born out of wedlock whose paternity is established either by judicial proceedings or by acknowledgment is primarily liable for the child's support, which is enforceable against him. The mother of such child also is liable for the support of the child, but such liability is enforced only if the court finds that it is not practical to secure support of the child from the father (secs. 13-102, 13-106, 13-108). The father is liable also for the reasonable expenses of the mother during the period of her pregnancy, confinement, and recovery (sec. 13-107).



Support of a child born out of wedlock, whose paternity has been established, may be decreed by a court order, or by a settlement approved by the court; that is, a voluntary agreement between the father and mother of the child, or some authorized person, wherein the father promises to provide adequately for the child's support. The court's approval of the settlement is dependent upon adequate provision being made for the support of the child and clear evidence of the father's willingness and ability to perform the agreement. The court in its discretion may require a bond from the father to insure performance of the settlement. Such settlement is binding on all parties and bars all remedies of the mother and child and the legal representative of the child so long as it is performed by the father (sec. 13-105). The liability of the father or mother for the support of the child is discharged by compliance with the court order or settlement, or by the adoption of the child by some other person (sec. 13-104).

If the father of a child whose paternity has been established fails to enter into a settlement for the support of such child, or is in default in the performance of the same, the mother, guardian, next friend of the child, or the county may file a complaint in an equitable proceeding setting forth the facts of paternity and of nonsupport. If the court finds such facts to be true, it shall issue a decree directing the father to support the child and specifying the amount of such support, and may require the furnishing of a bond to insure the performance of the decree. Failure on the part of the father to perform the terms of the decree constitutes contempt of court, which is dealt with in the same manner as other contempts (sec. 13-106).

In addition, any mother of a child born out of wedlock or pregnant with a child which may be born out of wedlock, or the attorney general of Nebraska with regard to any child born in a State institution, including the University Hospital, may make a complaint to establish paternity before any justice of the peace, or municipal, county, or district judge, accusing on oath a person of being the father of said child. If the accused party, upon answering the complaint as required, pays or secures payment to the complainant or to the Department of Public Welfare or Board of Regents, as the case may be, such sums of money or property as may be agreed upon to be received in full satisfaction, and further gives bond to the county where such woman resides, to relieve the county of all charges for the support of such child, the accused is then discharged from custody upon his paying the costs of prosecution (sec. 13-113). Otherwise the matter proceeds on to trial and issuance of a court order (sec. 13-114).

Any judicially approved settlement or court order of support is binding on the legal representatives of the father or mother in the

event of his or her death, to the same extent as other contractual obligations and judicial judgments or decrees (sec. 13-110).

Any person who willfully fails to obey the terms of any court order or decree for support is deemed guilty of desertion, and upon conviction thereof, may be punished by imprisonment as provided (secs. 13-116, 28-446).

### **Legitimacy**

A child born out of wedlock whose parents marry each other is legitimate (sec. 13-109).

Children of marriages dissolved because either party is under age, insane, or an idiot are deemed to be the legitimate issue of the parent who, at the time of marriage, was capable of contracting marriage (sec. 42-326).

When a marriage is dissolved because of a prior undissolved marriage of either party, and the second marriage is contracted in good faith with full belief of the parties that the former spouse of either of them was dead, such fact is stated in the decree of divorce or nullity, and the children of such second marriage born or begotten before the commencement of the suit are deemed the legitimate issue of the party capable of contracting at the time of marriage (sec. 42-327).

A divorce because of the wife's adultery does not affect the legitimacy of children of the marriage, but legitimacy, if questioned, may be determined by the court upon proper proof. In every case, legitimacy of all children begotten before the commencement of the suit is presumed until the contrary is proven (sec. 42-325).

On annulment of marriage because of consanguinity or interracial grounds, the children of such marriage are deemed to be born out of wedlock (sec. 42-328). (NOTE.—It is not known what effect, if any, the amendment by Legislative Bill 179, April 1, 1963, Nebraska Session Laws 1963, page 136, "to repeal all mixed race marriage restrictions," may have with respect to the legitimacy of children born of interracial marriages.)

## **29. Inheritance—child born out of wedlock**

If a child born out of wedlock dies intestate without lawful issue, his estate descends to his mother, or if she has died, to her heirs at law (sec. 30-110).

Every child born out of wedlock shall be considered the heir of the person who, in writing signed in the presence of a competent witness, has acknowledged himself to be the father of such child. In all cases a child born out of wedlock is the heir of his mother. However, such child cannot claim, as representing his father, or mother any part of the estate of his or her kindred, lineal or collateral, unless his parents have

intermarried and had other children, and his father after such marriage acknowledged him as provided, or adopted him into the family (sec. 30-109).

## POLITICAL RIGHTS

### 30. Domicile of a married woman

Notwithstanding that modern statutes have greatly changed the status of married women, the husband is the head of the family and has the right to choose the matrimonial domicile, and this right must be recognized by the wife.<sup>47</sup>

#### Divorce

A married woman who sues for divorce in Nebraska is deemed to be an inhabitant of the State, although her husband may reside elsewhere (sec. 42-339).

A wife may have residence or domicile separate from her husband for the purpose of divorce.<sup>48</sup>

Permanent separation usually implies separate domicile; but in the absence of any proof showing a separate domicile of the wife, proof of the domicile of the husband will be sufficient to establish that of the wife, for the purpose of a suit by her.<sup>49</sup>

#### Relief

For relief purposes every married woman shall have the legal settlement of her husband, if she has one, or if she is abandoned or deserted by him, she may acquire a legal settlement as if she were unmarried (sec. 68-115).

### 31. Public office—eligibility of women

Women are eligible for election to public office (Const., art. III, sec. 8; art. IV, sec. 2; and art. V, sec. 7) (sec. 32-102).

A married woman is eligible to hold the office of county treasurer.<sup>50</sup>

### 32. Jury service—eligibility of women

When the presiding judge of the district court has certified that courthouse accommodations and facilities are adequate to permit the service of women as jurors, the names of women are to be included in the same manner as those of men and used in making up all jury lists for the county. Persons who are husband and wife shall not be jurors on the same panel.

<sup>47</sup> *Preston v. State* (1921), 106 Nebr. 848; 184 N.W. 925.

<sup>48</sup> *Wray v. Wray* (1948), 149 Nebr. 376; 31 N.W. (2d) 228.

<sup>49</sup> *Smith v. Smith* (1886), 19 Nebr. 706; 28 N.W. 296.

<sup>50</sup> *State ex rel. Jordan v. Quible* (1910), 86 Nebr. 417; 125 N.W. 619.



## THE LEGAL STATUS OF WOMEN

Any woman called for jury service may send a written request to the presiding judge that she be excused, stating her reasons for the request. If good cause is shown, the court will grant the request, and notify the woman immediately. Unless notified that she has been excused, she must report for jury duty at the time her summons requires her to appear.

Good grounds for excuse from jury duty may rest upon (a) physical or mental condition which might result in impairment of the woman's health if she is compelled to serve, or which would unduly embarrass her; (b) conditions in her home which would work undue hardship on her or her family if compelled to serve; or (c) any other cause sufficient to warrant an excuse for a man under similar circumstances (secs. 25-1601, 25-1601.01, 25-1601.02).

A married woman who files a written request for an exemption from jury duty, and who is not notified that she has been excused, shall be deemed to have waived her right to be excused for the purpose of this section.

A woman who is not notified that she has been excused, and who is called for jury duty, shall be deemed to have waived her right to be excused for the purpose of this section.

A woman who is not notified that she has been excused, and who is called for jury duty, shall be deemed to have waived her right to be excused for the purpose of this section.

31. Public office—eligibility of women

A woman is eligible for election to public office if she is a citizen of the State, and if she is not disqualified by any law of the State.

32. Jury service—eligibility of women

A woman is eligible for jury service if she is a citizen of the State, and if she is not disqualified by any law of the State.

A woman is eligible for jury service if she is a citizen of the State, and if she is not disqualified by any law of the State.