

L13.3: 157-30

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

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REPORT FOR

**NEW MEXICO**

as of October 1, 1962



WOMEN'S BUREAU BULLETIN 157-30 (Revised)

**UNITED STATES DEPARTMENT OF LABOR**

**W. WILLARD WIRTZ, Secretary**

**WOMEN'S BUREAU**

**Mrs. ESTHER PETERSON, Director**

L.S. 157-50

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United States of America

NEW MEXICO  
S. J. ...

The report for New Mexico was prepared by Peggy S. Amundson and reviewed by Laura Lee Spencer, under the general direction of Alice A. Morrison, Chief of the Division of Legislation and Standards in the Women's Bureau, U.S. Department of Labor.

Women's Bureau, Department of Labor

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1963



For sale by the Superintendent of Documents, U.S. Government Printing Office  
Washington 25, D.C. - Price 15 cents

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# 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 English common law, on which the fabric of the Nation's jurisprudence is woven.

In addition, those far western and southwestern States which were explored and developed by the French and Spanish—Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington—were governed by laws based on the community-property system.

Common-law rules of property sprang from various causes, notably tradition, military or economic exigency, and "natural male dominance." On the other hand in France and Spain the community-property laws vested the wife with an interest, in many respects equal to that of her husband, in property acquired during marriage.

In New Mexico the community-property system has been modified, an 1876 law providing that the common law as recognized in the United States of America shall be the rule of practice and decision in the courts. In general it has been the rule that in the absence of a specific statute, the common law applies.

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.

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 by Executive Order 10980, December 14, 1961) has appointed a Committee on Political and Civil Rights to review the civil and political rights of women. The Commission's report, which will be submitted in October 1963, will present findings and make recommendations for constructive action.

## SOURCES

Constitution of New Mexico  
New Mexico Statutes Annotated, 1953  
New Mexico Reports  
Opinions of the Attorney General  
Pacific Reporter  
Pacific Reporter (Second Series)

## EXPLANATORY NOTE

Bulletin 157-30 presents a digest of the State constitution and statutory provisions affecting the legal status of women in New Mexico. It includes pertinent statutory changes enacted in that State up to October 1, 1962, and supersedes the previous report for New Mexico.

References to the State constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation "Const.," as "(Const., art. 20, sec. 11)," placed after the related subject matter.

References to code sections likewise are in parentheses, as "(sec. 22-7-2)."

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.)."

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

# NEW MEXICO

## CIVIL RIGHTS

### *Contracts and Property*

#### 1. Age of majority

The age of majority for both sexes is 21 years, by rule of common law, regardless of marital status.<sup>1</sup>

#### 2. Contractual powers of a minor

Contracts and conveyances of a minor are voidable under the common-law rule. But when an infant receives anything by reason of a contract which he disaffirms upon coming of age, he must restore what he received under the contract, if he still has it, in order to make the disaffirmance effective. He cannot avoid the contract and still retain the fruits of it.<sup>2</sup>

Guardianship over minors of both sexes ceases when they arrive at the age of 21 years, or with their marriage (secs. 32-1-7, 32-1-42). The statute refers to personal control of the wards and does not purport to declare them of legal age. It does not mean that a married man of 20 years may vote or hold office, or that a woman married before reaching her majority has the period of her legal minority diminished;<sup>3</sup> nor does it have any application to guardianship of estates of minors.<sup>4</sup>

A minor who has been lawfully married may institute, prosecute to judgment, or defend any action against his or her lawful wife or husband in his or her own name without a guardian or next friend (sec. 21-6-7).

A minor capable of contracting marriage may make a valid marriage settlement (sec. 57-2-11). (See number 18.)

A married woman under 21 years of age may join her husband in all conveyances, leases, and mortgages affecting the community real estate. Her execution of such instruments has full force and effect, as if she were 21 years old at the time she signed them (sec. 57-4-4).

<sup>1</sup> *Montoya de Antonio v. Miller* (1893), 7 N.M. 289; 34 Pac. 40. (Hist.)

<sup>2</sup> *Evants v. Taylor* (1913), 18 N. M. 371; 137 Pac. 583.

<sup>3</sup> *Montoya de Antonio v. Miller*, supra.

<sup>4</sup> *In re Hay's Guardianship* (1932), 37 N. M. 55; 17 P. (2d) 943.

## THE LEGAL STATUS OF WOMEN

Minors may make and withdraw bank deposits in their own names (sec. 48-10-1), hold credit union shares, and make deposits (sec. 48-19-13).

A fraternal benefit society may admit to membership any person who proves insurability as provided by statute. Any person so admitted prior to attaining the full age of 21 years is bound by the terms of the application and certificate and by the laws, rules, and regulations of the society, and is entitled to the same rights and privileges of membership to the same extent as though he or she were not a minor at the time of application (sec. 58-14-7).

### 3. Property exemptions from seizure for debt

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

Every person who has a family and every widow may hold exempt from execution, attachment, or sale the wearing apparel of such person or family, various items of furniture, appliances, and other personal property, food, fuel, livestock, and tools and implements of the debtor necessary for carrying on his trade or business, whether mechanical or agricultural, to be selected by him or her, within specified values, as enumerated in the statute (sec. 24-5-1).

Certain additional exemptions of specific equipment are allowed to draymen, farmers, doctors, and lawyers, who are heads of families (secs. 24-5-6, 24-5-7).

Every unmarried woman may hold the following items exempt: Wearing apparel to be selected by her, not to exceed \$150 in value; one sewing machine; one knitting machine; one piano or organ, if she is engaged in teaching music; a Bible, hymn book, psalm book, album, and any other books not exceeding \$50 in value (sec. 24-5-2).

Current wages or salary due may not be garnisheed for more than 25 percent of any wages or salary due for the last 30 days' service. If the wages or salary are \$100 or less for the last 30 days, garnishment may be had for no more than 20 percent. No exemption whatever may be claimed if the debtor is not the head of a family or the family does not reside in the State (sec. 26-2-27).

No exemption under this section applies where the debt was for the necessities of life; but where the debt was for other than the necessities of life the first \$80 earned within the previous 30 days is exempt. There is no additional exemption under this section even though the first \$80 has already been paid before garnishment.<sup>5</sup> Under a valid wage assignment made under the Small Loan Act, a sum not to exceed

<sup>5</sup> 1957-58 Op. Atty. Gen. No. 57-212.

10 percent of the salary or other compensation is collectible from the employer at the time of each payment to the borrower (sec. 48-17-49). (See number 5 as to valid wage assignment.)

Any beneficiary fund not exceeding \$5,000 that is set apart, appropriated, or paid by any benevolent association or society according to its rules, regulations, or bylaws to the family of any deceased member or to any member of such family, may not be seized under legal process to pay any debts of such deceased member (sec. 24-5-4).

No money or other benefit provided by a fraternal benefit society is liable to attachment, garnishment, or other process to pay the debt or liability of a member or beneficiary, either before or after payment by the society (sec. 58-14-21).

The cash surrender value of a life insurance policy, and other specified insurance contracts and benefits, are not liable to attachment, garnishment, or legal process by a creditor of the person insured, or who received the benefit thereof, nor is it subject in any way to the debts of such person, unless made or assigned for the benefit of such creditor (sec. 24-5-3).

Proceeds of any life insurance policy are not subject to debts of the deceased, except by special contract or arrangement made in writing (sec. 24-5-5).

Proceeds of an action for wrongful death are not liable for any debts of the deceased if he is survived by a spouse or certain specified heirs (sec. 22-20-3). (See number 15. Damages for wrongful death.)

#### B. HOMESTEADS

Husband and wife, or widow or widower living with an unmarried daughter or unmarried minor son, may hold exempt from sale or judgment or order a family homestead not exceeding \$3,000 in value. The husband has the right to make the demand for the homestead, but if he fails or refuses to act, the wife may do so. Neither can demand such exemption if the other has a homestead. The exemption is not allowed against a valid mortgage, nor against liens for purchase money, materials, or labor furnished (sec. 24-6-1).

A person owning the superstructure of a dwelling house occupied by him or her as a family homestead is entitled to hold it exempt, though the land is owned by another. A lessee may claim the homestead exemption, but this does not prevent a sale subject to the lease (sec. 24-6-2).

The widow and any unmarried minor children composing part of a decedent's family at the time of his death are entitled to have a statutory homestead set apart for them when a sale of the decedent's lands



is sought by the executor or administrator to pay debts. The exemption continues as long as any unmarried minor child resides on the homestead, even though the widow dies (sec. 24-6-3). (See also number 15, reference to sec. 29-1-22).

On sale of a homestead which is charged with liens, some of which preclude the allowance of a homestead and some of which do not, those liens so precluding the allowance are paid from the proceeds. The balance, not exceeding \$1,500, on application is awarded to the head of the family or the wife, as the case may be, in lieu of the homestead (sec. 24-6-6).

Any resident of the State who is the head of a family and not the owner of a homestead may hold exempt from levy or sale real and personal property selected by the person, his agent, or his attorney, up to \$1,500 in value in addition to the amount of chattel property otherwise exempt. The "in lieu" exemption does not apply to the first 25 percent of any amount due as salary or wages prior to service of the writ of garnishment (sec. 24-6-7).

No sale of real estate made under a mortgage which is not executed by the wife of the debtor, if he has a wife, can affect in any manner the right of the wife or family to have a homestead set off under the provisions of the statute (sec. 24-6-8).

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

All property of the wife owned by her before marriage, together with the rents, issues, and profits from it, is her separate property (sec. 57-3-4).

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

Either husband or wife may enter into any engagement or transaction with his spouse or with any other person respecting property which either might enter into if unmarried; such transactions between themselves are subject to the general rules of common law which control the actions of persons occupying confidential relations with each other (sec. 57-2-6).

Husband and wife can transmute community funds into property held in joint tenancy by them, and can make a gift to the community of the separate property of either party.<sup>6</sup>

When a married woman unites with her husband in the execution of an instrument affecting real estate and acknowledges the same in one of the forms sanctioned, she is described in the acknowledgment

<sup>6</sup> *Chavez v. Chavez* (1952), 56 N. M. 393; 244 P. (2d) 781. (Hist.)

as his wife, but in all other respects her acknowledgement is taken and certified as if she were sole (sec. 43-1-10).

A promissory note made by a married woman can be enforced only against her separate property; if she signs a note for her husband as an accommodation maker, she is liable although it was executed for a community debt.<sup>7</sup>

A married woman may own and control capital stock in building and loan associations as if she were unmarried, and her stock is not subject to her husband's control nor liable for his debts (sec. 48-15-8).

Either spouse may execute a valid power of attorney for himself or herself without the joinder of the other (sec. 57-2-7).

A husband and wife cannot by contract alter their legal relations, except as relates to their property, and except that they may agree in writing to a separation and may make provisions for the support of either of them and of their children during their separation (sec. 57-2-12).

A valid marriage settlement supersedes property rights of husband and wife defined by statute (sec. 57-3-1).

All contracts for marriage settlements and contracts for separation must be in writing, and executed and acknowledged or proved in the same manner as a grant of land (sec. 57-2-8).

Either spouse may convey or mortgage separate property without the other joining in such conveyance or mortgage (sec. 57-4-3).

The surviving spouse of an intestate decedent is entitled to administer the estate (sec. 31-1-9). Since the statute is mandatory, a widow who is qualified may not arbitrarily be denied the preferential right granted her by statute.<sup>8</sup>

No assignment of wages earned or to be earned given to secure a loan, nor a lien or mortgage on household furniture in use by the borrower, is valid unless it is signed by both husband and wife unless they have been living separate and apart for at least 2 months (sec. 48-17-49).

(For effect of incapacity or absence of the husband, see number 10.)

## 6. Earnings of a married woman

Earnings of the wife are not liable for the debts of the husband (sec. 57-3-6); however, this statute does not make such earnings the separate property of the wife. Her earnings are community property under the dominion of the husband.<sup>9</sup>

<sup>7</sup> *First Savings Bank & Trust Co. v. Flournoy* (1917), 24 N. M. 256; 171 Pac. 793. (Hist.)

<sup>8</sup> *In re Matson's Estate* (1946), 50 N. M. 155; 173 P. (2d) 484.

<sup>9</sup> *Albright v. Albright* (1916), 21 N. M. 606; 157 Pac. 662.

The community owns the earning power of the husband; when the earning power is used in the conduct of his separate business, the portion of his earnings attributable to his personal activities and talents is community property.<sup>10</sup>

Even though the spouses are residents of a State following the common-law rule that earnings are the separate property of the spouse, their earnings in a community property State are community property.<sup>11</sup>

However, money earned by the spouse outside the State constitutes community property where the marital domicile continues in New Mexico.<sup>12</sup>

While a wife is living separate from her husband, her earnings and accumulations and those of her minor children living with her or in her custody are her separate property (sec. 57-3-7).

### **7. Liability for family support**

Husband and wife contract toward each other obligations of mutual respect, fidelity, and support (sec. 57-2-1).

If the husband neglects to provide support for his wife, any other person may in good faith supply her with necessaries and recover the reasonable value thereof from her husband (sec. 57-2-3).

A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified by his misconduct in abandoning him; nor is he liable for her support when she is living separate from him by agreement, unless such support is stipulated in the agreement (sec. 57-2-4).

The wife must support her husband out of her separate property when he has not deserted her, if he has no separate property, if there is no community property, and if he is unable from infirmity to support himself (sec. 57-2-5).

A man who abandons his wife or a parent who abandons a child, without sufficient means of support, or who fails to provide for their support as far as his or her ability extends, is guilty of a misdemeanor (secs. 40-2-4, 40-2-5).

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

No formal proceeding is required by statute to enable a married woman to engage in a separate business. No inventory of her separate property is required to be placed on record.

<sup>10</sup> *Katson v. Katson* (1939), 43 N. M. 214; 89 P. (2d) 524.

<sup>11</sup> *Mounsey v. Stahl* (1957), 62 N. M. 135; 306 P. (2d) 258.

<sup>12</sup> 1943-44 *Op. Atty. Gen.* No. 4478.

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

All property of the husband or wife owned by him or her before marriage or acquired afterward by gift, bequest, devise, or descent is his or her separate property, as well as the rents, issues, and profits therefrom. A wife may convey her separate property without the consent of her husband (secs. 57-3-4, 57-3-5). (See number 5, reference to sec. 57-4-3).

Whenever any real or personal property, or any interest therein or encumbrance thereon is acquired by a married woman by an instrument in writing, the presumption (legal inference of fact) is that title is thereby vested in her as her separate property. If acquired by such married woman and any other person, the presumption is that she takes the part acquired by her as a tenant in common, unless a different intention is expressed in the instrument (sec. 57-4-1). (See number 10 for presumption if the property is acquired by husband and wife, as such.)

Purchase of property by a married woman with money borrowed on her individual credit is essentially an exchange of separate property for separate property, and it remains her separate estate.<sup>13</sup>

Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling (sec. 57-3-3).

Separate property of the wife is not liable for the debts of her husband but is liable for her own debts, whether contracted before or after marriage (sec. 57-3-9). Her separate property is not subject to the debts of the community.<sup>14</sup>

Separate property of the husband is not liable for the debts of the wife contracted before marriage (sec. 57-3-8).

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

All real and personal property acquired after marriage by husband or wife, or both, other than separate property as defined in number 9, is community property (sec. 57-4-1).

Husband and wife may hold property as joint tenants, tenants in common, or as community property (sec. 57-3-2).

Status of property at the time it is acquired determines whether it is separate or community property, regardless of the source of payments made later.<sup>15</sup>

<sup>13</sup> *Morris v. Waring* (1916), 22 N. M. 175; 159 Pac. 1002.

<sup>14</sup> *Rosenwald & Son v. Baca* (1922), 28 N. M. 276; 210 Pac. 1068.

<sup>15</sup> *Laughlin v. Laughlin* (1945), 49 N. M. 20; 155 P. (2d) 1010.

When any interest in real or personal property is conveyed to a married woman and any other person, the presumption is that she takes the part acquired by her as tenant in common, unless a different intention is expressed in the instrument. When any such real or personal property is acquired by husband and wife by an instrument in writing in which they are described as husband and wife, the presumption is that such property is community property, unless a contrary intent is expressed (sec. 57-4-1). Prior to its amendment in 1947, this section provided that an interest in real or personal property conveyed to a "married woman and *to her husband* (emphasis supplied), or to her and any other person, the presumption is that the married woman takes the part conveyed to her as tenant in common unless a different intention is expressed in the instrument. . . ." In applying this section to a deed executed prior to its amendment, the court held where realty is deeded to husband and wife the conveyance presumptively vests a one-half interest in the husband and wife as community property, and the remaining half in the wife as tenant in common. Use of community funds to purchase the real estate is not sufficient evidence to rebut the presumption, for in such cases a gift of community funds to the wife is presumed.<sup>16</sup>

However, there is no general presumption that personal property acquired during coverture and held in the name of a wife is her separate property.<sup>17</sup>

Property acquired by the husband during marriage is presumed to be community property, but this presumption is also rebuttable.<sup>18</sup>

All interest in any real estate, either granted or bequeathed to two or more persons, shall be held in common unless it is clearly expressed in the grant or bequest that it shall be held by both parties (sec. 70-1-14).

An instrument conveying or transferring title to real or personal property to two or more persons and the survivor, or to two or more persons with right of survivorship is prima facie evidence (evidence sufficient to establish an inference of fact) that such property is held in a joint tenancy (sec. 70-1-14.1). This provision changes the rule laid down in an earlier decision, that a deed in joint tenancy alone is not proof that the realty was intended to be held in joint tenancy so as to defeat the community nature of the ownership.<sup>19</sup> In this case it was pointed out that a joint tenancy arises where two or more persons hold property in which there is a unity of interest, unity of

<sup>16</sup> *August v. Tillian* (1947), 51 N. M. 74; 178 P. (2d) 590.

<sup>17</sup> *McClendon v. Dean* (1941), 45 N. M. 496; 117 P. (2d) 250.

<sup>18</sup> *Carron v. Aounador et ux.* (1923), 28 N. M. 491; 214 Pac. 772.

<sup>19</sup> *Trimble v. St. Joseph's Hospital* (1953), 57 N. M. 51; 253 P. (2d) 805.

title, unity of time, and unity of possession. A chief incident of such an estate is the right of a survivor to take the whole, as distinguished from a tenancy in common where each holds by a separate and distinct title having the right to dispose of his interest separately.

A life insurance policy payable to the estate of a person is his separate property if the policy was obtained before marriage, and community property if obtained subsequent to marriage. The status of proceeds or avails of such insurance, whether community or separate property of the insured, is not governed by the marital status of the insured at the time of his death. Reinstatement of a policy continues the original policy in force and is not the execution of a new contract of insurance.<sup>20</sup>

#### Management and control of community property

The husband has the management and control of the personal property of the community, and during marriage he has the sole power of disposition of it, other than by will, as he has of his separate estate. However, husband and wife must join in all deeds and mortgages affecting real estate which is not the separate property of either of them. Any attempted transfer or conveyance of community real property by either husband or wife alone is void and without effect, unless the conveyance is from one spouse directly to the other (sec. 57-4-3).

Even under this statute, if the husband attempts to dispose of real property of the community for the purpose of defrauding or defeating the wife's claims, the court will protect the wife against such disposition.<sup>21</sup>

After divorce the parties are no longer husband and wife and the property is no longer community property, and this section has no application. The parties become tenants in common in all of the property.<sup>22</sup>

Property of the community is not liable for the contracts of the wife, made after marriage, unless secured by a pledge or mortgage thereof executed by the husband (sec. 57-4-2).

A judgment on a contract against the husband may be satisfied out of the community, of which he is the head, thus enforcing the judgment against the wife's share therein, as well as the share of the husband.<sup>23</sup>

Community property is not exempt from liability for the torts of either husband or wife.<sup>24</sup>

<sup>20</sup> *In re White's Estate* (1939), 43 N. M. 202, 89 P. (2d) 36.

<sup>21</sup> 1917-18 *Op. Atty. Gen.*, p. 176.

<sup>22</sup> *Jones v. Tate* (1961), 68 N. M. 258; 360 P. (2d) 920.

<sup>23</sup> *Ginn v. MacAluso* (1957), 62 N. M. 375; 310 P. (2d) 1034.

<sup>24</sup> *McDonald v. Senn* (1949), 53 N. M. 198; 204 P. (2d) 990.

The husband's "management and control" embraces the right and duty to represent the community in its litigation. The wife is not a necessary party.<sup>25</sup>

Whenever the husband is of unsound mind or has been convicted of a felony and sentenced to imprisonment for more than 1 year, or has abandoned his wife and family and left them without support, or is a habitual drunkard or otherwise incapacitated to manage and administer the community property, the wife may petition the court as provided by statute to substitute her as the head of the community, with the same power of managing, administering, and disposing of the community property, real or personal, as the husband had. The court in its decree may place limitations on the power (secs. 57-4-5 to 57-4-9).

Written consent of the husband's guardian is required in lieu of the husband's joinder in mortgages or conveyances.<sup>26</sup>

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

A married woman may sue and be sued as if she were unmarried (sec. 21-6-6).

The purpose of this statute is to give the wife a remedy to sue alone for actionable wrong; it removes the common-law barrier that a wife must join with her husband in all actions for or against her. She may retain as her sole and separate property the proceeds from a judgment rendered in her favor.<sup>27</sup>

Cause of action for personal injury to the wife, and resulting pain and suffering, belongs to the wife; and the judgment and its proceeds are her separate property. But the cause of action for damages to the community for medical expenses, loss of services and earnings, if any, of the wife belong to the community, and the husband, as its head, is the proper party to bring such action.<sup>28</sup>

A wife may sue for alienation of her husband's affections.<sup>29</sup>

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

By rule of common law one spouse cannot sue the other in tort for personal injuries. The statute providing that a woman may sue and be sued as if she were unmarried does not create a substantive right of action against the husband for a tort committed by him against his wife.<sup>30</sup>

<sup>25</sup> (*Levy v. Kalabich* (1930), 35 N. M. 282; 295 Pac. 296.

<sup>26</sup> *Frkovich v. Petranovich* (1944), 48 N. M. 382; 151 P. (2d) 337.

<sup>27</sup> *Romero v. Romero* (1954), 58 N. M. 201; 269 P. (2d) 748.

<sup>28</sup> *Soto v. Vandeventer* (1952), 56 N. M. 483; 245 P. (2d) 826.

<sup>29</sup> *Murray v. Murray et ux.* (1925), 30 N. M. 557; 240 Pac. 303.

<sup>30</sup> *Romero v. Romero*, supra.

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

In civil actions, the husband or wife of any party to the proceeding is competent to give evidence on behalf of the other or of any of the parties to the suit, except in civil proceedings involving the question of adultery of either spouse or the husband or wife of any party to the action (secs. 20-1-9, 20-1-11).

Neither husband nor wife may be compelled to disclose any communication made by the other during the marriage (sec. 20-1-12).

In criminal cases the husband or wife of the defendant may testify in favor of, but not against, such defendant; however, he or she is a competent witness against the defendant in a prosecution for any unlawful assault or violence forcibly committed by the defendant on the person of such witness. A wife is a competent witness against her husband when he is being prosecuted for abandonment of or willful failure to support her or his family (sec. 41-12-20).

In any prosecution for incest, bigamy, polygamy, unlawful cohabitation, or adultery, the lawful husband or wife of the accused person is a competent witness and may be called, but not required, to testify without the consent of the spouse (sec. 41-12-21).

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under the 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. 22-19-25).

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

Any person 21 years or over and of sound mind may dispose by will of all his property, except what is sufficient to pay his debts and what is given by law as privileged property to his wife or family (sec. 30-1-1). (See also number 15.)

A wife has testamentary power over any portion of the community property which has been set apart to her by a judicial decree for her support and maintenance. In the absence of disposition by her will, such property goes to her descendants or heirs, exclusive of her husband (sec. 29-1-8).

The marriage of a man or woman, whether or not it is followed by the birth of a child, revokes a will made prior to such marriage.<sup>31</sup>

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

No estate in dower or curtesy is allowed upon the death of husband or wife (sec. 29-1-23).

<sup>31</sup> *In re Toepfer's Estate* (1904), 12 N. M. 372; 78 Pac. 53.



**Community property**

Upon the death of the wife the entire community property, without administration, belongs to the surviving husband, except such portion as may have been set apart to her by a judicial decree for her support and maintenance, which goes to her descendants or other heirs exclusive of her husband (sec. 29-1-8).

Upon the death of the husband the entire community property goes to the surviving wife, subject to the husband's testamentary disposition over one-half. When the community is dissolved by the death of the husband, the entire community property is subject to the community debts, the husband's debts, the funeral expenses of the husband, the family allowance, and the charge and expenses of administration (sec. 29-1-9).

**Separate property**

When any person having title to any separate estate, not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, subject to the payment of his debts, in the following manner:

One-fourth to the surviving husband or wife and the remainder in equal shares to the children of decedent, and further as provided by law (sec. 29-1-10).

If the intestate leaves no issue, the whole of his estate goes to the surviving spouse (sec. 29-1-13).

When the decedent leaves a widow, all personal property which in his hands as the head of a family would be exempt from execution, upon inventory and appraisal, is set apart to the widow as her property in her own right and is exempt in her hands as it was to the decedent (sec. 29-1-11). (See number 3.)

This statute vests in the widow an unqualified right to such property immediately upon the husband's death.<sup>32</sup>

All provisions of the law relating to wills and to estates of deceased persons made in regard to the widow of a deceased husband are applicable to the surviving husband of a deceased wife (sec. 29-1-22).

**Damages for wrongful death**

Damages in actions for wrongful death are not distributed in the same manner as the decedent's estate. Such damages go to the surviving spouse as follows: (a) All if there are no children; (b) if there is a surviving spouse and children or grandchildren, then equally to each, the grandchildren taking by right of representation (sec. 22-20-3).

<sup>32</sup> *White et al. v. Mayo et al.* (1931), 35 N. M. 430; 299 Pac. 1068.

**16. Provision for survivors during administration of estate**

The court must make an allowance, if it is needed, to the widow and children under 15 years of age sufficient to maintain them for 6 months from the death of the decedent (sec. 31-4-1).

The widow is not deprived of this allowance by accepting provisions of her husband's will giving her a stated sum "in lieu of all other demands."<sup>33</sup>

(As to homestead provisions for the widow, see number 3.)

**Summary administration**

If an intestate decedent is survived by a spouse or relatives capable of inheriting, and leaves an estate of personal property only, appraised at not more than \$1,000, the court may grant summary administration to the petitioner or some other suitable person as provided by statute. After payment of the funeral expenses and distribution of those entitled, the administrator is discharged (secs. 31-1-30, 31-1-32).

The surviving spouse or next of kin may, upon presentation of affidavit and without procuring letters of administration, collect from the State or any political subdivision thereof, from any corporation, bank, or trust company, or from any other organization or individual, up to \$300 that may have been owed decedent at the time of death for wages or salary earned. Any sum of money up to \$300 which the deceased may have left on deposit with a bank or trust company, corporation, individual, or firm doing business as bankers may be collected in like manner (secs. 31-13-1, 31-13-2).

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

The rights of the spouses in the community estate are fixed by statute (see number 15), or by a valid marriage settlement agreed upon in lieu of the statute (sec. 57-3-1).

There is no statute providing for election against the testamentary disposition of separate property.

***Marriage and Divorce*****18. Age of consent to marriage**

No male under 21 years of age and no female under 18 years of age may marry unless he or she obtains the consent of his or her parents, guardian, or of the person under whose charge he or she is; and for that purpose the presence of those parties, or a certificate in writing authenticated before competent authority, is required (sec. 57-1-5).

<sup>33</sup> *In re Flourney's Estate* (1917), 22 N. M. 582; 166 Pac. 1173.

No person authorized to solemnize marriages in the State may knowingly unite in marriage: (1) Any male under the age of 21 years or female under the age of 18 years, without the consent of their parents or guardian; (2) any male under the age of 18 years or female under the age of 16 years, with or without the consent of their parents or guardian. The court, however, may authorize marriage of persons under the ages mentioned, in cases of seduction or bastardy or in cases of pregnancy if such marriage would not be incestuous (sec. 57-1-6). Violation of these provisions by either of the parties to the marriage or by the person officiating renders the violator subject, on conviction, to a statutory fine of not less than \$50 (sec. 57-1-8).

### 19. Common-law marriage

Common-law marriages have never been valid in New Mexico.<sup>34</sup>

### 20. Premarital requirements

Before a marriage license may be issued each applicant must file a certificate from a physician showing that the applicant has been given an examination not more than 30 days prior to the date of application for the license, and that the applicant is not infected with venereal diseases or is not in a stage of such diseases which may become communicable. Upon application the court may waive these provisions for good cause shown (secs. 57-1-10.1, 57-1-10.2).

There is no waiting period required between the date of application for and issuance of the license.

Marriage is a civil contract for which the consent of the contracting parties, capable in law of contracting is essential (sec. 57-1-1).

Marriages between persons within prohibited degrees of kinship, as defined by statute, are prohibited and void (sec. 57-1-7).

### 21. Interstate cooperation in marriage-law enforcement

All marriages celebrated beyond the limits of the State which are valid according to the laws of the jurisdiction where contracted, are likewise valid in this State and have the same force as if celebrated in accordance with New Mexico statutes (sec. 57-1-4).

### 22. Annulment

No marriage between relatives within the prohibited degrees, or between or with infants under the prohibited ages, may be declared void except by a decree of the district court upon proper hearing. A marriage contracted while the parties were under the legal age is to

<sup>34</sup> *In re Gabaldon's Estate* (1934), 38 N. M. 392, 397; 34 P. (2d) 672. (Hist.)

be held legal and binding if they continue to live together until reaching the age at which they could contract a valid marriage. In case of annulment of marriage of a female minor, the court may in its discretion grant alimony until she becomes of age or remarries (sec. 57-1-9).

A marriage may be annulled where one party had a spouse of a prior undissolved marriage. The statutory provision for alimony in instances of annulment applies only to such invalid or void marriages as are specified in the code.<sup>35</sup>

### **23. Divorce**

Absolute divorce may be decreed to either party on any of the following grounds: Abandonment, adultery, impotency, cruel and inhuman treatment, habitual drunkenness, incompatibility, or conviction for a felony and penitentiary imprisonment after marriage.

The husband may be granted a divorce if the wife, at the time of marriage, was pregnant by another, not her husband, and without his knowledge.

The wife is entitled to a divorce for neglect on the part of the husband to support her according to his means, station in life, and ability (sec. 22-7-1).

Incurable insanity is a ground for divorce, if the condition has existed continuously for 5 years preceding the filing of the divorce complaint. Strict proof is required as prescribed by statute (secs. 22-7-7 to 22-7-10).

#### **Legal separation**

When the spouses have permanently separated and no longer live together as husband and wife, either may institute suit for a division of property or for disposition of the children without dissolution of the bonds of matrimony, or the wife may institute suit for alimony alone (sec. 22-7-2).

#### **Alimony, maintenance, and property division**

In any suit for final divorce, division of property, alimony, or custody of the children, the court may make and enforce an order to restrain use or disposition of property of either party, or an order for control of children, or to provide for support of wife during pendency of suit; and it may make such order relative to expenses of the suit as will insure the wife efficient preparation and presentation of her case; and on final hearing the wife may be allowed a reasonable portion of the husband's property and alimony. The court may set

<sup>35</sup> *Prince v. Freeman* (1941), 45 N. M. 143; 112 P. (2d) 821.

apart out of the property of the respective parties a portion thereof for the maintenance and education of minor children, and may order their guardianship, care, custody, maintenance, and education (sec. 22-7-6).

In divorce, separation, or support suits, the court may make allowance to the wife of the husband's separate property as alimony, and a decree making such allowance shall have the force and effect of vesting title of such property in the wife, and shall be a lien on the real estate of the husband (secs. 22-7-13, 22-7-14). The court may make allowance of property of the parents for the maintenance, education, and support of the minor child or children, and may vest title to such property in a guardian appointed by the court (sec. 22-7-15). Such allowance becomes a lien on the real estate of the person charged with such support (sec. 22-7-16).

Failure to divide the property at divorce does not affect the property rights of either the husband or the wife; either may subsequently institute and prosecute a suit for division and distribution thereof, or with reference to any other matter pertaining thereto, which could have been litigated in the original suit for divorce (sec. 22-7-22).

This section recognizes an existing present interest of the wife in the community property during the existence of the matrimonial status, which continues even after divorce, where the property is not divided in the decree in the divorce case. In the absence of a statute conferring on the court power to apportion community property between the spouses, giving to one a greater interest therein than such party had in the community, the court has no such power. On divorce the wife is entitled to one-half of the community property, which is not forfeited by committing adultery; subject, however, to the power of the divorce court to make provision therefrom for the children.<sup>36</sup>

### *Parents and Children*

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

The mother is entitled as fully as the father to the earnings of their minor child or children (sec. 32-1-4). (Also see number 6.)

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

The father, or in case of his death or abandonment of his family, the mother, is the natural guardian of their minor children and has the care of their persons and education; but in no case do they have the

<sup>36</sup> *Beals v. Ares* (1919), 25 N. M. 459; 185 Pac. 780.

care and management of the children's estates unless they are appointed by the court for that purpose, in which event they must give bond and security in the same manner as other guardians (sec. 32-1-1).

Parents of a minor have equal powers, rights, and duties concerning the minor. The mother is as fully entitled as the father to custody and control of their minor child or children. Where the father and mother live apart the court may, for good reasons, award custody and education of their minor child or children to either parent or to some other person (sec. 32-1-4). (Code compiler's note: Section 32-1-1 down to the semicolon may be superseded by section 32-1-4.)

In all cases in which application is made for appointment of a guardian for the estate of a minor, the father, or in case of his death or abandonment of the family, the mother, or in case of divorce or legal separation, the parent having custody of the minor, has a preferred right to be appointed as such guardian unless the right is waived or it is shown that such parent is not a fit and competent person (sec. 32-1-2).

A minor over 10 years of age, if he is not under the guardianship of his parents, may select his own guardian of the person, subject to the approval of the court (sec. 32-1-41).

A minor 14 years of age may select his own guardian, subject to the approval of the court, unless this is a testamentary appointment, and any preceding guardianship may be terminated (sec. 32-1-40).

The natural or adoptive parents of an unemancipated minor under 18 years of age, living with his parents, who maliciously or willfully destroys property, are liable for such damages in an amount not in excess of \$500 in addition to taxable court costs (sec. 22-21-1).

Guardianship of the person of a minor ceases with marriage. (See number 2.)

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

The father or mother, if competent, may appoint by will a guardian for their unmarried minor child. But such appointment may not take effect to deprive the surviving parent of the guardianship during his or her lifetime, unless such surviving parent expressly consents or is proved to be not a fit and competent person to have the guardianship of the child (sec. 32-1-5).

**27. Inheritance—child**

**Inheritance from a child**

When an intestate leaves no issue, the whole of his estate goes to his spouse; if he leaves no spouse, the portion which would have gone to the spouse goes to his parents. When one of his parents is dead, the portion which would have gone to such deceased parent goes to the surviving parent (secs. 29-1-13, 29-1-22).

If one of the children of the intestate is dead, the child's heirs inherit his share as though the child had outlived his parent (sec. 29-1-12).

**Inheritance from a parent**

See number 15.

**Damages for wrongful death**

Damages for wrongful death are distributed to the children of the deceased as follows: (a) When there is a surviving spouse and children or grandchildren, then equally to each, the grandchildren taking by right of representation; (b) if there is no spouse, to such children and grandchildren by right of representation.

If the deceased is a minor, childless and unmarried, then the damages go to the father and mother, who have an equal interest in the judgment; or if either of them is dead, to the survivor (sec. 22-20-3).

**28. Child born out of wedlock**

The mother owes to her child born out of wedlock and not legitimated, maintenance and support as if it were born in wedlock (sec. 22-4-1). The father owes the child maintenance and support, having regard to the condition in life of the mother, until the child is 16 years of age or, if the child is physically and mentally incapable of working, until the child arrives at full age. The father is also liable to pay the expenses of the mother's pregnancy and confinement and of the child's funeral (sec. 22-4-2). The mother may recover from the father an equal share of the support which she has furnished or owes to the child, or in the case of her total or partial inability, the additional amount of the support she owes. She may recover not more than 2 years' support furnished prior to the bringing of the action unless demand was previously made in writing (sec. 22-4-3).

The father is liable to third parties for support furnished the child if paternity has been judicially established or acknowledged by the

father in writing, or if he has partially performed the obligations imposed on him (sec. 22-4-4).

An agreement or compromise for support may be made only when adequate provision is fully secured and with the approval of the court, which bars other remedies of the mother and child (sec. 22-4-19).

Paternity proceedings may be instituted during pregnancy of the mother, or after birth of the illegitimate child, but the trial may not be had until after birth, except with the consent of the putative father (secs. 22-4-9, 22-4-25). Support proceedings may not be brought after 2 years from the birth of the child unless paternity has been judicially established, or has been acknowledged by the father in writing or by furnishing support (sec. 22-4-24).

If the defendant in the paternity proceeding is adjudged the father of the child, the court's order declares the fact and makes the defendant responsible for the child's support, in annual amounts, until it is 16 years of age or dies. The judgment may also include expenses in connection with the birth of the child (sec. 22-4-16).

The court may enjoin the adjudged father from transferring or disposing of his property. The complaining mother's rights under the judgment may be enforced under attachment or garnishment laws and by contempt proceedings. The judgment, when rendered, is a lien on all real estate of the adjudged father when the transcript is filed as required by law, and is enforceable as other judgments (sec. 22-4-18). If paternity is judicially established or acknowledged by the father in writing, or there has been part payment of his obligation, his failure to support the child fully subjects him on conviction to a fine not exceeding \$1,000, or imprisonment of not more than 2 years, or both (sec. 22-4-21).

The obligation so determined is enforceable against the estate of the father, subject and subordinate to like claims to support by his widow and lawful children (sec. 22-4-6).

Illegitimate children become legitimate by the intermarriage of their parents (sec. 29-1-20).

Children of marriages declared void due to nonage or incestuous relationship are deemed legitimate, with the right of inheritance from both parents (sec. 57-1-9).

The presumption of law is that a child born in wedlock is legitimate, and the mother is not a competent witness to prove that the child was not begotten by the man who became her husband before its birth.<sup>37</sup>

<sup>37</sup> *Grates v. Garcia* (1915), 20 N. M. 158; 148 Pac. 493.



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

Illegitimate children inherit from the mother and the mother from the children. They inherit from the father whenever they have been recognized by him as his children, by a signed instrument which shows on its face that it was signed with the intent of recognizing such children as heirs (sec. 29-1-18).

Under such circumstances, if the recognition of relationship has been mutual, the father may inherit from his illegitimate child, but in thus inheriting from an illegitimate child, the mother and her heirs take preference over the father and his heirs (sec. 29-1-19).

The illegitimate child inherits through, as well as from, his mother, and the heirs of the mother may inherit from the child. If the recognition requirement is met, the same applies to the father's kindred.<sup>38</sup>

**POLITICAL RIGHTS****30. Domicile of a married woman**

The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto (sec. 57-2-2).

The husband's voting residence governs that of his wife who is living with him; single women over 21 years of age, widows, divorcees and married women living apart from their husbands for good cause may establish their own voting residence.<sup>39</sup>

To institute divorce proceedings the statute requires that the plaintiff must have actually resided in good faith in the State for 1 year; but where the wife is the plaintiff, the residence of the husband in this State inures to her benefit (sec. 22-7-4).

**31. Public office—eligibility of women**

Every citizen of the United States who is a legal resident of the State and a qualified elector therein is qualified to hold any public office, except as otherwise provided by the Constitution.

The right to hold public office in the State may not be denied or abridged on account of sex, and wherever the masculine gender is used in the Constitution in defining the qualifications for specific offices, it is to be construed to include the feminine gender; provided, however, that the payment of public-road poll tax, school poll tax,

<sup>38</sup> *State et al. v. Chavez et al.* (1938), 42 N. M. 569; 82 P. (2d) 900.

<sup>39</sup> 1935-36 *Op. Atty. Gen.*, p. 97.

or service on juries may not be made a prerequisite to the right of a female to vote or hold office (Const., art. 7, sec. 2).

Women may hold the office of notary public and such other appointive offices as may be provided by law (Const., art. 20, sec. 11).

**32. Jury service—eligibility of women**

Women serve on juries subject to the same qualifications and exemptions as men (sec. 19-1-1).

