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The Legal Status of Women in the United States of America

REPORT FOR
OKLAHOMA
as of January 1, 1960

The report for Oklahoma was prepared by Laura H. Dale with the assistance of Mary K. Bostain under the general direction of Alice K. Leopold, Director of the Division of Women's Labor Law and Policy and Political Status of the Women's Bureau, U.S. Department of Labor.



WOMEN'S BUREAU BULLETIN 157-35 (Revised)

UNITED STATES DEPARTMENT OF LABOR
JAMES P. MITCHELL, *Secretary*

WOMEN'S BUREAU
MRS. ALICE K. LEOPOLD, *Director*

The report for Oklahoma was prepared by Laura H. Dale, with the assistance of Mary Z. Bastian, under the general direction of Alice A. Morrison of the Division of Women's Labor Law and Civil and Political Status of the Women's Bureau, U.S. Department of Labor.

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CONTENTS

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

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INTRODUCTION

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

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

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

The material considered centers largely around the woman in the marriage relation, since the legal status of the unmarried woman is practically identical with that of the unmarried man.

The United States Summary of the Legal Status of Women in the United States of America, Bulletin 157, has been brought up to date as of January 1, 1953. Information in the Summary is compiled from the reports for 48 States and the District of Columbia. Separate reports are available for Alaska and Hawaii. Material for these States will be incorporated in the Summary when it is revised.

SOURCES

Constitution of Oklahoma
Oklahoma Statutes, Annotated
Oklahoma Reports
Pacific Reporter

EXPLANATORY NOTE

This pamphlet, Bulletin 157-35, presents a digest of the constitution and statutory provisions affecting the legal status of women in the State of Oklahoma. It includes pertinent statutory changes enacted in that State up to January 1, 1960, and supersedes the previous report and addendum for Oklahoma.

References to the State constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation "Const.," as (Const., art. XII, sec. 4), placed after the related subject matter.

References to the code sections are likewise in parentheses, as (T. 32, sec. 53).

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."

OKLAHOMA

CIVIL RIGHTS

Contracts and Property

1. Age of majority

Minors are males under 21 years of age and females under 18 years of age (T. 15, sec. 13).

The disabilities of minority as to contracts or the transaction of general or special business may be removed by the district court on application of any person under 21 years of age. But the court must be satisfied that the minor is capable of managing his affairs and that his interest will be aided by conferring powers of majority on him (T. 10, secs. 91, 92).

2. Contractual powers of a minor

A minor is liable for the reasonable value of necessaries furnished him under his contract for them, entered into when he is not under the care of a parent or guardian able to provide for him or his family (T. 15, sec. 20). He is liable also under contracts which he is authorized by statute to make (T. 15, sec. 21).

Other contracts made by a minor under 18 years of age are voidable unconditionally before his majority or within 1 year thereafter. If he makes the contract, however, after he is 18 years of age he may avoid it upon returning to the other party the consideration paid or its equivalent with interest (T. 15, secs. 18, 19).

A minor 16 years of age or over has full legal capacity to enter into contracts or other transactions to obtain loans for the purpose of furthering his higher education. A minor has all the rights, powers and privileges with respect to such acts and is subject to the obligations of persons of full age (T. 15, sec. 30).

A minor may take and hold real estate (T. 16, sec. 32). Persons of any age who have been legally married and are otherwise qualified may dispose of, and contract concerning, real estate acquired after marriage (T. 16, sec. 1). "Qualified" here means not of unsound mind and not a spendthrift.¹ In general, until a minor is 18 years

¹ *Coats v. Benton* (1920), 80 Okla. 93; 194 Pac. 198.

of age he cannot contract concerning real property, nor in respect to any personal property not in his immediate possession or control, unless special authorization is given by the court (T. 15, sec. 17).

All minors on whom the rights of majority have been conferred by the court may convey, mortgage, or dispose of any real estate in Oklahoma that they own, or make any contract regarding it (T. 16, sec. 1).

A trust company is authorized to accept and receive commercial and savings deposits from minors and to pay to them any funds which they deposit (T. 6, sec. 356).

When any shares or deposits are made in a minor's name in a credit union, the same is held for his exclusive right and benefit, and shares, dividends, or interest are paid to him (T. 6, sec. 395.14).

A minor over 16 years of age may own, control, and dispose of shares of building and loan stock, but may not hold any office in the association (T. 18, sec. 212c).

A minor may not serve as an administrator or executor of an estate (T. 58, secs. 102, 126).

(See number 14 as to a minor's capacity to make a will.)

3. Property exemptions from seizure for debt

A. RESPECTIVE RIGHTS OF MAN AND WOMAN

Every person owning a home and residing therein or the head of every family residing in the State is entitled to reserve as exempt various items of personal property enumerated in the statute. The list includes all household and kitchen furniture; farm equipment; equipment used in the debtor's trade or profession; livestock; poultry; cemetery lot; library; family portraits; wearing apparel; all provisions and forage on hand or growing for family consumption, and for the use of exempt stock for 1 year; and 75 percent of all wages or earnings for personal or professional services rendered during the 90 days preceding seizure for debt (T. 31, sec. 1).

The term "head of the family" contemplates a person upon whom, as head of the house, there rests an obligation to support the other members of the household, and on the part of the others some state of dependency.²

Persons who are not heads of families are allowed exemption on specified articles of personal property. These include all wearing apparel; cemetery lot; equipment used in the debtor's trade or profession; and 75 percent of all current wages or earnings for personal or professional services (T. 31, sec. 4).

² *Lena v. Clinkenbeard* (1935), 172 Okla. 6; 44 Pac. (2d) 2.

None of the personal property enumerated by the statute as subject to exemption by a debtor may be reserved from attachment or execution for wages of any clerk, mechanic, laborer, or servant (T. 31, sec. 6).

Under any assignment for wages, salary, or other compensation for services, given as security for a loan under the Small Loans Act, not more than 10 percent of the borrower's wages, salary, or compensation may be collected from the employer of the borrower by the licensee at time of each payment (T. 15, sec. 280.19).

B. HOMESTEADS

Every person owning a home and residing therein, or the head of every family residing in the State, may hold as exempt the home of the family, whether title to the property is in the husband or the wife (T. 31, sec. 1). A rural homestead may not contain more than 160 acres. A homestead in a city or town, owned and occupied as a residence only, may consist of not more than 1 acre of land, and its value may not exceed \$5,000. But the homestead area may not be reduced below one-fourth of an acre regardless of value. If used for both residence and business purposes, the homestead interest may not exceed \$5,000. Temporary renting of the homestead does not destroy the exemption, when no other homestead has been acquired (Const., art. XII, sec. 1; T. 31, sec. 2).

A homestead cannot be abandoned without a departure therefrom with the definite intention never to return.³

The homestead is subject to liens for purchase money, and for work and material used in constructing improvements (T. 31, sec. 5). Any sale or mortgage of the homestead by the owner, if married, must be with the consent and joinder of the other spouse (Const., art XII, sec. 2; T. 16, sec. 4). Provision is made for the sole deed, mortgage, or contract of the homestead by one spouse, who has title thereto, when the other has abandoned such spouse for 1 year or taken up residence out of the State (T. 16, sec. 6).

When either husband or wife has become hopelessly insane, the other spouse may petition the court for power to sell and convey the homestead, or to mortgage, or lease it for oil and gas mining purposes. On due proof, the court grants the petition, and after the decree is entered in the court records, the authority to convey rests entirely in the petitioning spouse (T. 16, secs. 7, 10).

At least 30 days before the petition is to be heard in court, the applicant or his attorney must serve a copy of it on the nearest male

³ *Cooper v. Klester* (1947), 199 Okla. 238; 185 Pac. (2d) 458.

relative of the insane husband or wife. If no such male relative is known to the applicant, then the copy must be served on the county attorney where the homestead is situated. The county attorney then has the duty to appear in court and see that the application is in good faith and the proceedings fairly conducted (T. 16, sec. 9).

(See number 16 as to right to remain in the homestead on death of the owner.)

4. Ownership and control of property owned at marriage

Property belonging to a married woman at time of marriage is her separate property after marriage. Any increase in value of such property is the separate property of the owner unless the increase was caused by expenditure of joint funds or joint efforts of husband and wife.⁴

5. Contractual powers of a married woman

All persons are capable of contracting except minors, persons of unsound mind, and persons deprived of civil rights (T. 15, sec. 11).

Husband and wife contract toward each other obligations of mutual respect, fidelity, and support (T. 32, sec. 1).

Either spouse may convey, mortgage, or make any contract relating to any of his or her real estate, other than the homestead, without the joinder of the other (T. 16, sec. 13).

Either husband or wife may enter into any engagement or transaction regarding property with the other, or with any other person, as if unmarried. In transactions between themselves they are subject to the general rules which control the action of persons occupying confidential relations with each other (T. 32, sec. 5).

A conveyance of property between spouses is valid, whether made as an outright gift or in payment of a debt, unless it is shown that fraud existed or that the interests of creditors were jeopardized.⁵

A woman retains the same legal existence after marriage that she had before marriage. She is entitled to the same protection of all her rights, as a woman, which her husband receives as a man (T. 32, sec. 15).

These statutes accord to a married woman the same legal status and freedom of contract enjoyed by the husband.⁶

Husband and wife cannot alter their legal relations by contract with each other, except as to property, and as to an immediate separation. They may make provisions for the support of either of them and of their children during such separation (T. 32, sec. 6).

⁴ *Midyett v. Midyett* (1952), 206 Okla. 312; 243 Pac. (2d) 650.

⁵ *Hasley v. Bunte* (1936), 176 Okla. 457; 56 Pac. (2d) 119.

⁶ *Farmers' State Bank of Ada v. Keen* (1917), 66 Okla. 62; 167 Pac. 207.

The surviving spouse of a person dying intestate has priority for appointment to administer the estate (T. 58, sec. 122).

But among relatives, claiming and equally entitled to administer, males are preferred to females, and relatives of the whole blood to those of the half blood (T. 58, sec. 123).

No assignment of, or order for, payment of any salary, wages, or other compensation for services, earned or to be earned, given to secure any loan made under the Small Loans Act, is valid, without written consent of the spouse if the borrower is married. Written assent is not required where husband and wife have lived separate and apart for at least 5 months preceding such assignment or order (T. 15, sec. 280.19).

If a husband or wife is sentenced to imprisonment, abandons the other, removes from the State, and remains absent for 1 year without providing for the maintenance and support of the family, the other spouse may be authorized to manage, control, sell or encumber the property of the owner for the support and maintenance of the family and the payment of debts (T. 32, sec. 12). All contracts, sales or encumbrances so made are binding on both (T. 32, sec. 13).

A married woman is authorized to own, control, and dispose of shares of stock in building and loan associations (T. 18, sec. 212c).

If a husband and wife are sued together, the wife may defend for her own right. If her husband neglects to defend, she may defend for his right also (T. 12, sec. 225).

6. Earnings of a married woman

A wife's earnings are her separate property.⁷

7. Liability for family support

The husband must support himself and his wife out of the common property, or out of his separate property, or by his labor. The wife must support her husband when he has not deserted her, out of the common property, or out of her separate property, when he has no common or separate property and he is unable from infirmity to support himself (T. 32, sec. 3).

If the husband neglects to make adequate provision for the support of his wife, any other person may in good faith supply her with articles necessary for her support and recover the reasonable value of them from her husband (T. 32, sec. 10).

The parent entitled to the custody of a child must support and educate him in a manner suitable to his circumstances. If the support and education which the father of a legitimate child is able to

⁷ *Enid City Ry. Co. v. Reynolds* (1912), 34 Okla. 405; 126 Pac. 193.

give are inadequate, the mother must assist him to the extent of her ability (T. 10, sec. 4).

If a wife abandons her husband without just cause, or lives apart from him by agreement, he is not liable for her support unless agreed upon by contract (T. 32, sec. 11).

The court may issue an order requiring support to be furnished (T. 12, sec. 1600.21). Noncompliance subjects the violator to punishment for contempt of court (T. 12, sec. 1600.23).

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

There is no statutory restriction on a married woman's right to engage in a separate business.

A married woman has the same status as her husband as to the right to engage in business.⁸

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

Except for mutual obligations of support imposed by statute (T. 32, sec. 3), neither husband nor wife has any interest in the separate property of the other,⁹ but neither can be excluded from the other's dwelling (T. 32, sec. 4).

"Separate property" has been defined as property acquired by either spouse as a result of his or her separate earnings, skill, industry or labor.¹⁰

The separate property of either husband or wife is not responsible for the debts of the other contracted before marriage; the wife's property is not liable for the debts of the husband contracted after marriage (T. 32, sec. 9).

A married woman may make and file for public record, as provided by statute, a complete inventory of her separate personal property (T. 32, sec. 8). But her failure to file such an inventory does not forfeit her right to assert ownership of the property, nor give her husband the right to mortgage or dispose of it.¹¹

10. Property acquired by joint efforts of husband and wife

A husband and wife may hold property as joint tenants (T. 32, sec. 8). Property acquired during marriage by industry of husband and wife is joint property and if there is no issue on the death of either spouse, the entire estate goes to the surviving spouse.¹²

⁸ *Farmers' State Bank of Ada v. Keen* (1917), 66 Okla. 62; 167 Pac. 207.

⁹ *Pridemore v. Duncan* (1930), 146 Okla. 70; 293 Pac. 266.

¹⁰ *In re Dorris' Estate* (1956), Okla.; 292 Pac. (2d) 399.

¹¹ *Caylor Lumber Co. v. Mays* (1918), 73 Okla. 30; 174 Pac. 521.

¹² *Hisaw v. Chandler* (1926), 115 Okla. 99; 243 Pac. 146.

The Oklahoma Community Property Law, enacted in 1945, was repealed in 1949.

(See also number 15.)

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

A married woman may sue and be sued in the same manner as if she were unmarried (T. 12, sec. 224).

In an action for personal injuries, caused by the negligent act of another, a married woman living with her husband, and suing in her own name, may recover for the loss of capacity to earn, if resulting from such negligence, and for cost of medical treatment if paid, or to be paid, out of her separate earnings.¹³

A married woman may sue in her own name to protect her property rights.¹⁴

For any injury to a married woman's reputation, person, property, character, or any natural right, she has the right to appeal in her own name alone, to the courts of law or equity, for redress and protection (T. 32, sec. 15).

Actions may be brought by one spouse for alienation of the affections of the other.¹⁵

12. Damages for injury by spouse to person or property

A married woman may maintain an action against her husband to recover damages suffered from negligent or intentional wrongs inflicted on her by him, whether they were cohabiting at the time or not.^{16 17}

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

In civil actions, a husband and wife may not testify for or against each other, except as to transactions in which one acted as agent of the other, or in an action growing out of personal injuries to either spouse, or in cases where they are joint parties and have a joint interest in the action. In no case may either be permitted to testify as to any communication made by one to the other during marriage (T. 12, sec. 385).

In criminal cases, neither husband nor wife may be a witness against the other except in a criminal prosecution for a crime committed by one against the other, or in a prosecution against either or both for a felony committed by one against a minor child of either spouse.

¹³ *Enid City Ry. Co. v. Reynolds* (1912), 34 Okla. 405; 126 Pac. 193.

¹⁴ *Moore v. Moore* (1916), 59 Okla. 83; 158 Pac. 578.

¹⁵ *Brown v. Brown* (1925), 104 Okla. 206; 230 Pac. 853.

¹⁶ *Fiedler v. Fiedler* (1914), 42 Okla. 124; 140 Pac. 1022.

¹⁷ *Courtney v. Courtney* (1939), 184 Okla. 395; 87 Pac. (2d) 660.

They may be witnesses for each other, however, and are subject to cross-examination as other witnesses. In no event may their testimony disclose communications made by one to the other except on a trial of an offense committed by one against the other or a felony committed by one against the minor child of either (T. 22, sec. 702).

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under the Uniform Reciprocal Enforcement of Support Act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage (T. 12, sec. 1600.26).

14. Right to dispose of separate property by will

Every person over 18 years of age, of sound mind, may dispose of all his real and personal estate by will (T. 84, sec. 41). A married woman may dispose of all her separate estate by will without the consent of her husband, and may alter or revoke the will as if she were single. Her will is executed and proved in the same manner as other wills (T. 84, sec. 42).

A will is subservient to any antenuptial contract in writing, but no spouse may bequeath or devise away from the other so much of his estate that the other spouse receives less than would be received if the testator died without making a will. However, the testator is not required to devise or bequeath more than one-half of his estate to the surviving spouse. No person may by will dispose of property which could not be alienated by the testator while living, with the exception of the homestead which may be devised by one spouse to the other (T. 84, sec. 44).

A will executed by an unmarried woman is revoked by a subsequent marriage, and is not revived by the death of her husband (T. 84, sec. 108). A man's will is revoked if he marries and has issue after making his will and is survived by his wife or issue, unless provision has been made for such issue by settlement or in the will, or an intention was shown not to make such provision. If a testator marries after making a will and is survived by his wife, the will is revoked unless provision was made for her by marriage contract or provision is made for her in the will (T. 84, sec. 107).

15. Inheritance rights in deceased spouse's estate

Subject to payment of debts as provided by statute (T. 84, sec. 2), any person's estate not disposed of by will nor limited by marriage contract, descends and is distributed to a surviving spouse in the following manner:

When decedent leaves issue: An equal share with 1 child or the lawful issue of 1 child surviving. One-third, when more than 1 child, or 1 child and the lawful issue of 1 or more deceased children, or the lineal descendants of 2 or more deceased children, survive the decedent. An equal part with each of decedent's living children and the lawful issue of any deceased child, by right of representation, in property not acquired during marriage with decedent, if the decedent had been married more than once.

When decedent leaves no issue: One-half of the estate in property not acquired by joint efforts during marriage, the other half to decedent's parents or, if no parent is living, to decedent's brothers and sisters and the children of any of them who are dead.

(See number 27.)

The entire estate, whether parents or brothers and sisters survive or not, in property acquired by the joint industry of husband and wife during the marriage. On the death of the surviving spouse, one-half of any such property remaining undisposed of by will of the surviving spouse goes to the heirs of the husband and one-half to the heirs of the wife.

The entire estate in every kind of property, if no parent nor brother nor sister of the decedent is living (T. 84, sec. 213).

The surviving spouse inherits the whole estate in property acquired by joint efforts of husband and wife during the marriage.¹⁸ It makes no difference whether the wife has contributed any particular effort or industry, mental or physical, to its acquisition to entitle her to all the property, as a valid marriage is the only requisite to existence of such an estate.¹⁹

Dower and curtesy are abolished (T. 84, sec. 214).

16. Provision for survivors during administration of estate

A surviving spouse may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law. Specified articles of personal property, including family pictures, church pew, burial lot, the wearing apparel of the decedent and family, provisions and fuel for 1 year, and household and kitchen furniture, are delivered immediately to the surviving spouse and child or children. Such property and the homestead are not liable for any prior debts or claims whatever (T. 58, sec. 311), except that the homestead is liable for record liens (T. 58, sec. 313).

In addition to this property, there is set apart to the surviving spouse or minor children of the decedent, all such personal property

¹⁸ *Byers v. Brinlee* (1932), 157 Okla. 72; 10 Pac. (2d) 690.

¹⁹ *In re Keith's Estate* (1956), Okla.; 298 Pac. (2d) 423.

or money as is exempt by statute, with the homestead, for their possession and use. This property is subject only to payment of necessary expenses of decedent's last illness, funeral charge, and administration expenses if no other assets are available (T. 58, sec. 312).

If the amount of property so set apart is less than the statutory allowance, and insufficient for support of the surviving spouse or children, or if there is other estate of the decedent, the court may in its discretion make such further reasonable allowance as may be necessary during settlement of the estate (T. 58, sec. 314).

The personal property set apart for family use becomes the property of the surviving spouse, if there is no minor child. If there is a minor child, the spouse takes one-half the property; if more than one minor child, the spouse takes one-third and the minor children share the remainder. If there is no surviving spouse, the property is shared equally among the minor children (T. 58, sec. 316).

When the value of the whole personal estate is not more than \$1,500, the court assigns, for the use and support of the widow and any minor children, all of such estate after payment of administration charges and expenses of decedent's last illness and funeral. If the value is not more than \$3,000, it is within the court's discretion to dispose of the estate under the summary administration provisions (T. 58, sec. 317).

If the widow has a maintenance derived from her own property equal to the portion set apart to her by the above provisions, the whole property set apart, other than her right in the homestead, goes to the minor children (T. 58, sec. 318).

A surviving husband has the same right to a family allowance during administration of a deceased wife's estate as a surviving wife has during administration of her deceased husband's estate.²⁰

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

Neither a husband nor a wife can dispose of property by will in such manner as to vest in the other less than he or she would receive if the estate were distributed according to the statute. A married person is not required to will to the surviving spouse more than one-half of property not acquired during marriage by joint industry (T. 84, sec. 44). If less than the statutory share is left to a surviving spouse by the decedent's will, such survivor has the right to elect whether to accept the provision of the will or to take instead the portion granted by statute.²¹

²⁰ *Ware v. Beach* (1958), Okla.; 322 Pac. (2d) 635.

²¹ *Bank of Commerce & Trust Co. v. Trigg* (1929), 138 Okla. 216; 280 Pac. 563.

Marriage and Divorce

18. Age of consent to marriage

An unmarried male of 21 years of age or over, or an unmarried female of 18 or over is capable of contracting and consenting to marriage.

Males between 18 and 21 and females between 15 and 18 years of age may contract marriage with the consent of a parent or guardian. Males under 18 years and females under 15 years are expressly prohibited from entering into the marriage relation. However, the court may authorize the marriage of persons under these ages in settlement of suits for seduction or bastardy; or in cases where the female is pregnant or has given birth to an illegitimate child, whether or not any suits for seduction or bastardy have been brought (T. 43, sec. 3).

19. Common-law marriage

A common-law marriage is valid in this State. Provisions which direct that a license must be issued (T. 43, sec. 4); that only authorized persons may perform the ceremony; that a certain number of witnesses must be present (T. 43, sec. 7); and that a marriage certificate must be signed and recorded (T. 43, sec. 8) are merely directory. A marriage exists where competent parties agree to be and become immediately man and wife, and under such an agreement, enter into and afterward maintain the marriage relation.²²

20. Premarital requirements

Each applicant for a license to marry must file a certificate from a physician stating that a standard serological examination as may be necessary to discover syphilis has been given, not more than 30 days prior to the date of such application, and that syphilis is not present in a stage that may be communicable (T. 43, sec. 31).

In case of emergency or for good cause shown, the court may waive the requirement of the physician's certificate, or extend the 30-day period. Such extension, however, may not exceed 90 days after the test was made (T. 43, sec. 32).

In the event that one or both parties to be married are under the legal age, the application for license to marry must remain on file for not less than 3 days before the license may be issued (T. 43, sec. 5).

Marriages between persons within certain degrees of kinship, or between persons of specified races are prohibited (T. 43, secs. 2, 12).

²² *In re Love's Estate* (1914), 42 Okla. 478; 142 Pac. 305.

21. Interstate cooperation in marriage-law enforcement

There are no provisions regarding the evasion of the marriage laws of other States.

However, where citizens of the State go elsewhere and contract a marriage prohibited by Oklahoma statutes governing public policy, and then return to Oklahoma as their domicile, the law of Oklahoma governs in determining the validity of the marriage.²³

22. Annulment

Marriages may be annulled by the district court in an action brought by the incapable party on proof of want of age or understanding (T. 12, sec. 1283).

An annulment may also be granted when one of the parties to a marriage has been divorced less than 6 months prior to the ceremony (T. 12, sec. 1281b).

Children of marriages annulled because of want of age or understanding are legitimate (T. 12, sec. 1283).

23. Divorce

A divorce may be granted for any of the following causes: (a) abandonment for 1 year; (b) adultery; (c) impotency; (d) extreme cruelty; (e) fraudulent contract; (f) habitual drunkenness; (g) gross neglect of duty; (h) conviction of a felony and imprisonment in the penitentiary; (i) insanity for a period of 5 years; (j) incompatibility; or (k) procurement of divorce outside the State by one spouse which does not release the other in this State. A decree of divorce on the ground of insanity does not relieve the plaintiff from contributing to the support and maintenance of the defendant (T. 12, sec. 1271).

The husband may obtain a divorce if the wife was pregnant by another at the time of marriage (T. 12, sec. 1271).

Remarriage is prohibited within 6 months after the granting of a divorce decree (T. 12, sec. 1280).

On being granted a divorce the wife may be restored to her maiden name if she so desires, and to all the property owned by her prior to marriage or acquired in her own right after marriage (T. 12, sec. 1278).

On granting a divorce, the court makes provision for guardianship, custody, support and education of minor children of the marriage (T. 12, sec. 1277).

A divorce decree may be set aside at any time if both parties to the action file a petition therefor, and neither party has married a third person since the issuance of the divorce decree (T. 12, sec. 1288).

²³ *Ross v. Bryant* (1923), 90 Okla. 300; 217 Pac. 364.

Alimony and maintenance

The wife or husband may obtain alimony from the other without a divorce in an action brought for that purpose on the grounds on which a divorce may be granted (T. 12, sec. 1284).

In cases where the court grants alimony without a divorce or where a divorce is refused for good cause, the court may make such order as may be proper for the custody, maintenance and education of the children (T. 12, sec. 1275).

After filing a divorce or alimony petition, the court may make and enforce orders to restrain the disposition of the property of the parties and for support of the wife or the husband, or the minor children. The court may also make orders respecting the expenses of the suit. On granting a divorce to the wife, or refusing one on application of the husband, the court may require the husband or wife to pay reasonable expenses of the other in the prosecution or defense of the action (T. 12, sec. 1276).

The wife may be allowed alimony from the husband's property in the discretion of the court. Property acquired jointly during marriage is divided as the court feels just and reasonable. If the divorce is granted because of the fault of the wife, the court may set apart to the husband, for the support of the children, such portion of the wife's separate estate as may be proper (T. 12, sec. 1278).

Parents and Children

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

The father of a legitimate unmarried minor child is entitled to its custody, services, and earnings. The father cannot transfer such custody or services to any other person except the mother, without her written consent, unless she has deserted him or lives separate from him by agreement.

The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings (T. 10, sec. 6).

A minor receives the wages of his employment in service, unless the parent or guardian entitled to them gives notice to the employer that he claims such wages (T. 10, sec. 18).

The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment (T. 10, sec. 17).

25. Guardianship of a minor child

Either parent, whether married or not, if competent to transact his or her own business and not otherwise unsuitable or disqualified, is entitled to the guardianship of his or her minor child. If the parents are married and living together, however, the parent petitioning the court for appointment must have the endorsement or nomination of the other unless the minor is at least 14 years of age and therefore capable under the law of nominating the parent he desires as guardian. If both parents are seeking appointment, the court, upon full investigation, may appoint the one most competent to care for the minor's interest (T. 58, secs. 762, 768, 769).

The mother becomes entitled to custody of the child when the father is dead, or is unable or refuses to take the custody, or has abandoned his family (T. 10, sec. 5).

The parent, as such, has no control over the property of the child (T. 10, sec. 8).

No person, whether a parent or not, has any power as a guardian of property until duly appointed (T. 30, sec. 7).

As between parents adversely claiming the custody or guardianship of a minor, neither is entitled as a matter of right. Other things being equal, however, if the child is of tender years, the mother is favored as guardian; if the child is of an age to require education and preparation for labor or business, then the father is preferred for appointment (T. 30, sec. 11).

The authority of a parent ceases upon the marriage of a child (T. 10, sec. 10).

The husband and father, has no rights superior to those of the wife and mother in regard to the care, custody, education, and control of children of the marriage, while such husband and wife live separate and apart from each other (T. 10, sec. 21).

The power of a guardian appointed by a parent ceases on the marriage of the ward (T. 30, sec. 19), that of a guardian appointed by the court is suspended on the ward's marriage if the appointment was for the person of the ward (T. 30, sec. 20).

26. Appointment of testamentary guardian for a minor child

A guardian of a minor's person or estate, or both, may be appointed by will or by deed. The father may make such an appointment with the written consent of the mother. Either parent has such power if the other is dead or incapable of consent. The mother of an illegitimate minor child may make such an appointment by deed or will (T. 30, sec. 6).

27. Inheritance—child

If a person dies intestate, leaving no issue, the surviving spouse takes one-half the estate and the decedent's father and mother take the other half in equal shares. If one parent is dead the survivor takes the shares of both.

If the intestate leaves neither issue nor spouse, his parents take the estate in equal shares. If one is dead, the survivor inherits the whole. However, any part of the estate acquired by the joint industry of husband and wife during the marriage goes to the surviving spouse. The property remaining after the death of the decedent's surviving spouse, intestate,²⁴ is divided in equal shares between the heirs of the deceased spouses.

If the intestate was a minor, and left no issue, the estate goes to the parents equally, if they are living together. If they are not living together it goes to the parent who had the care of the minor.

If a person dies intestate, leaving only one child and a surviving spouse, the estate is shared by them equally. If more than one child survive, one-third of the estate goes to the surviving spouse and the remainder is shared by the children (T. 84, sec. 213).

28. Child born out of wedlock

If a child is born out of wedlock a complaint may be made charging the proper person with being the father of the child (T. 10, sec. 71). When the paternity of the child has been established by judicial proceeding, the adjudged father is charged by court order with the maintenance of the child, in such amount and manner as the court directs. Security for performance of the order is required (T. 10, sec. 78), and the court has continuing power in the case to change any order or judgment rendered (T. 10, sec. 79).

A child born within 10 months after the dissolution of a marriage, is presumed to be a legitimate child. A child born before wedlock becomes legitimate by the subsequent intermarriage of his parents (T. 10, sec. 2).

The father of a child born out of wedlock, by publicly acknowledging it as his own, receiving it into his family, with the consent of his wife if he is married, and otherwise treating it as a legitimate child, thereby adopts it as such, and such child is deemed legitimate for all purposes from the time of birth (T. 10, sec. 55).

29. Inheritance—child born out of wedlock

On the death of an illegitimate child, who had not been acknowledged or adopted by his father, and who leaves no lawful issue, his

²⁴ *Black v. Haynes* (1914), 45 Okla. 363; 145 Pac. 362.

intestate estate goes to his mother, or, if she is dead, to her heirs at law (T. 84, sec. 216).

Every child born out of wedlock is an heir of the person who, in writing signed in the presence of a competent witness, acknowledges himself to be the father of such child, and in all cases he is an heir of his mother. He does not inherit through his father or mother any part of the estate of their kindred, either lineal or collateral, unless before his death his parents have intermarried and his father, after such marriage, acknowledges him as his child or adopts him into his family (T. 84, sec. 215).

POLITICAL RIGHTS

30. Domicile of a married woman

The husband is the head of his family. He may choose any reasonable place or mode of living and the wife must conform thereto (T. 32, sec. 2).

The residence or domicile of a married woman is that of her husband.²⁵

A wife who resides in the State at the time she applies for a divorce is considered a resident of Oklahoma for that purpose, even though her husband is a nonresident (T. 12, sec. 1286).

31. Public office—eligibility of women

There is no statutory restriction on women's eligibility to hold elective or appointive public office.

32. Jury service—eligibility of women

All citizens residing in the State having the qualifications of electors, of sound mind and discretion and of good moral character, are competent jurors to serve on grand and petit juries, with certain exemptions. A woman with minor children may be granted an exemption on her request (T. 38, sec. 28).

²⁵ *Pope v. Pope* (1926), 116 Okla. 188; 243 Pac. 962.