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The Legal Status of Women in the United States of America

January 1, 1948

REPORT FOR
OREGON

*Individual State material, constituting part of a compilation
to show the present legal status of women in the
United States of America*



BULLETIN OF THE WOMEN'S BUREAU, No. 157-36 (Revised)

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THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

In response to continuing domestic and international needs, the Women's Bureau has prepared a revised edition of its 1938 report on the legal status of women in the United States of America.

The revised report is based on an examination of the Constitutions, official statutes, and significant decisions of courts of last resort of the Federal Government and the several States, as well as pertinent law texts of recognized authority.

This pamphlet presents a digest of the material compiled for a single State, which has been incorporated in the complete report.

LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR,
WOMEN'S BUREAU,
Washington, September 8, 1949.

SIR: I have the honor to transmit to you a revised report on the legal status of women in Oregon. This is one of 54 separate reports constituting a survey of the laws of the 48 States, the District of Columbia, the territories of Alaska, Hawaii, and Puerto Rico, and the United States possessions, the Canal Zone and Virgin Islands.

The original report for each jurisdiction represents a thorough search of statutes and decisions of appellate courts construing its statutes or establishing its judicial policy. Revision covers important changes by legislative action.

The study was made by Sara L. Buchanan, Attorney, aided by Mary L. Sullivan, Associate Economist, and Elizabeth Batson, Editorial Assistant, all of the Bureau staff.

Respectfully submitted.

FRIEDA S. MILLER, *Director.*

Hon. MAURICE J. TOBIN,
Secretary of Labor.

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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 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, natural male dominance, and the social status of women. Shifts in these have effected an almost complete overturn in laws governing the property owned by a woman prior to her marriage and that coming into her individual ownership after her marriage, by gift, inheritance, will, or accumulation from her premarital possessions.

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 largest remaining area to be reformed to the present-day trend lies in the matter of ownership and control of property acquired by the cooperative efforts of husband and wife after marriage.

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, with the exception of the discrimination in some States which bars women from jury duty; or of distinctions, such as variance between men and women in the statutory age of majority or age of consent to marriage.

OREGON

SOURCES

Constitution of Oregon.
1940 Compiled Laws Annotated.
Pocket Part Supplements, 1943 Cum., 1944-1947.
Oregon Reports.
Pacific Reporter.

EXPLANATORY NOTE

References to the State Constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation Const., as (Const., art. 15, sec. 5), placed after the related subject matter.

References to the code are likewise in parentheses, thus (sec. 63-502); enactments since 1940 carry the appropriate code section number followed by reference to the Pocket Part by year, as (63-118, 1944-1947 P.P.).

Case citations, definitely construing statutes or declaring judicial policy in the absence of express statutory provision, are indicated by numerical footnote references, and appear immediately after the related paragraphs. Cases showing historical development of a statute or policy are followed by the abbreviation (Hist.).

Subject headings are preceded by numbers, which remain constant for their respective topics through the entire State series. Cross references among topics employ these numbers for brevity, as "See Number 6," which refers to the subject heading "Separate Earnings of Married Woman—Ownership and Control."

OREGON

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

Any person attains majority at the age of 21 years, and thereupon assumes control of his or her own actions and business, has all the rights, and is subject to all the liabilities, of a citizen of full age (sec. 63-501).

Females attain majority when they are legally married (sec. 63-502).

2. Contractual Powers of Minors.

Minors may own and control bank deposits in their own names (secs. 40-1001, 40-2529), and certain savings and loan association stock, as prescribed by statute (sec. 41-604). They are not qualified to act as executors or administrators (sec. 19-216).

In general, at common law, the contracts and conveyances of a minor are voidable, and he may ratify or disaffirm them within a reasonable time after his majority. In the absence of an express statute, the common law is applied where it does not conflict with the State Constitution or special enactments of the legislature. See *Perry v. Fletcher* (1919), 93 Ore. 43, 53; 182 Pac. 143.

But a minor is liable on his contracts for necessities furnished him, if actually required and if supplied at a reasonable price (sec. 71-102).

It should be noted that a female minor becomes of age upon her legal marriage [see Number 1], and that—

“A married woman may bar her right of dower in any estate conveyed by her husband, or by his guardian, if he be a minor, by joining in the deed of conveyance thereto with, or by executing a deed separately from, her husband or such guardian, with or without mentioning the barring of dower therein”—

if such deed is executed to the husband's grantee or the grantee's heirs or assigns (sec. 17-108).

See Number 14.

3. Property Exemptions from Seizure for Debt—Respective Rights of Men and Women.

Personal Property.

The judgment debtor is entitled to select as exempt from levy for debt (except debts for purchase price, or, under certain circumstances, for materials or labor performed): Books, pictures, and musical instruments owned by any person to the value of \$75; necessary wearing apparel up to \$100 value, owned by any person, and, if such person is a householder, for each member of his family to the value of \$50; necessary equipment, by which such person habitually earns his living, to the value of \$400; poultry to the value of \$50. A householder is entitled also to household goods, furniture, and utensils to the value of \$300; family pew; 6 months' supply of provisions for the family; designated livestock, with limited food provision for them; also limited fuel supply. All pensions granted to any person for a preceding period of employment or service are exempt, without necessity of claim by the pensioner for such exemption (sec. 6-1201).

Wages.

The earnings of any debtor for personal services rendered within 30 days next preceding service of an attachment, garnishment, execution, or other process, which, together with other earnings for personal services performed by the debtor within the same period, amount to the sum of \$75 or less, are exempt if such earnings are necessary for the use of the family supported wholly or partly by the labor of such debtor; except that only 50 percent of such earnings may be held exempt if the debt incurred is for family expenses. No earnings of any debtor are exempt against a debt or demand incurred for property or money obtained by fraud or under false pretenses (sec. 6-1202).

The exemption statutes extend protection to all litigants in the courts of the State, whether residents or not, unless restricted by the terms of the statutes themselves to some designated class of persons.¹

Homestead.

A homestead is exempt to the value of \$3,000, when it is "the actual abode of and occupied by the owner, his or her spouse, parent or child." Temporary removal or absence with the intention to reoccupy the property as a homestead does not impair the exemption. If the property is sold, the exemption extends to \$3,000 of the proceeds while held, with the intention to purchase another homestead, for a period not exceeding 1 year (sec. 6-1301).

A rural homestead may consist of any quantity of land not exceeding 160 acres. If the homestead is in a town or city, its area may be any quantity of land not exceeding 1 block, provided the value is not more than \$3,000 (sec. 6-1302).

The exemption does not apply against mechanics' liens for work, labor, or material for improvement of property claimed as home-

stead, or to purchase-money liens and valid mortgages (sec. 6-1303).

Claim for homestead exemption may be made by the owner, his or her spouse, parent or child, agent or attorney, when the property has been levied upon (sec. 6-1304).

See Numbers 5 and 9 as to restrictions on sole conveyance of lands by either spouse.

Succession to Homestead.

On the death of the owner, the homestead descends to the person entitled to receive it under the statute or will. If such person is the decedent's child, grandchild, widow or widower, father or mother, the property continues exempt from the decedent's debts other than statutory liens and expenses of last sickness, funeral, and administration. The passing of title under this provision does not prevent or limit the probate court from setting apart the use of the homestead to a widow, widower, or the minor children of the deceased spouse as provided in section 19-602 (secs. 6-1305, 6-1306). See Number 16 as to this right of surviving spouse.

Life Insurance.

The proceeds or the cash surrender value of a policy of life insurance, payable to a lawful beneficiary other than the insured, are exempt to such beneficiary from the creditors and representatives of the person effecting the insurance, except that, in general, the amount of any premiums paid in fraud of creditors, with accrued interest, will be subject to such creditors' claims out of the proceeds (sec. 101-514).

¹ *Bond v. Turner* (1898), 33 Ore. 551, 553; 54 Pac. 158; 44 L. R. A. 430.

4. Property of Married Woman Owned at Marriage—Ownership After Marriage.

See Number 9.

5. Contractual Powers of Married Women.

A married woman may manage, sell, convey, or devise property owned by her at the time of her marriage or acquired afterward. She may exercise these rights over such property in the same manner and to the same extent that her husband can with respect to property belonging to him (sec. 63-204).

As the husband cannot by will or deed defeat the wife's interest in his lands, neither can the wife defeat the husband's interest in her lands, and the wife by her sole deed cannot convey a fee-simple title divested of the husband's life estate. The power of disposal as a necessary incident of ownership means only the power to dispose of the interest owned.¹ See also Numbers 14 and 15. See Number 9 as to wife's right when husband abandons her.

A husband and wife, by their joint deed, may convey the real

estate of the wife in like manner as she might do by her separate deed if she were unmarried (sec. 70-102).

A married woman's acknowledgment to any conveyance of real property in the State is taken in the same manner as if she were unmarried (sec. 70-117).

In general, a conveyance, transfer, or lien executed by either husband or wife to, or in favor of, the other is valid as if between other persons. But when either spouse conveys to the other an undivided one-half of any real property and retains a like undivided half, expressing in the conveyance an intention to create an estate in entirety, the husband and wife will hold the property by entireties. However, either of them may make valid conveyance of his or her interest in lands held by the entirety to the other, and thereby dissolve the entirety (sec. 63-210). See Number 9 as to further rights in such estates.

Either husband or wife may appoint the other as attorney in fact to control, sell and convey, mortgage, or bar dower or curtesy in his or her property for their mutual benefit. The appointment may be revoked, as if between strangers (sec. 63-211).

All laws which impose or recognize civil disabilities upon a wife which are not imposed or recognized as to the husband are repealed; and for any unjust usurpation of her property or natural rights, a wife has the same right to appeal in her own name alone to the courts of law or equity for redress that the husband has (sec. 63-202).

"All laws," as here used, includes both the statutory and common law, and any provisions of either that impose or recognize civil disabilities upon the wife but not upon the husband are repealed by the statute. "Civil disability," as to the wife, means some disqualification by operation of law which renders her incapable of doing certain acts or things.²

By virtue of this statute [sec. 63-202], a wife is at liberty to contract with her husband,³ except that neither of them can contract with the other to relinquish their respective rights of dower and curtesy [see sec. 63-205].^{4 5} Under its provisions, a wife's right to acquire property, to enjoy the fruits of her labor, or to hold and invest the profits arising from the successful management of her own trade or business, is undisputed. When by her industry, prudence, economy, and business foresight, she acquires property in the management of her separate business, it is her property and not her husband's. It cannot be liable for his debts, even though he has given his services in connection with her separate business.⁶

For all civil injuries committed by a married woman, damages may be recovered from her alone, and her husband cannot be held liable, except in cases where he would be jointly responsible with her if they were not married (sec. 63-208).

No female may be arrested in any action, except for an injury to person, character, or property (sec. 7-301, subsec. 5).

A wife may apply to the circuit court of the county in which she resides to compel her husband to provide support for her and

their minor children. The court has authority to grant such relief as the circumstances of the case require (secs. 63-212 to 63-215).

Fiduciary Capacities.

Married women are eligible to hold office in charitable societies of which they are members, when such societies are incorporated under the statute governing nonprofit organizations. Married women may act as trustees for such societies, and no liability attaches to the husband of any such married woman in consequence of any act resulting from his wife's official position (sec. 77-417).

Administration of an intestate person's estate is to be granted by the county court probating wills, in the court's discretion, first to the widow, or widower, or next of kin (sec. 19-210, subsec. 1).

"If the deceased were a married woman, the administration of her estate shall in all cases be granted to her husband, if he be qualified and competent for the trust and apply therefor within 30 days from her decease, unless by force of a marriage settlement, or otherwise, she shall have made some testamentary disposition of her property which shall render it necessary and proper to grant the administration to some other person" (sec. 19-212).

In the appointment of a guardian for a minor, women are eligible, if otherwise qualified; but among relatives of the minor, the court will give preference to the father, mother, adult brother, sister, or other relative, in the order named (sec. 22-120).

¹ *Runyan v. Winstock* (1909), 55 Ore. 202, 205, 210; 104 Pac. 417; 105 Pac. 895. (Hist.)

² *Ingalls v. Campbell* (1889), 18 Ore. 461, 465; 24 Pac. 904.

³ *In re Edwards' Estate* (1932), 140 Ore. 431, 440; 14 Pac. (2d) 274.

⁴ *Potter v. Potter* (1903), 43 Ore. 149, 151; 72 Pac. 702.

⁵ *Chance v. Weston* (1920), 96 Ore. 390, 401; 190 Pac. 155.

⁶ *King v. Voos* (1886), 14 Ore. 91, 97, 98; 12 Pac. 281.

6. Separate Earnings of Married Woman—Ownership and Control.

The real or personal property which a woman acquires during marriage by her own labor is not liable for her husband's debts, contracts, or liabilities. It is subject to the same exemptions and liabilities as property owned at the time of her marriage or afterward acquired by gift, devise, or inheritance (sec. 63-203). See also Number 5, footnote 6.

7. Liability of Married Woman for Family Necessaries.

The expenses of the family and the education of the children are chargeable against the property of both husband and wife, or either of them. They may be sued for such expenses, either jointly or separately. The wife's liability ceases after 2 years from the maturity of the debt (sec. 63-207). This statute was intended for the protection of creditors of the husband and wife, and does not change the common-law duty of the husband to maintain his wife during the marriage and provide family necessaries.¹

¹ *Taylor v. Taylor* (1909), 54 Ore. 560, 582, 583; 103 Pac. 524.

8. Formal Procedure Required for a Married Woman to Engage in a Separate Business.

No decree of court, formal consent of husband, or recorded inventory of separate property is required by statute from a married woman who engages in a separate business. See Number 5, footnote 6.

9. Married Woman's Separate Property—Control During Marriage—Liability for Husband's Debts.

The property and pecuniary rights of every married woman, at the time of marriage, or afterward acquired by gift, devise, or inheritance, are not subject to the debts or contracts of the husband; "and laws shall be passed providing for the registration of the wife's separate property" (Const., art. 15, sec. 5). The statute provides that: "The property and pecuniary rights of every married woman at the time of her marriage or afterwards acquired, shall not be subject to the debts or contracts of her husband," omitting the words "by gift, devise, or inheritance" (sec. 63-204). See also Number 5.

When property is owned by either husband or wife, the other has no interest in it which can be the subject of contract between them, nor such interest as will make the property liable for the contracts or liabilities of either the husband or wife, who is not the owner of the property, except as provided by statute (sec. 63-205).

Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage. They are not liable for each other's separate debts, except as provided by statute, nor is the rent or income of either spouse's separate property liable for the separate debts of the other (sec. 63-206). See Number 5.

Estates by Entireties.

A conveyance of land to husband and wife by one instrument makes them own it as tenants by the entirety,¹ unless the conveyance shows a different intention. The Married Woman's Act does not repeal this common-law estate, but the provisions of the act have abolished the right of the husband to the exclusive enjoyment of the income of such property during the joint lives of the spouses.²

While an estate by the entirety exists, the husband and wife have an equal interest, and when they join in its disposal the net proceeds are to be equally divided.³ See also Number 5 as to power of either spouse to create a tenancy by entirety, or dissolve it.

No estate by the entirety can be created in personal property.⁴

Wife's Rights When Husband has Abandoned Her.

When a husband has abandoned his wife without making suitable provision for her support, and has been absent from the State for 1 year, the wife—

"may in all respects contract in relation to, sell, convey, and

deal with her separate property, real and personal, in the same manner as if she were a feme sole, and may in her own name, without being joined with her own husband, sue or be sued in relation to her separate property on any contract made by her * * *."

The fact of abandonment must be established of record upon the wife's petition and proof before the county court. The powers extend only to contracts made after the decree of the court and before the husband's return (sec. 63-201).

When One Spouse Insane.

When one spouse has been adjudged insane and committed to a public insane asylum, during the continuance of such disability the other may convey, as if unmarried, any and all real estate owned in his or her sole right, and acquired after the insane spouse has been committed to the asylum. Such a conveyance releases the curtesy or dower right of the disabled spouse. Real estate held and owned jointly can be conveyed only by proper proceedings in probate court, after appointment of a guardian for the insane person. Any deed executed under these provisions must be accompanied by the certificate of the superintendent of the asylum where the insane spouse is detained, showing that such person is under disability (sec. 70-103).

¹ *Noblitt v. Beebe* (1882), 23 Ore. 4; 35 Pac. 248.

² *Ganoe v. Ohmart* (1927), 121 Ore. 116, 119; 254 Pac. 203.

³ *Marchand v. Marchand* (1931), 137 Ore. 444, 449; 3 Pac. (2d) 128.

⁴ *Holman v. Mays* (1936), 154 Ore. 241, 249; 59 Pac. (2d) 392.

10. Property Acquired After Marriage Through Cooperative Efforts of Spouses—Ownership and Control.

Separate property of husband or wife is that owned or claimed by either before marriage or before the effective date of this act, whichever is later, also that property acquired afterward either by gift, will, or inheritance, or received as compensation for personal injuries.

Community property.—All property acquired by either husband or wife during marriage and after the effective date of this act (except the *separate property* of each as defined above) is deemed to be the *community* or *common property* of husband and wife. Each spouse has a vested, undivided one-half interest in the community property. Whatever effects husband and wife possess when the marriage is dissolved are regarded as community unless proved to be separate property.

Control.—The wife is authorized to manage, control, and dispose of (1) her separate personal property, and (2) that portion of community personal property which consists of her earnings and all rents, interest, dividends, and other income from her separate property, and all other common or community personal property, the title to which stands in her name.

The husband is authorized to manage, control, and dispose of his separate personal property, and of all community personal

property not under the control of the wife by the terms of this act.

Both husband and wife must join in execution of any deed, mortgage, or other instrument to convey or encumber community real property. Rights of husband and wife in all real property owned by them (whether separate or community) are governed by existing law, except that dower and curtesy rights do not apply to community real property.

Bank deposits in the name of either husband or wife are presumed to be the separate property of the party in whose name the account stands, no matter who made the deposit.

Debts.—The portion of the community property under the control of the wife is subject to her debts and damages incurred in acquiring, holding or managing such property, but not otherwise.

A similar provision applies to the community property under the husband's control as to debts or damages incurred by him in acquiring, controlling or disposing of it.

All debts created by either spouse after marriage, or after the effective date of the act if later, are regarded as community debts unless proved otherwise.

All property of husband and wife, and all community property, is liable for family expenses, subject to existing legal exemptions. Husband and wife, and each of them, are entitled to the exemptions allowed them by existing laws.

Termination of marriage.—When the marriage is dissolved by a competent court, each spouse is vested with an undivided one-half interest in the community property as tenants in common, and other rights as provided by State law.

When either spouse dies, the surviving spouse administers all community property in the same manner and with the same responsibilities as a surviving partner administers a partnership under the Oregon statutes.

The community property law is to be liberally construed to effect its purposes (1947, p. 910).

11. Damages Recovered for Injury by Strangers to a Married Woman's Person, Property, or Character—Ownership and Control.

"All laws which impose or recognize civil disabilities upon a wife which are not imposed or recognized as existing as to the husband are hereby repealed; provided, that this act shall not confer the right to vote or hold office upon the wife, except as is otherwise provided by law; and for any unjust usurpation of her property or natural rights she shall have the same right to appeal in her own name alone to the courts of law or equity for redress that the husband has" (sec. 63-202).

A married woman may sue for the alienation of her husband's affections, under the provisions of the statute [sec. 63-202] removing her civil disabilities.^{1 2} A married woman may sue for loss of consortium due to the injury or death of her husband

through the willful or negligent act of a third person (sec. 63-202, 1943 P.P. Cum.).

¹ *Keen v. Keen* (1907), 49 Ore. 362, 365; 90 Pac. 147; 10 L. R. A. (N. S.) 504.

² *Bird v. Ellingsworth* (1936), 156 Ore. 103, 107; 59 Pac. (2d) 261; (1937), 65 Pac. (2d) 674.

12. Action to Recover Damages for Willful or Negligent Injuries to the Person or Property of One Spouse by the Other—Respective Rights of Husband and Wife.

In the absence of a specific statute empowering husband and wife to sue each other for personal torts, neither spouse can maintain such an action against the other, by rule of common law.

If either husband or wife obtain possession or control of property belonging to the other either before or after marriage, the owner of the property may maintain an action for its recovery or for any right accruing from it in the same manner and extent as if they were unmarried (sec. 63-209).

13. Competency of Spouses to Testify For or Against Each Other.

In civil actions, generally, a husband may not be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or afterward, without the consent of the other, be examined as to any communication made by one to the other during the marriage. But this restriction does not apply to a civil action between spouses, nor to a criminal action or proceeding for a crime committed by one against the other (sec. 3-104).

If a party to the action, suit, or proceeding offer himself as a witness, he thereby consents to the examination also of a spouse on the same subject, within the meaning of the preceding statutory provision (sec. 3-105). This rule does not apply to a criminal action.¹

In criminal actions, generally, when one spouse is the party accused, the other is a competent witness, but may not be allowed or compelled to testify unless both spouses consent. But either spouse is a competent witness against the other in all cases of personal violence upon one by the other, or of any personal violence or other unlawful act committed against any minor child of either or both; and in all criminal actions for polygamy or adultery the husband or wife of the accused is a competent witness and may testify as to the fact of marriage against and without the consent of the other (sec. 26-935).

¹ *State v. McGrath* (1899), 35 Ore. 109, 112; 57 Pac. 321.

14. Disposition of Separate Property by Will—Extent of Married Woman's Right.

Every person 21 years of age or over, of sound mind, may dispose of both real and personal estate by will, except that the dower or curtesy right of a surviving widow or husband cannot be cut off by the will of the deceased spouse (sec. 18-101, 1943 P.P. Cum.).

A married woman may make disposition by will of any real estate held in her own right subject, however, to her husband's curtesy right (sec. 18-102). See Number 5 as to disposition of other property by will. See Number 17 as to right of election against the will of a deceased spouse.

15. Estate of Deceased Husband or Wife—Share of Surviving Spouse.

Separate Property—The surviving spouse of any person who dies intestate shares in the estate, subject to payment of the decedent's debts, as follows:

ABSOLUTE INTEREST

Real Property.

When no lineal descendants of the decedent survive, the living spouse takes all the real property (sec. 16-101, subsec. 2).

Personal Property.

A widow is allowed "all articles of her apparel and ornament, according to the degree and estate of the intestate, and such property and provisions for the use and support of herself and minor children as shall be allowed and ordered in pursuance of sections 19-601 to 19-604, inclusive [see Number 16]; and this allowance shall be made as well when the widow waives the provision made for her in the will of her husband as when he dies intestate." The personal property of the intestate subject to distribution as provided by statute is given to the living spouse if no issue survive, or one-half of it if issue survive (sec. 16-102, subsecs. 1, 2, and 4).

LIFE INTEREST

Dower and Courtesy.

A widow is entitled to dower, that is, the use during her life "of one-half part of all the land whereof her husband was seized of an estate of inheritance at any time during the marriage," unless she is barred from such right according to law (sec. 17-101).

The dower right may be barred by her valid deed of conveyance (sec. 17-108), by her assent before the marriage to a jointure in lieu of dower (secs. 17-109, 17-110), or by her acceptance of a pecuniary provision in lieu of dower (sec. 17-111).

A widower is entitled, as tenant by the curtesy, to the use during his life "of one-half part of all the lands whereof his wife was seized of an estate of inheritance at any time during his marriage," unless he is lawfully barred from such right. Statutes applicable to dower are made to apply as far as practicable to curtesy also (sec. 17-401).

A nonresident widower has curtesy or dower only in the lands of which the deceased spouse was seized at the date of death (secs. 17-116, 17-401).¹

The dower or curtesy right of a spouse who has been adjudged

of unsound mind, or incapable of conducting personal affairs, may be relinquished by judicial proceeding, as prescribed by statute, to enable the other spouse to make valid conveyance of his or her real property (secs. 17-501 to 17-508).

Community Property—See Number 10.

¹ *Rieger v. Harrington* (1922), 102 Ore. 603, 612, 614; 203 Pac. 576.

16. Provision for the Surviving Spouse During Administration of the Estate.

Until administration of the estate has been granted and the inventory filed, the surviving spouse and the minor children of the decedent are entitled to remain in possession of the homestead, all the wearing apparel of the family, and decedent's household furniture. The widow and minor children may have a reasonable provision for their support during this period, to be allowed by the court (sec. 19-601).

When the estate's inventory has been filed, the court will order the setting apart to the widow, widower, or minor children of all property which was exempt from execution to the decedent at the date of death. This property then belongs to the widow or widower to be used or expended for the support of such spouse and minor children, if any (sec. 19-602).

Ownership of the homestead, however, is determined by the provisions of the decedent's will, if a will was made.¹ If the exempt property is insufficient for the support of the widow and minor children, according to their circumstances and condition in life, for 1 year after the inventory is filed, the court may order a sufficient amount to be paid to the widow for such support, provided the estate appears able to pay all debts and administration expenses in addition to such an allowance (sec. 19-603).

If the inventory shows that the value of the estate above property exempt from execution does not exceed \$150, the court will order the whole estate set apart for the widow or minor children of a decedent, after payment of funeral and administration expenses, thus closing the administration of the estate, unless other property is discovered (sec. 19-604).

The surviving spouse of a person who dies having a cash deposit not exceeding \$500 in a bank or trust company may withdraw such deposit on affidavit, as prescribed by statute, without probate of the estate (sec. 22-1406).

Wages up to \$200, earned within 3 months of an employee's death, are to be paid to the surviving spouse as if earned by such survivor (sec. 102-607a, 1943 P.P.). An amount up to \$250 due by the State to a deceased individual may be paid to the surviving spouse without administration (sec. 90-505a, 1944-1947 P.P.).

A widow may remain in the dwelling house of her husband for 1 year after his death without being chargeable with rent for it, and is to have her reasonable sustenance out of the estate for 1 year (sec. 17-118).

¹ *Winslow v. Becker* (1936), 154 Ore. 336, 344; 58 Pac. (2d) 620.

17. Disinheritance of Husband or Wife by Will of Deceased Spouse —Survivor's Alternative.

A widow may elect whether she will accept the provision made for her by her husband's will, or be endowed of the life estate in his lands, as provided by law. She is not entitled to both dower and testamentary provision, unless the will plainly shows that the testator so intended (sec. 17-113). Her election must be made within 1 year after her husband's death, in the manner prescribed by statute (sec. 17-114).

There is no corresponding statute for the husband; but the rights of curtesy and dower cannot be destroyed by the will of a deceased spouse. See Number 14.

[That a surviving husband may renounce provisions of his wife's will pertaining to him, and have set apart to him as homestead and exempt property real and personal estate which had been devised by her to others, is illustrated in the case of *In re Potter's Estate* (1936), 154 Ore. 167, 172; 59 Pac. (2d) 253.]

II.—MARRIAGE AND DIVORCE

18. Age of Consent to Marriage—Men and Women.

Marriage is a civil contract, which may be entered into by males of the age of 18 years, and females of the age of 15 years, who are otherwise capable (sec. 63-101). Written consent of "parent and guardian," if any, is required before a license to marry may be issued, when the female is under 18 or the male under 21 years of age. If either of the parties has no parent or guardian resident within this State, and the female has resided in the county where the application is made for the 6 months immediately preceding application for license, such consent may be waived (sec. 63-113).

In general, a waiting period of 3 days must elapse between the application for license and the issuance of the license. In special cases, the probate judge may, in his discretion, order a license to be issued immediately following the application for it (sec. 63-112).

19. Validity of Common-Law Marriage.

The common-law marriage is invalid in this State, and contrary to its public policy regarding the solemnization of marriages, as clearly expressed by mandatory statutes.^{1 2}

Under the Workmen's Compensation Law it is expressly provided that—

"In case an unmarried man and an unmarried woman shall have cohabited in the State of Oregon as husband and wife for over 1 year prior to the date of an accidental injury received by such man, and children shall be living as a result of said relation, said woman and said children shall be entitled to compensation under this act the same as if said man and woman had been legally married" (sec. 102-1764).

¹ *Huard v. McTeigh* (1925), 113 Ore. 279, 295; 232 Pac. 658; 89 A. L. R. 528. (Hist.)

² *Bolin v. Marshall* (1935), 76 Fed. (2d) 668.

20. Health Certificate Requisites to Issuance of Marriage License —Men and Women.

Before a marriage license can be issued there must be filed with the clerk the sworn certificates of a duly authorized practicing physician in the State, made within 10 days prior to the filing date, showing that in his opinion each of the persons seeking marriage is free from contagious or infectious venereal diseases in a communicable stage, epilepsy, feeble-mindedness, insanity, drug addiction, or chronic alcoholism. Laboratory tests are required for determination of syphilis or gonorrhea (63-118, 1944-1947 P.P.).

21. Interstate Cooperation in Marriage Law Enforcement.

The State follows the general rule that the validity of a marriage is determined by the laws of the place where it is solemnized. See *Sturgis v. Sturgis* (1908), 51 Ore. 10, 93 Pac. 696, 15 L. R. A. (N. S.) 1034; also *Ollschlager's Estate v. Widmer* (1909), 55 Ore. 145, 105 Pac. 717.

22. Grounds for Marriage Annulment—Respective Availability to Man or Woman.

When either party to a marriage is incapable of consent for want of age or sufficient understanding, or when consent has been obtained by force or fraud, the marriage is voidable, but only at the suit of the party laboring under the disability, or upon whom the force or fraud is imposed (sec. 63-103). Such a marriage is void from the time it is so declared by decree of the proper court (sec. 9-903).

The marriage will not be declared void if it appears that the parties freely cohabited together as husband and wife after the party under disability, or upon whom force or fraud was imposed or practiced, had arrived at legal age, acquired sufficient understanding, been restored to reason, been freed from the force, or discovered the fraud, as the case may be (sec. 9-905).

Marriages prohibited by law are absolutely void. Such marriages include those between parties of forbidden degrees of kindred, between persons of forbidden races, or between parties either of whom has a husband or wife living (secs. 9-902, 63-102). Such a marriage may be declared void from the beginning at the suit of either party. Whether so declared or not, it will be deemed void in any action, suit, or proceeding in which it may be questioned (sec. 9-904). The court is empowered, according to the merits of the case, to dissolve the marriage from the beginning or from the date of the decree, or to declare the marriage valid, lawful, and binding (sec. 9-906).

Another marriage may not be contracted with a third person by either party, following annulment or divorce, until the suit has been finally determined, nor in any case until the expiration of 6 months from the date of the decree granting the annulment or divorce (sec. 9-916).

23. Grounds for Divorce—Respective Availability to Spouses.

The dissolution of the marriage contract may be declared at the suit or the claim of the injured party for any of the following causes:

Impotency existing at the time of the marriage, and continuing to the filing of the suit; adultery; conviction of felony; habitual gross drunkenness contracted since marriage and continuing for 1 year prior to the commencement of the suit; willful desertion for 1 year; cruel and inhuman treatment or personal indignities rendering life burdensome; permanent insanity, proved as required by statute (sec. 9-907). In cases of insanity, the afflicted spouse must be assured of adequate support, as prescribed by law (sec. 9-914).

A permanent separation from bed and board may be granted for adultery.

A separation from bed and board for either a limited or unlimited time may be allowed for willful desertion, or at the wife's suit for the husband's neglect or refusal to provide for her during a period of six months, conviction of a felony, habitual gross drunkenness beginning since marriage and continuing for 1 year before suit brought, and cruel and inhuman treatment or personal indignities (secs. 63-212, 63-213, 1943 P.P. Cum.).

III.—PARENTS AND CHILDREN

24. Services and Earnings of Minor Children—Parents' Respective Rights.

In the absence of misconduct of either, the parents have equal rights and responsibilities as to their children. The mother is as fully entitled to the custody and control of the children and their earnings as the father. If the father dies, the mother is to have as full and complete control of the children and their estate as the father would at the mother's death (sec. 63-304).

25. Guardianship of Minor Children—Parents' Respective Rights.

In appointing a guardian for a minor under 14 years of age, the court must give preference to the father, mother, adult brother, sister, or other nearest relative, in the order named, if such person is otherwise qualified as required by law (sec. 22-309, 1944-1947 P.P.).

26. Appointment of Testamentary Guardian for Minor Children—Parents' Respective Rights.

Every father may appoint by written will a guardian or guardians for any of his minor children; and every mother may likewise appoint a guardian or guardians for any of her minor children, if the father is dead and has not appointed a guardian, or if, following divorce, the mother has been given custody of the child. But the right to appoint such a guardian cannot deprive a sur-

viving parent of the custody of the person of his or her children, if such parent is competent to transact his or her own business (sec. 22-106). See also Number 24.

27. Inheritance from an Intestate Child—Parents' Respective Rights.

Real Property.

When an intestate person leaves no lineal descendants nor spouse, his real property descends, subject to his debts, to his father and mother in equal portions. If only one parent is living, such parent takes the whole (sec. 16-101, subsecs. 2 and 3).

When any minor child dies, leaving no spouse nor children, any real estate inherited by him from an ancestor descends to the heirs of such ancestor (sec. 16-101, subsec. 5).

Personal Property.

When an intestate person leaves no spouse nor issue, the residue of personal property after payment of debts and charges of administration, is distributed to the decedent's parents in equal portions, or to the surviving parent if only one is living (sec. 16-102, subsecs. 2, 3, and 4) (sec. 16-101, subsecs. 2 and 3).

28. Support of Children Born Out of Wedlock—Parents' Respective Responsibility.

When the accused in a bastardy proceeding has been adjudged to be the father of a child born out of wedlock, he stands chargeable with its future maintenance in such sum and manner as the court directs; also for all expenses incurred for the lying-in and attendance of the mother during her sickness, and for the care and support of the child since its birth, as well as costs of the prosecution. All these matters are to be determined by the court and entered as a judgment. The maintenance of the child by the father will be required in yearly sums of not less than \$100 nor more than \$350 for the first 2 years, and not less than \$150 nor more than \$500 for each year succeeding until the child is 14 years of age. The defendant is entitled to jury trial and to an appeal from the judgment, as provided in civil cases. No conviction can be made upon the unsupported testimony of the woman (sec. 28-905). Bond is required for performance of the court's orders. If no bond is filed, the adjudged father is to be committed to prison until he complies with the judgment or is discharged according to law (sec. 28-906).

29. Inheritance from Child Born Out of Wedlock—Mother's Right.

If an illegitimate child dies intestate, leaving no spouse or lawful issue, the mother of such child inherits all his property (sec. 16-202).

B.—POLITICAL RIGHTS**30. Domicile of Married Women.**

In the absence of a specific statute, the common-law rule has been applied, that the domicile of a wife follows that of her husband. See *Bryant v. Dukehart* (1923), 106 Ore. 359, 367, 210 Pac. 454; also *Stewart v. Stewart* (1926), 117 Ore. 157, 163, 242 Pac. 852.

31. Public Office—Eligibility of Women.

No distinction is made in the constitution or statutes between men and women in the matter of eligibility for public office.

32. Jury Service—Eligibility of Women.

Women are eligible for jury duty, on the same terms as men (secs. 14-107, 14-204, 1943 P.P. Cum.).

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