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

REPORT FOR

**PENNSYLVANIA**

as of January 1, 1965



WOMEN'S BUREAU BULLETIN 157-37 (Revised)

UNITED STATES DEPARTMENT 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, 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 in the absence of a specific statute abrogating common-law principles, the common law applies. In the century past, many old common-law injustices to women have been removed by statute.

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

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

The President's Commission on the Status of Women (established December 14, 1961, by Executive Order 10980) appointed a Committee on Civil and Political Rights to review the civil and political rights of women. The Commission's report, submitted in October 1963, presents findings and makes recommendations for constructive action. A considerable number of States, including Pennsylvania, already have established Governors' Commissions on the Status of Women to implement the recommendations made in the report of the President's Commission.

## SOURCES

Purdon's Pennsylvania Statutes Annotated  
Pennsylvania District Reports  
Pennsylvania District and County Reports  
Pennsylvania District and County Reports (Second Series)  
Pennsylvania State Reports  
Pennsylvania Superior Court Reports  
Atlantic Reporter  
Atlantic Reporter (Second Series)

## EXPLANATORY NOTE

Bulletin 157-37 presents a digest of the State constitutional and statutory provisions affecting the legal status of women in Pennsylvania. It includes pertinent statutory changes enacted in that State up to January 1, 1965, and supersedes the previous report for Pennsylvania of January 1, 1957.

References to the code sections are indicated by parenthetical insertions of title and section numbers, as "(T. 48, sec. 34)."

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

Pennsylvania District Reports—Pa. Dist. Rpts.  
Pennsylvania District and County Reports—D. & C.  
Pennsylvania District and County Reports (Second Series)—D. & C. (2d)  
Pennsylvania State Reports—Pa.  
Pennsylvania Superior Court Reports—Pa. Super. Ct.  
Atlantic Reporter—Atl.  
Atlantic Reporter (Second Series)—A. (2d)

Numbered subject headings are the same as those 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."

## PENNSYLVANIA

### CIVIL RIGHTS

#### *Contracts and Property*

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

The age of majority for both men and women is 21 years (T. 46, sec. 601(65)).

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

A minor is not competent to contract. Generally, he may bind himself for his food, apparel, necessary physic and other necessities, and for his good teaching or instruction.<sup>1</sup>

Minors 18 years of age or over may make insurance contracts and are given full powers in relation to them as if 21 years of age (T. 40, sec. 572).

A minor may open and maintain a bank account in his own name with the same rights and privileges as if he were of full age, and may make withdrawals without the assent of his parent or guardian (T. 7, sec. 819—902a).

A married minor 17 years of age or older may execute a valid conveyance of real estate with his or her adult spouse (T. 21, sec. 51).

A married minor 17 years of age or older may execute a deed of conveyance or mortgage of real estate with his or her adult spouse (T. 21, sec. 57).

A minor cannot bind himself even for necessities when he has a guardian or parent to supply his wants; likewise a minor wife cannot bind herself for shelter and lodgings when she has a spouse under legal duty to supply them for her.<sup>2</sup>

##### **3. Property exemptions from seizure for debt**

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

Property to the value of \$300, in addition to all wearing apparel of the debtor and his family and Bibles and schoolbooks in use in the family, is exempt from levy and sale on execution (T. 12, sec. 2161).

<sup>1</sup> *In re O'Leary's Estate* (1945), 352 Pa. 254; 42 A. (2d) 624.

<sup>2</sup> *Bizler v. Addir* (1960), 22 D. & C. (2d) 732.

## THE LEGAL STATUS OF WOMEN

A debtor includes a wife as well as her husband; both spouses are entitled to the exemption to the extent of \$300 in their respective estates against an execution levied under their joint debt.<sup>3</sup>

Sewing machines belonging to seamstresses or to private families are exempt from levy and sale on execution (T. 12, secs. 2167-2168).

Income or return not exceeding \$100 per month from an insurance or annuity contract is exempt to the beneficiary or annuitant (T. 40, sec. 515).

The net proceeds of any life insurance policy or annuity contract accruing to the benefit of the wife, children, or dependent relative of the insured person are exempt from all claims of creditors of the insured (T. 40, sec. 517).

The net proceeds payable to the insured or to any beneficiary under contracts of accident or disability insurance or under accident or disability clauses attached to life insurance contracts are exempt from the claims of creditors and seizure under any legal process (T. 40, sec. 766).

### B. HOMESTEADS

There is no statutory provision for a homestead exemption. The freeholder of an estate in fee simple (a person who has title to real property) may be entitled to a stay of execution against certain judgments up to \$500 and under certain prescribed conditions (T. 12, sec. 2201). The remedy is available without distinction between men and women.

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

All property owned by a woman at the time of her marriage continues to be her separate property after marriage. Such property is not liable for the debts of her husband (T. 48, sec. 64).

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

A married woman has the same right and power as a married man to acquire, own, possess, control, use, convey, lease, or mortgage any property of any kind, real, personal, or mixed, either in possession or expectancy, or make any contract, in writing or otherwise; she may exercise such right and power in the same manner and to the same extent as a married man (T. 48, sec. 32.1).

Property conveyed by one spouse without the joinder of the other is subject to the spouse's intestacy share (T. 20, sec. 1.5). (See number 15.)

A wife declared a feme sole trader (a married woman who engages in business on her own account) because of desertion or nonsupport

<sup>3</sup> *Friday v. Glasser* (1900), 14 Pa. Super. Ct. 94.

may convey her property without the joinder of her husband (T. 48, secs. 42, 44).

No female shall be arrested or imprisoned by reason of any debt (T. 12, sec. 255).

A conveyance of real estate to a husband and wife creates a tenancy by the entirety unless a contrary intention is shown.<sup>4 5</sup> (For definition of tenancy see number 10.)

Either spouse surviving the other may draw a deposit made by them jointly during the marriage in any banking institution (T. 7, sec. 819—903).

A contract of a married woman for the purchase of a sewing machine for her own use is valid and binding without her husband's joining in the contract (T. 48, sec. 33).

A married woman owning loans of the State or of the city of Philadelphia, or any of the loans, or a share or shares, of the capital stock of any corporation created by or under the laws of Pennsylvania, may sell or transfer them as if she were unmarried (T. 48, sec. 36).

Women, married or single, may serve as officers, directors, or trustees of an incorporated institution (T. 7, sec. 819—514). A married woman may legally make conveyances of real estate to her husband or her husband and herself jointly as if she were unmarried (T. 48, sec. 71).

A wife may lend money to her husband out of her separate estate and may take security in the form of a judgment or mortgage against his estate in the name of a third person as trustee (T. 48, sec. 70).

No assignment of, or order for, wages or salary to be earned made by a married man to secure a loan is valid unless the written consent of his wife is attached thereto (T. 43, sec. 274).

A married woman may sue and be sued civilly, in all respects, and in any form of action, and with the same effect and results and consequences as an unmarried person, except that she may sue her husband only as prescribed (T. 48, sec. 111). (See number 12.)

A wife who has been deserted, abandoned, or driven from her home by her husband may sue her husband or any other person in any court in her own name, or may assign, transfer, or endorse over to any person or persons any evidence of indebtedness against her husband or others as if unmarried (T. 48, sec. 115).

If a married woman claims to have advanced the purchase money for land, the legal title of which is in her husband, she may bring an action of ejectment against him for the land (T. 21, sec. 602).

<sup>4</sup> *In re Vandergrift's Estate* (1932), 105 Pa. Super. Ct. 293; 161 Atl. 898.

<sup>5</sup> *Newhard v. Newhard* (1931), 303 Pa. 299; 154 Atl. 500.

## 6. Earnings of a married woman

The separate earnings of any married woman, whether they are wages for labor, salary, or income from property, belong to her and are under her control independently of her husband. They are not subject to any legal claim either of the husband or of his creditors (T. 48, sec. 34).

## 7. Liability for family support

In all cases where debts may be contracted for necessities for the support and maintenance of the family of any married woman, the creditor may sue both husband and wife for the purchase price of the necessities, and upon judgment rendered has right of execution first against the husband's property, and if there is no such property, then against the separate property of the wife. Judgment may not be rendered against the wife unless it is proved that she contracted the debt and that it was incurred for articles necessary for the support of the family (T. 48, sec. 116).

Action may be brought at law or in equity against a husband for maintenance of his wife and children if he has separated himself and, being of sufficient ability, has neglected or refused to provide suitable maintenance for them (T. 48, sec. 131).

Whenever a man has separated from his wife or children without reasonable cause, or when his whereabouts are unknown, and he has sufficient ability but has neglected or refused to provide suitable maintenance for them, proceedings may be had against his real or personal property to provide maintenance for them (T. 48, sec. 132).

Any husband or father who separates himself from his wife or children without reasonable cause or willfully neglects to maintain them, and such wife or children are destitute, or are dependent wholly or in part on their earnings for adequate support, is guilty of a misdemeanor, and is subject to fine and/or imprisonment (T. 18, sec. 4731).

Where a deserted wife has used her separate estate to discharge an obligation resting primarily on her husband, the law imposes a quasi-contractual relationship to reimburse the deserted wife for expenditures from her separate estate used to provide herself with support in a manner in keeping with the husband's financial circumstances and earning power.<sup>6</sup>

### Relief law

Every husband, wife, child (except a child of a parent who abandoned or persisted in abandonment for a period of 10 years during child's minority), father, and mother of an indigent person, whether

<sup>6</sup> *Adler v. Adler* (1952), 179 Pa. Super. Ct. 506; 90 A. (2d) 389.

a public charge or not, shall, if of sufficient financial ability, care for and maintain, or financially assist, such indigent person at a rate which the court shall direct. Every person who willfully neglects or refuses to comply with the court's order may be committed to the county jail for a period not exceeding 6 months (T. 62, sec. 1973).

Conduct on the part of a wife which would supply the husband with valid grounds for divorce will justify the husband in refusing to support the wife.<sup>7</sup>

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

In order to protect her earnings and profits as her own separate property, the statute requires a married woman to present her petition, under oath or affirmation, to the court of common pleas having jurisdiction over her residence, stating her intention to claim her earnings and profits separately. The court then directs her petition to be placed on record, making it conclusive evidence of her right to claim and receive such earnings and profits (T. 48, secs. 34-35).

A married woman may be declared a feme sole trader if her husband is an absent mariner or has deserted her, or if she is living apart from her husband, by presenting her petition to the court of common pleas, setting forth, under affidavit, the facts which authorize her action. If a decree is granted, the wife's property is subject to her free and absolute disposal during life and her husband loses his intestacy right (T. 48, secs. 41-44). (See number 15.)

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

All property owned by a single woman continues to be her property as fully after her marriage as before; and all such property accruing to any woman during marriage, by will, descent, deed of conveyance, or otherwise, is to be owned, used, and enjoyed by her as her own separate property. Such property, whether owned by her before marriage or accruing to her afterward, is not subject to levy and execution for the debts or liabilities of her husband, nor can it be sold, conveyed, mortgaged, transferred, or in any manner encumbered by her husband without her written consent duly acknowledged before a judge of common pleas, stating that such consent was not the result of coercion but voluntarily given and of her own free will (T. 48, sec. 64).

(See number 5 for right to convey property.)

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

There is no statutory provision for community of interest between the spouses in property acquired after marriage by their cooperative efforts. Such property belongs to the husband by rule of common law,

<sup>7</sup> *Seery v. Seery* (1957), 183 Pa. Super. Ct. 322; 131 A. (2d) 845.

unless a joint ownership has been created by private arrangement, such as joint deed, joint bank account, and the like. A husband and wife may hold property as tenants by the entirety, tenants in common, and joint tenants.<sup>8 9</sup> (Tenancy by the entirety—property held by conveyance to husband and wife where each possesses the whole estate with right of survivorship. Tenancy in common—property held by several and distinct titles with unity of possession, neither party knowing his own severally; it is not limited to husband and wife. Joint tenancy—all interest held the same. There is unity of conveyance, time, place, and possession with right of survivorship attached; it is not limited to husband and wife.)

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

A married woman is given full power to sue in any civil action as if unmarried, except that suit against her husband must be as specified (T. 48, sec. 111). (See number 12.) Under this statute, any suit for damages arising from torts done to her is brought in her name alone, and any amount recovered becomes her separate property. The husband's right based on such a tort is that given him at common law to be compensated for the loss of his wife's services.<sup>10</sup>

Actions for alienation of affections of husband or wife are abolished except in cases where the defendant is a parent, brother, sister, or a person in loco parentis to the plaintiff's spouse (T. 48, sec. 170).

This act does not abolish actions for criminal conversation. The common-law right of action in trespass for damages for criminal conversation has not been abolished in Pennsylvania.<sup>11 12</sup>

All causes of action for breach of promise to marry are abolished (T. 48, sec. 171).

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

Husband and wife may not sue each other in any civil action, except in a divorce proceeding or in an action by one to recover his or her separate property from the other. The wife may not be arrested or imprisoned for her torts (T. 48, sec. 111).

Reasonable interpretation of the Married Women's Property Act necessarily permits an action in equity by one spouse against the other to protect as separate property his or her interest therein held by them as tenants by the entirety and from possession of which the complaining spouse is wrongfully excluded.<sup>13</sup>

<sup>8</sup> *In re Kleinschmidt's Estate* (1949), 362 Pa. 353; 67 A. (2d) 117.

<sup>9</sup> *Blease v. Anderson* (1913), 241 Pa. 198; 88 Atl. 365.

<sup>10</sup> *Walker v. Philadelphia* (1900), 195 Pa. 168; 45 Atl. 657.

<sup>11</sup> *Grove v. Widney* (1950), 68 D. & C. 541.

<sup>12</sup> *Baldrige v. Matthews* (1954), 378 Pa. 566; 106 A. (2d) 809.

<sup>13</sup> *Lindenfelser v. Lindenfelser* (1956), 383 Pa. 424; 119 A. (2d) 87.

A wife deserted, abandoned, or driven from home by her husband may bring civil suit against him upon any cause of action as if she were unmarried, and she is a competent witness against her husband; but such act does not destroy the right of survivorship in any land conveyed jointly to husband and wife (T. 48, sec. 114).

A wife may recover damages from her husband for an assault and battery committed upon her person by him after he has deserted or abandoned her or driven her from their common home.<sup>14</sup> She may maintain an action against her husband for personal injuries sustained by her through his negligence.<sup>15</sup>

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

Husband and wife are incompetent to testify against each other, or in support of a criminal charge of adultery alleged to have been committed by or with the other, except in proceedings for desertion or maintenance, and in any other criminal proceeding enumerated in the statute where bodily injury or violence is attempted (T. 19, sec. 683).

Neither spouse is competent to testify against the other in a civil proceeding, except in one brought by a wife to be declared a feme sole trader, or in certain divorce actions (T. 28, sec. 317). However, the wife may testify in rebuttal when put on the defensive as to her conduct or character in civil actions brought against the husband for necessities furnished to the wife (T. 28, sec. 318). Either husband or wife is competent to testify against the other in rebuttal when his or her character or conduct is attacked in a civil action brought by the other spouse (T. 28, sec. 319).

(See also number 12.)

Neither spouse may testify as to any confidential communication between them, in either criminal or civil suits, unless this privilege is waived upon the trial (T. 19, sec. 684; T. 28, sec. 316).

Husband and wife are competent witnesses in actions against the husband for maintenance for the wife and children, or when the husband is tried for nonsupport (T. 48, sec. 131; T. 18, sec. 4731).

In any action by either spouse to protect or recover the separate property of either, both are competent witnesses except as to confidential communications, which privilege may be waived (T. 28, sec. 320).

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

Every person of sound mind and of the age of 21 years or older may dispose by will of his real and personal estate, subject to payment of

<sup>14</sup> *Candidi v. Candidi* (1954), 87 D. & C. 96.

<sup>15</sup> *Waterman v. Waterman* (1954), 3 D. & C. (2d) 126.

debts and charges; and any person 18 years of age or older of sound mind who is in active military service or is a mariner may dispose by will of all his real and personal estate subject to payment of debts and charges (T. 20, sec. 180.1).

If the testator marries after making a will, the surviving spouse receives the share given by statute in intestate estates, unless the will gives a larger share.

If the testator is divorced after making a will, all provisions in the will in favor of or relating to his divorced spouse are ineffective (T. 20, sec. 180.7).

The real and personal property, however acquired, of a wife who has been declared a feme sole trader according to statute is subject to her free and absolute disposal during life, or by will, without interference by the husband, in cases of nonsupport by the husband for 5 or more years, or of separation for 1 year or longer without support from him; and if she dies without making a will, her property goes to her next of kin as if the husband were already dead (T. 48, sec. 44).

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

The widow or widower is entitled to the following share of the real and personal estate of an intestate decedent, after payment of debts and charges:

(a) If one child survives, or descendants of one deceased child, the living spouse takes one-half of the estate.

(b) If more than one child, or one or more children and the descendants of any deceased child or children, or the descendants of more than one deceased child or children survive, the living spouse takes one-third of the estate.

(c) If no issue survive, the living spouse is entitled to the first \$10,000 in value and one-half of the balance of the estate.

(d) If no issue, parent, brother, sister, child of a brother or sister, grandparent, uncle, or aunt survives, the living spouse is entitled to all of the estate (T. 20, sec. 1.2).

A husband who for 1 year or more prior to the death of his wife has willfully neglected or refused to provide for her, or a husband or wife who for 1 year or more prior to the death of the other has willfully and maliciously deserted such spouse, loses the right to claim any title or interest in the real or personal estate of the deserted spouse (T. 20, sec. 1.6).

The share of real estate to which the widow or widower is entitled covers both the property the decedent owned at time of death and any property which he or she may have conveyed without the surviving spouse's signature (T. 20, sec. 1.5).

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

The surviving spouse or specified family members may be paid wages, salary, or any accrued vacation benefits or pension due a decedent up to \$1,000 (T. 20, sec. 320.201).

The spouse of any decedent domiciled in this State, or if no spouse, or if the spouse has forfeited his right, then specified family members, may retain or claim as an exemption real or personal property to the value of \$1,000 (T. 20, sec. 320.211).

Small estates of a gross value of \$2,500 or less can be settled without administration (T. 20, sec. 320.202).

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

A surviving spouse may elect to take against the provisions of a decedent's will. Upon such an election the surviving spouse is entitled to one-third of the real and personal estate of the testator, if children or their descendants survive. If only one child and his descendants or other heirs survive, the spouse is entitled to one-half of the real and personal estate (T. 20, sec. 180.8). The right of election may be forfeited through desertion by the survivor for 1 year prior to the decedent's death or if the survivor has participated as a principal or accessory in the wrongful slaying of the other (T. 20, sec. 180.9).

A conveyance of assets by a person who retains a power of control over such assets, as specified in the statute, is treated as a testamentary disposition at the election of the surviving spouse, and as such the spouse may elect to take against it. This, however, does not defeat the rights of any income beneficiary whose interest became vested before the death of the one making the conveyance. A spouse electing under this section must also elect to take against the will and against all other conveyances of which he is a beneficiary under terms of this section (T. 20, sec. 301.11).

## ***Marriage and Divorce***

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

Persons under 21 years of age must have the consent of parents or guardians, in person or in writing properly certified and witnessed, before a marriage license may be issued. Both male and female applicants must be 16 years of age before a license may be issued. In special cases the court may authorize the issuance of a license when one or both parties are under age 16 if it is in their best interests (T. 48, sec. 1—5).

## 19. Common-law marriage

Common-law marriages are recognized, but it should plainly appear that there was an actual agreement entered into to form a legal relation of husband and wife.<sup>16</sup>

The marriage law of 1953, which repealed or changed the law relating to marriage, is not in any way to be construed to change the existing law with regard to common-law marriage (T. 48, sec. 1—23).

## 20. Premarital requirements

Each applicant for license to marry must submit a physician's statement showing that an examination, including the standard serological test, has been given within the 30 days preceding issuance of license, to determine whether syphilis is present, and, if present, whether the disease is in a communicable stage or is likely to become communicable (T. 48, sec. 1—5).

No license to marry may be issued: (a) if either applicant is weak-minded, insane, or of unsound mind; (b) if either applicant has been, within 5 years preceding application, an inmate of an institution for weak-minded or insane persons, unless the court determines that it is to the best interest of the applicant and the general public to issue the license; (c) if either applicant is or has been, within 5 years preceding application, an inmate of an institution for indigent persons, unless the court determines that the applicant is no longer indigent, and if a male, that he is able to support a family; (d) if either applicant is under the influence of intoxicating liquor or narcotic drugs; (e) to a person divorced by a former spouse on grounds of adultery, for the marriage of such person to the person with whom adultery was committed, during the lifetime of the former spouse; (f) to applicants within prohibited degrees of consanguinity and affinity (T. 48, sec. 1—5).

No license to marry shall be issued until or after the third day following the making of application, except in emergencies or extraordinary circumstances authorized by the court (T. 48, sec. 1—4).

## 21. Interstate cooperation in marriage-law enforcement

While following the general rule that a marriage valid by the law of the place where it is solemnized is valid everywhere, the State excepts any particular marriage contracted elsewhere that is contrary to good morals, public policy, or the positive statutes of the jurisdiction where the rule is sought to be enforced. This is especially true where the parties to the marriage, citizens of this State, go to another

<sup>16</sup> *In re Stauffer's Estate* (1953), 372 Pa. 537; 94 A. (2d) 726.

State for the express purpose of evading a statutory prohibition of their own domicile.<sup>17</sup>

## 22. Annulment

Where a supposed marriage has been contracted though absolutely void under the law when contracted, either party may make application for, and be granted, a decree declaring such attempted marriage null and void, as provided by statute (T. 23, sec. 12).

A court having jurisdiction of a divorce action is empowered to determine the case as law and justice may require, by either dismissing the proceeding, granting absolute or limited divorce, or decreeing an annulment of the marriage (T. 23, sec. 55).

If a person, during the lifetime of a spouse with whom a marriage is in force, enters into a subsequent marriage, and the parties live together as husband and wife, and such subsequent marriage was entered into by one or both parties in good faith, believing the former spouse was dead or that the marriage had been dissolved or without knowledge of such former marriage, they shall—after the impediment to their marriage is removed by death of the other party to the former marriage, or by an annulment or divorce—if they continue to live together as husband and wife in good faith on the part of one of them, be held to have been legally married from the time of such annulment, divorce, or death (T. 48, sec. 1—17).

When the spouse of an applicant for marriage license has disappeared, or is absent from his place of residence without being heard of after diligent inquiry, an orphans' court judge, aided by the report of a master if necessary, upon petition of the applicant for marriage license, may make a finding and decree that the absentee is dead and the date of his death, provided that other provisions in the statute are complied with (T. 48, sec. 1—8).

Marriages within prohibited degrees of consanguinity or affinity are voidable, but when any such marriage has not been dissolved during the lifetime of the parties, the unlawfulness of the same shall not be inquired into after the death of either of the parties (T. 48, sec. 1—16).

## 23. Divorce

An absolute divorce may be granted the innocent and injured spouse on any of the following grounds: (a) impotency or incapability of procreation existing at the time of the marriage and thereafter; (b) bigamy or subsisting prior marriage; (c) adultery; (d) willful and malicious desertion and absence from marital abode without a reason-

<sup>17</sup> *In re Stull's Estate* (1898), 183 Pa. 625; 39 Atl. 16.

able cause for 2 years; (e) cruel and barbarous treatment endangering the life of the other; (f) indignities of the person of the other rendering conditions intolerable and life burdensome; (g) uncondoned fraud, force, or coercion in procuring the marriage; (h) conviction of certain listed crimes and a sentence to imprisonment for 2 years or more. A divorce may also be granted: to either party to a marriage between two parties within the prohibited degrees of consanguinity or affinity; to the party who has not remarried, if the other has married again on false rumor of such spouse's death after 2 years' absence (T. 23, sec. 10).

A divorce from bed and board may be granted the wife when her husband has: (a) maliciously abandoned his family; (b) maliciously turned his wife out of doors; (c) endangered her life by cruel and barbarous treatment; (d) offered such indignities to her person as to render her condition intolerable and life burdensome; (e) committed adultery (T. 23, sec. 11).

A husband or wife who is guilty of the crime of adultery may not, during the lifetime of the former spouse, marry the person with whom the crime was committed (T. 48, sec. 169).

A divorced woman may resume her maiden or other prior name if she files written notice of such intention with the court (T. 23, sec. 98).

On divorce, husband and wife holding property as tenants by the entirety shall thereafter hold such property as tenants in common of equal one-half shares in value (T. 68, sec. 501).

Whenever a divorce from bed and board is granted a married woman, she may encumber, grant, convey, or dispose of real estate as if she were a feme sole without her husband's joining in the conveyance (T. 48, sec. 117a). On divorce, either spouse may convey to the other, without joinder of the other, his or her interest in real estate owned as tenants by the entirety, so that the grantee shall hold the same free from all right, title, and interest which the grantor had (T. 21, sec. 52.1).

#### **Alimony and maintenance**

In case of absolute or limited divorce, the court may allow the wife reasonable alimony pending the suit and counsel fees and expenses (T. 23, sec. 46).

In case of limited divorce, the court may allow a wife such alimony as her husband's circumstances will permit, not to exceed one-third of the annual profit or income from his estate or from his occupation and labor, which allowance shall continue until a reconciliation takes place. The court has the discretion to suspend the alimony in case the wife refuses to return and cohabit under the protection of the court (T. 23, sec. 47).

Alimony referred to under the statute is for support of the wife alone and is in addition to the obligation of a father to support his minor children.<sup>18</sup>

The statute makes no provision for alimony in a permanent divorce action.<sup>19</sup>

On application of a husband for divorce from an insane wife, the court has power to decree alimony for the support of such insane wife during the term of her natural life, by requiring him to file a bond with sureties if necessary, before granting the divorce.

If the wife is the petitioner and has sufficient means, the court may provide for the support of her insane husband in the same manner, if he has not sufficient estate in his own right for his support (T. 23, sec. 45).

### **Parents and Children**

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

The mother of a minor child who contributes by the fruits of her own labor or otherwise toward its support, maintenance, and education has the same and equal power, control, and authority over the child and the same and equal right to its services and earnings as the father possesses, if she is otherwise qualified as a fit and proper person to have control and custody of the child. Upon desertion by one parent, the services and earnings of the child belong to the other, if qualified otherwise. The parents may sue together to recover for injuries to their minor child, or either may sue in the name of both (T. 48, sec. 91).

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

The mother of a minor child who contributes to its support, maintenance, and education has equal right with the father as to the natural guardianship of the child, that is, to its control and custody (T. 48, sec. 91).

A parent of a minor cannot be appointed as guardian of the minor's estate, except that he may be appointed coguardian with another fiduciary or fiduciaries (T. 20, sec. 320.1012).

A person under 21 years of age cannot be appointed as guardian of a minor's estate (T. 20, sec. 320.1012).

A person of the same religious persuasion as the parents of a minor shall be preferred as guardian of his person. A person nominated by a minor over 14 years of age, if found by the court to be qualified and suited, shall be preferred as guardian of his person and estate (T. 20, sec. 320.1013).

<sup>18</sup> *Marra v. Marra* (1952), 170 Pa. Super. Ct. 588; 88 A. (2d) 112.

<sup>19</sup> *Hooks v. Hooks* (1936), 123 Pa. Super. Ct. 507; 187 Atl. 245.

A guardian of the estate of a minor is not necessary if the net value of his real and personal property is \$2,500 or less (T. 20, sec. 320.1001).

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

Any person may appoint by will a testamentary guardian for the real or personal estate left by him to a minor child, when such property is devised, bequeathed, or appointed to the minor in that person's will or descends from that person to the minor by intestacy or as otherwise specified.

A sole surviving parent or adopting parent of an unmarried minor child may appoint a testamentary guardian of the person of such child during his minority, or for a shorter period, provided that no father who, for 1 year or more previous to his death, has willfully neglected or refused to provide for his child, and no mother who, for a like period, has deserted her child or willfully failed to perform her parental duties, shall have the right to appoint a testamentary guardian of the person of such child (T. 20, sec. 180.18).

## **27. Inheritance—child**

Parents inherit from a child as follows:

If no issue survive, the share of a decedent's estate, if any, to which the surviving spouse is not entitled, or the entire estate if there is no surviving spouse, descends to the parents or parent of the decedent (T. 20, sec. 1.3).

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

Any parent, within or without the State, who willfully neglects or refuses to contribute reasonably to the support and maintenance of a child born out of lawful wedlock is guilty of a misdemeanor, and upon conviction is subject to fine or imprisonment or both, with or without hard labor, in the court's discretion. Before the trial, however, with the consent of the defendant indorsed on the bill of indictment, on entry of a plea of guilty or after conviction, the court, considering the circumstances and financial capacity of the defendant, may issue an order for periodic payments. The court shall have power to suspend the sentence and release the defendant from custody or probation, provided that the defendant has entered recognizance in such sum, with or without surety, as the court directs (T. 18, sec. 4732).

When the parents of a child born out of wedlock have married each other, the child is legitimated (T. 20, sec. 1.7).

In all cases where a supposed or alleged marriage is contracted, and found to be void or voidable, the children born to such a marriage shall be deemed the legitimate children of both parties for all purposes (T. 48, sec. 169.1).

## 29. Inheritance—child born out of wedlock

For purposes of descent by, from, and through an illegitimate child, he shall be considered the child of his mother but not of his father. If the parents of an illegitimate child have married each other, he is legitimated for purposes of descent by, from, and through him as if he had been born in lawful wedlock (T. 20, secs. 1.7, 180.14, 301.14).

The mother and maternal kindred inherit from an illegitimate child as if the child had been born in lawful wedlock (T. 20, sec. 1.7).

## POLITICAL RIGHTS

### 30. Domicile of a married woman

The husband's domicile determines that of his wife.<sup>20</sup>

A wife may acquire separate domicile for purposes of divorce.<sup>21</sup>

A wife may acquire a separate domicile when she is separated from her husband for cause.<sup>22</sup>

### 31. Public office—eligibility of women

In the absence of any constitutional or statutory provision specifically disqualifying women from holding public office, they are eligible on the same basis as men. Any common-law rule to the contrary is abrogated.<sup>23</sup>

### 32. Jury service—eligibility of women

Women are eligible for jury service upon the same terms as men (T. 17, secs. 1333, 1338).

<sup>20</sup> *In re Nicholl's Guardian* (1925), 86 Pa. Super. Ct. 38.

<sup>21</sup> *Betz v. Betz* (1931), 103 Pa. Super. Ct. 306; 157 Atl. 359.

<sup>22</sup> *Harrison v. Harrison et al.* (1932), 163 Atl. 62.

<sup>23</sup> *Op. Atty. Gen.* (1920), 30 Pa. Dist. Rpts. 268.

