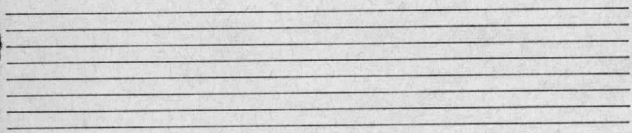


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The Legal Status of Women in the United States of America



REPORT FOR
SOUTH DAKOTA
as of January 1, 1957

The report for South Dakota was prepared by James H. ...
with the assistance of James H. ...
Director of the Division of the Status of Women,
Labor Law and Civil and Political Status of the Women,
Bureau of Labor, U. S. Department of Labor.



WOMEN'S BUREAU BULLETIN 157-40 (Revised)

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

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

The Legal Status of Women
in the
United States of America

REPORT FOR

SOUTH DAKOTA

Year 1914-1915

The report for South Dakota was prepared by Laura H. Dale with the assistance of Laura H. Harris, 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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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 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 each of the 48 States and the District of Columbia.

SOURCES

Constitution of South Dakota
South Dakota Code of 1939
1952 Code Supplement
Session Laws, 1953, 1955
South Dakota Reports
Northwestern Reporter

EXPLANATORY NOTE

This pamphlet, Bulletin 157-40, presents a digest of the Constitution and statutory provisions affecting the legal status of women in the State of South Dakota. It includes pertinent statutory changes enacted in that State up to January 1, 1957, and supersedes the previous report and addendum for South Dakota.

References to the State Constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation "Const.," as "(Const., art. 21, sec. 4)," placed after the related subject matter.

References to the code sections are likewise in parentheses, as "(sec. 7.0205)."

Session Laws are referred to by year of enactment and page number, as "(1955, p. 479)."

Case citations definitely construing statutes or declaring judicial policy in the absence of express statutory provision are indicated by footnote references. Cases showing historical development of a statute or policy are followed by the abbreviation "hist."

Numbered subject headings are the same as those 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."

SOUTH DAKOTA

CIVIL RIGHTS

Contracts and Property

1. Age of majority

Males attain their legal majority at the age of 21 years; females, at 18 years (sec. 43.0101).

2. Contractual powers of a minor

A minor cannot give a delegation of power nor—under 18 years of age—make a contract relating to real property or to personal property not in his immediate possession or control (sec. 43.0103). He can, however, make any other contract in the same manner as an adult, subject to his disaffirmance in general and to the statutory marriage provisions (sec. 43.0104). He cannot disaffirm (a) a valid contract for the reasonable value of necessaries purchased by him when not under the care of a parent or guardian able to provide for him (sec. 43.0106), or (b) a valid obligation incurred by him under an express provision of statute (sec. 43.0107).

In all cases other than those specified, a minor's contracts made before he is 18 years of age may be disaffirmed by him either before his majority or within 1 year afterward, or—if the contracts are made while he is over the age of 18—they may be disaffirmed upon his restoring the consideration to the party from whom it was received or paying its equivalent with interest (sec. 43.0105).

A bank deposit in the name of a minor shall be held for the exclusive right and benefit of the minor, and interest due shall be paid to the person in whose name the deposit is made. The receipt of the minor is sufficient release or discharge of such deposit (sec. 6.0413). Shares in building and loan associations may be subscribed for, held, transferred, and payments made therein by any minor and with the same effect as though he were of full age, except that such minor or his estate shall be bound on his subscription for stock only to the extent of payments actually made thereon (sec. 7.0205).

The disability of minority of any person eligible for guaranty or insurance of a loan pursuant to the Serviceman's Readjustment Act,

and of the minor spouse of any eligible veteran, is removed for all purposes in connection with such transaction (sec. 43.0103-1).

A minor is liable in a civil suit for a wrong done by him (sec. 43.0108).

Minors are incompetent to act as executors (sec. 35.0402) or administrators (sec. 35.0503).

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

3. Property exemptions from seizure for debt

A. RESPECTIVE RIGHTS OF MAN AND WOMAN

Exemption of a reasonable amount of personal property is authorized by the Constitution (Const., art. 21, sec. 4).

Three classes of exemptions—(a) absolute, (b) additional, and (c) alternative—are established by statute:

(a) Absolute exemptions include all family pictures; a church pew; a burial plot; the family Bible and all schoolbooks used by the family, and all other books used as a part of the family library, not exceeding \$200 in value; all wearing apparel and clothing of the debtor and his family; 1 year's supply of family provisions; necessary fuel for 1 year; and the homestead, as defined by statute (secs. 51.1801, 51.1802).

(b) In addition to absolute exemptions, the debtor, if head of a family, may select from his other personal property an exemption aggregating not more than \$750 in value. This class covers "goods, chattels, merchandise, money or other personal property." If the debtor is a single person, not the head of a family, this exemption is allowed but limited to \$300 in value (sec. 51.1803).

(c) Instead of additional exemptions the debtor, if the head of a family, may select alternative exemptions consisting of specific family and household possessions, livestock with necessary food for them, farm implements, or mechanical or professional equipment for earning a livelihood. Statutory limits of maximum total value are set for each class of property (sec. 51.1804).

None of the enumerated exemptions avails against debts for purchase money, laborers' or mechanics' wages, or material furnished, as prescribed by statute (secs. 51.1707, 51.1807).

No exemptions except those classed "absolute" may be allowed to (a) a nonresident, (b) a debtor in the act of removing his family from the State, or (c) one who has absconded, taking his family with him (sec. 51.1808); nor against a debt for property obtained under false pretenses (sec. 51.1809); nor against penalties, forfeitures, and costs in criminal cases (sec. 51.1810).

When garnishment or levy under judicial process has been used to reach earnings to secure or satisfy a claim and such earnings have been determined to be exempt, further earnings of the debtor may not be garnished for a period of 6 months, unless the debtor's financial status has changed to the extent that the property is in excess of all his exemptions (sec. 37.5001).

From the proceeds of insurance on the life of any person resident in the State at the time of his death who leaves a surviving widow, husband, or minor child or children, any amount not exceeding \$5,000 is exempt to the use of such surviving spouse, child, or children, though the policy is payable to the order of the insured or his assigns, estate, executor, or administrator, provided it has not been assigned to another person. The \$5,000 so exempted is not subject to the payment of any debt of the insured, or of the surviving widow, husband, or minor child or children (sec. 51.1805).

The provisions of the statute which set apart insurance proceeds to the extent of \$5,000 for the surviving husband, widow, or children apply whether or not such beneficiaries are residents of the State, since the statute affects distribution of property as well as exemption.¹

B. HOMESTEADS

Homestead exemption to "all heads of families" is authorized by the Constitution (Const., art. 21, sec. 4).

The homestead "of every family, resident in this State" is declared exempt so long as it continues to possess the character of a homestead (sec. 51.1701). A "family" may be a widow or widower, though without children, continuing to occupy the homestead used as such at the death of the deceased spouse; or any family consisting of one or more persons in actual occupancy of a statutory homestead (sec. 51.1702).

The owner or the husband or wife may select the homestead, causing boundaries to be marked and a description of them recorded, as provided by statute (secs. 51.1711, 51.1712).

The homestead must embrace the house used as a home by the owner (sec. 51.1708). If it is within a town plot, the area is limited to 1 acre; if rural property, the aggregate area may not exceed 160 acres. Special provisions are made for homestead limits in mineral lands acquired under laws of the United States (secs. 42.0101, 51.1710). In general, a homestead is exempt against the claims of creditors to the extent of \$5,000, above any encumbrances (secs. 37.4909, 51.1802).²

¹ *In re Babcock's Estate* (1936), 64 S. D. 283, 290; 266 N. W. 420.

² *Peck v. Peck* (1927), 51 S. D. 157, 165; 212 N. W. 872.

Neither husband nor wife can convey or encumber, by his or her sole deed, the homestead owned by either of them, when both spouses are residents of the State (sec. 51.1703). Statutory provision is made, however, for conveyance or encumbrance by the separate deed or mortgage of one spouse of his or her title in any real estate, including the homestead, when the other spouse is insane or mentally incompetent (sec. 51.1704).

Upon the death of the owner of a homestead, the legal title to the property passes to the heirs under the statute or to the person or persons designated by will (sec. 51.1717). (See number 14 as to limits of will.) But the right of possession and occupancy of the whole homestead remains in the owner's surviving husband or wife "until it is otherwise disposed of according to law, and upon the death of both husband and wife the children may continue to possess and occupy the whole homestead until the youngest child becomes of age" (sec. 51.1716). The homestead cannot be partitioned among the heirs so long as it is occupied as a homestead by the surviving husband, wife, or any minor child.³

4. Ownership and control of property owned at marriage

The real and personal property of any woman in this State, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, is her separate property and is not liable for the debts of her husband (Const., art. 21, sec. 5). (See also number 9.)

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 (sec. 10.0201).

The wife retains after marriage all the civil and property rights of a single woman. She may buy and sell, receive and convey, will, or otherwise dispose of any real or personal property belonging to her, or in which she may have an interest, without joining the name of her husband, except as provided in the case of a homestead (secs. 14.0204, 14.0207). (See number 3.)

Either husband or wife may enter into any contract or transaction with the other or with any other person, respecting property, which either might if unmarried (sec. 14.0202).

A husband and wife may hold real or personal property together as joint tenants or tenants in common (sec. 14.0204). A conveyance or other instrument executed by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner (sec. 51.1624).

³ *Wells v. Swenney* (1903), 16 S. D. 489, 495; 94 N. W. 394; 102 A. S. R. 713.

Husband and wife cannot alter their legal relations by any contract with each other, except as to property, and except that they may agree in writing to an immediate separation and may make provision for the support of either of them and of their children during such separation (sec. 14.0202).

Marriage does not disqualify a woman from serving as administratrix (sec. 35.0504) or as executrix (sec. 35.0404). The surviving husband or wife, or some competent person he or she selects, is given preference for appointment as administrator of the estate of a person dying intestate (sec. 35.0501). But among several persons claiming and equally entitled to administer upon an estate, males must be preferred to females, and relatives of whole blood to those of the half blood (sec. 35.0501 (10)).

After enumeration of the various civil actions in which a defendant may be arrested, the statute provides: "No female shall be arrested in any action, except for willful injury to person, character, or property" (sec. 37.2502 (10)).

When real property of an estate cannot be divided without prejudice or inconvenience to the owners, the court may assign the whole to one or more of the parties entitled to shares therein who will accept such assignment, always preferring the males to the females. The parties accepting the whole estate must pay to the other parties their just proportion of the true value thereof (sec. 35.1717).

6. Earnings of a married woman

The wife retains after marriage all the civil and property rights of a single woman (sec. 14.0207). The earnings of the wife are not liable for the debts of the husband; and the earnings and accumulations of the wife and of her minor children living with her or in her custody while she is living separate from her husband are her separate property (sec. 14.0206).

7. Liability for family support

Husband and wife contract toward each other obligations of mutual respect, fidelity, and support (sec. 14.0201). The husband must support himself and his wife out of his property or by his labor. The wife must support the husband out of her separate property when he has not deserted her, has no separate property, and is unable from infirmity to support himself (sec. 14.0209).

The husband is not bound to support his wife if she has abandoned him without cause or lives separately from him by agreement without provision for support (sec. 14.0211).

In general, every husband and wife is jointly and severally liable for the purchase price of necessaries, consisting of food, clothing, and

fuel purchased by either of them for their family while they are living together as husband and wife (sec. 14.0206).

If a parent neglects to provide articles necessary for a child under his charge, according to his circumstances, a third person may in good faith supply such necessities and recover the reasonable value thereof from the parent (sec. 14.0313).

A man who without good cause willfully abandons or neglects or refuses to provide for his wife, leaving her in a destitute condition; and any person who without good cause willfully abandons or neglects or refuses to provide for his or her child by birth or adoption, under 16 years of age, leaving such child in a destitute condition, on conviction is subject to imprisonment (sec. 13.3202).

When a husband or wife abandons his or her spouse, removing from the State and remaining away for 1 year or more, or is sentenced to imprisonment for 1 year or more, or becomes insane and is committed to a hospital for the insane, and such spouse is without means of support, a judicial proceeding is available under which the court may empower the applicant or some other suitable person to manage, control, sell, or encumber the property of such offending, imprisoned, or insane person in order to provide suitably for the spouse and minor children during the period of abandonment, imprisonment, or insanity (sec. 14.0205).

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

There is no statute requiring decree of a court or formal consent of the husband to enable a married woman to engage in a separate business.

(See numbers 5 and 9 as to contracts and separate property.)

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

Except for mutual obligations of support imposed by statute, neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling (sec. 14.0203). The wife may convey her separate property without her husband's consent. If she chooses she may prepare a formal inventory of her separate personal property and record it in the office of the register of deeds in the county of her residence. The filing of the inventory is notice, and evidence in the wife's favor, of her title in the property (sec. 14.0204). (In a case in which the wife sued for the recovery of property claimed by her which had been taken in mortgage foreclosure as that of her husband, it was held that she could recover despite the fact that she had not filed an inventory as provided in the statute. The court said that while a married woman may file such an inventory, she is not bound to do so, and by a failure to file it she only subjects herself to

the burden of proving her ownership in the same manner as other persons.)⁴

The separate property of the wife, which includes her earnings and accumulations, is not liable for the debts of her husband, and the husband's separate property is not liable for the debts of the wife contracted before marriage (sec. 14.0206).

10. Property acquired by joint efforts of husband and wife

In general, the common-law rule governs, which provides that property acquired during the marriage by the cooperative efforts of husband and wife belongs to the husband as the head of the family and the person charged primarily with its support. However, joint ownership may be created by private arrangement, such as joint deeds or joint bank accounts, which clearly show that a joint ownership is created (sec. 14.0204).

Stock issued by a building and loan association to a husband and wife shall be held by them as joint tenants and may be paid to either of them or to the survivor (sec. 7.0206).

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

A married woman may sue in her own name, without joining her husband as party plaintiff, for any injury to her reputation, person, or property. In like manner, actions founded upon her separate contracts or torts or relating to her individual property may be brought against her without joining the husband as party defendant (sec. 14.0207).

Neither husband nor wife, as such, is answerable for the acts of the other (sec. 14.0206). (See number 5 as to liability on contracts.)

It is the established law of the State that the wife, independent of any statute, has a cause of action against any person wrongfully interfering with the marital relationship.^{5 6} (Her status thus is recognized as identical with that of the husband in protection of this right.)

A parent, brother, sister, or person in loco parentis may maintain an action against a seducer for recovery of all medical attendance, nursing and other expenses incident to the subsequent illness and confinement of the person seduced, and in all such actions the plaintiff shall recover not only actual but exemplary damages (sec. 37.2001).

An unmarried woman may maintain an action for seduction for actual as well as for exemplary damages (sec. 37.2002).

⁴ *Anderson v. Medbery* (1902), 16 S. D. 324, 328; 92 N. W. 1089.

⁵ *Moberg v. Scott* (1917), 38 S. D. 422, 429, 431; 161 N. W. 998; L. R. A. 1917D 732 (hist.).

⁶ *Holmstrom v. Wall* (1936), 64 S. D. 467, 469; 268 N. W. 423.

12. Damages for injury by spouse to person or property

No authority has been found expressly changing the rule of the common law that no right of action can exist between husband and wife for a tort committed upon the person of one by the other.

In cases of marriage between the parties to a seduction, if it appears that the seducer has abandoned his wife or family or entered into the marriage relation for the purpose of avoiding prosecution, the wife may maintain an action against her husband for all damages sustained by her as well as for exemplary damages (sec. 37.2003).

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

The general rule of the statute is that neither husband nor wife can testify for or against the other without the other's consent.⁷

Husband and wife are competent witnesses to testify against each other without the other's consent in actions brought by either against any person for damages for criminal conversation, for alienation of affections, or for any cause involving the moral reputation of the other (sec. 36.0101).

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 to testify to any relevant matter, including marriage and parentage (sec. 14.0819, 1952 Supp.).

In all prosecutions pertaining to desertion of wife or child, the husband and wife are competent witnesses for the State and may testify to any relevant acts or communications between them. No husband or wife shall be called as a witness against the other without the consent of such witness (sec. 13.3203).

In actions for damages for seduction, if it appears that the defendant married the person seduced, the wife is a competent witness against her husband (sec. 37.2004).

14. Right to dispose of separate property by will

Subject to right of occupancy of a homestead, every person over the age of 18 years and of sound mind may by last will dispose of all his estate, real and personal (sec. 56.0202).

If a person, after having made a will, marries and has a child who survives the testator, the will is revoked unless provision has been made for the child by settlement, by the will, or by reference in the will showing an intention not to make such provision. If a testator

⁷ *State v. Burt* (1903), 17 S. D. 7; 94 N. W. 409; 106 A. S. R. 759.

marries and his or her spouse survives, the will is revoked unless provision is made for the surviving spouse by marriage contract, by provision in the will, or by reference therein showing an intention not to make such provision (sec. 56.0223; 1955, p. 479).

15. Inheritance rights in deceased spouse's estate

When any person having title to any estate not otherwise limited by marriage contract dies without disposing of the property by will, the portion subject to distribution after payment of debts is succeeded to by a surviving spouse in the following manner:

When one child or its lawful issue survives, the decedent's husband or wife takes an equal share with such child or its issue.

When more than one child is living, or one child and the lawful issue of one or more deceased children, or no child but only lineal descendants, the spouse takes one-third.

When no issue survives and the estate does not exceed \$50,000 in value, all of it goes to a surviving husband or wife; but if the estate exceeds \$50,000, the living spouse takes the first \$50,000 and one-half the remainder when decedent is survived by parent, brother, sister, or issue of deceased brother or sister.

When decedent leaves no issue and no parent, brother, or sister, the whole estate goes to the surviving husband or wife (sec. 56.0104; 1953, p. 421).

(See number 27 as to share of decedent's parents.)

Dower and curtesy are abolished (secs. 14.0206, 56.0103).

16. Provision for survivors during administration of estate

Upon the death of any husband or wife or head of a family, having selected or being entitled to select a homestead as provided by law, the survivor or survivors of such homestead claimant who are legally entitled to the right may continue to have exclusive possession of the statutory homestead and of its rents and profits until it is otherwise disposed of. In addition, specific personal property enumerated in the statute, including all wearing apparel and clothing of the decedent and family, 1 year's supply of family provisions, and household furnishings up to \$150 in value, is to be delivered immediately to the surviving spouse and children and is not liable for any prior debts or claims whatever (sec. 35.1302).

An additional allowance of \$750 in money or personal property is to be made and set apart to the surviving spouse or minor child or children, subject only to expenses of the decedent's last illness, funeral charges, and administration expenses if no other assets are available.

If the person died intestate and the estate consists only of personal property, the county court must assign money or property up to \$1,500

in value for the use and support of his widow, or widow and minor children, after payment of expenses for decedent's last illness and funeral and administration costs (sec. 35.1303).

Besides these specific provisions the county court is authorized, in its discretion, to order reasonable further allowance from the estate, when necessary for maintenance of the family, under conditions prescribed by the statute, subject only to prior payment of funeral and administration expenses (sec. 35.1304).

When personal property is set apart for the use of the family, in accordance with the statute, it becomes the property of the surviving spouse if decedent left no minor children. If a minor child survives, the spouse receives one-half the property; if more than one minor child, the spouse receives one-third (sec. 35.1305).

Whenever money, personal property, or income is set apart for the use of the family, and the decedent is survived by a spouse and a minor child, the court may dispense with the appointment of a guardian to control and manage the share of such minor child, and may direct that such share be turned over to the surviving spouse for the use and benefit of the surviving minor child (sec. 35.1312).

Exception under family allowances

If the surviving spouse has a maintenance from his or her own property equal to the portion set apart by law, he or she is allowed only the spouse's right in the homestead (sec. 35.1306).

Summary administration

Summary administration may be had when the decedent was a resident of the State, died in the State, or left property therein, and (a) the total gross value of the estate at time of death does not exceed \$2,500, exclusive of any and all property situated elsewhere; or (b) the total gross value of the estate, exclusive of the homestead, within the State does not exceed \$1,500, provided the value of the homestead is under \$5,000 and the decedent is survived by a spouse and one or more minor children (sec. 35.0701, 1952 Supp.).

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

There is no statute which gives either husband or wife the right of election between provisions made for him or her by the will of a deceased spouse and the share passing to the surviving spouse under the statute governing intestate estate. It should be noted that life possession and occupancy of the homestead and general allowances of exempt property, including insurance, are preserved to a surviving spouse and minor children, if any.

Marriage and Divorce

18. Age of consent to marriage

An unmarried male of the age of 18 years or older and an unmarried female of the age of 15 years or older who are not otherwise disqualified are capable of consenting to and consummating a marriage (sec. 14.0109).

License to marry may not be issued in any case in which either party is under the age necessary to render the marriage absolutely valid, or is under the age of majority, unless his or her parent or guardian consents in writing, duly acknowledged or proved (secs. 14.0112, 14.0113).

The statutory requirements as to the consent of the parents to the issuance of a marriage license to minors are only directory and do not affect the validity of the marriage.⁸

19. Common-law marriage

Common-law marriages can exist under the laws of this State.⁹ Certain requisites are necessary to constitute such marriages, however. There must be a current understanding that the parties are husband and wife; they must at once, and in good faith, assume the marriage relation with the intent to continue it during the remainder of their lives. Both parties must in good faith believe and understand that they are in fact and in law husband and wife. No mere illicit or adulterous intercourse, even with the intent to become legally married at some future time, is sufficient.¹⁰ The law presumes that relations which were illicit in their beginning continue so.¹¹ (It is significant that in none of the three cases cited was the claim of a common-law marriage established from the proof.)

20. Premarital requirements

All persons applying for license to marry must file a certificate of a physician showing that within the 20 days prior to the application thorough physical examination and standard laboratory tests have been made for discovery of syphilis. A license may not be issued unless the certificate indicates either the absence of the disease or, if present, that it will not become communicable. Exception to this requirement is allowed only on physician's affidavit that pregnancy exists (sec. 14.0123, 1952 Supp.).

⁸ *Lessert v. Lessert* (1935), 64 S. D. 3, 5; 263 N. W. 559.

⁹ *Svendsen v. Svendsen* (1916), 37 S. D. 353, 368; 158 N. W. 410 (hist.).

¹⁰ *Bracken v. Bracken* (1922), 45 S. D. 430, 433; 188 N. W. 46.

¹¹ *Agnew v. Agnew* (1931), 58 S. D. 164, 171; 235 N. W. 644.

21. Interstate cooperation in marriage-law enforcement

All marriages contracted outside the State which would be valid by the laws of the jurisdiction where contracted are valid in this State (sec. 14.0103).

22. Annulment

Annulment of marriage may be granted if at the time of the marriage: (a) the party seeking annulment was under the age of legal consent to marry, and married without consent of parent or guardian; (b) either party had a living spouse of a former undissolved marriage; (c) either party was of unsound mind; (d) consent of either was obtained by fraud; (e) consent of either was obtained by force; or (f) either party was physically incapable of entering into the marriage state and this condition appears incurable. A decree of annulment will not be granted under causes (a), (c), (d), or (e) when the parties have freely cohabited as husband and wife after the disability, delusion by fraud, or restraint by force has been removed (sec. 14.0601).

The following marriages are null and void from the inception: (a) Marriage within prohibited degrees of kinship or parental relationship; (b) marriage contracted during life of former spouse, unless prior marriage has been dissolved, or unless former spouse was absent and not known to be living for 5 successive years immediately preceding subsequent marriage; (c) intermarriage of persons belonging to certain specified races (sec. 14.0106).

Persons who intermarry within the degree of consanguinity within which marriages are by law declared incestuous and void are punishable by imprisonment in the State penitentiary for a period not to exceed 10 years (sec. 13.1715; 1953, p. 56).

The issue of all marriages null in law are legitimate (sec. 14.0301). The court must award the custody of children of a marriage annulled on the ground of force or fraud to the innocent parent and may also provide for their education and maintenance out of the property of the guilty party (sec. 14.0604).

23. Divorce

Divorce may be granted on any of the following grounds: Adultery, extreme cruelty, willful desertion, willful neglect, habitual intemperance, conviction of felony, or incurable insanity of at least 5 years' duration (sec. 14.0703).

Willful desertion as a ground for divorce is defined as follows: (a) Persistent refusal to have reasonable matrimonial intercourse, or the refusal of either party to dwell in the same house with the other without reasonable cause for refusal, is desertion by either party;

(*b*) where one party is induced by stratagem or fraud to leave the family dwelling or to be absent, and during such absence the offending party departs with intent to desert, it is desertion by the party committing the stratagem or fraud; (*c*) departure or absence from the family dwelling due to cruelty or threats of bodily harm is desertion by the one who is cruel or who made the threats; (*d*) the wife's refusal to conform to the husband's reasonable place and mode of living is desertion by the wife; (*e*) the husband's selection of an unreasonable and grossly unfit place or mode of living is desertion by the husband (sec. 14.0709).

On granting divorce the court may, in its discretion or on application of either party, restore to the woman her maiden or other name she bore prior to the marriage. If the custody of any minor child is granted to the mother, this provision does not apply (sec. 14.0702).

When divorce is granted for adultery of the wife, the legitimacy of children begotten before the commission of the adultery is not affected, but legitimacy of other children of the wife may be determined by the court on evidence in the case (sec. 14.0706).

When a divorce is granted for adultery, the innocent party may marry again; but the guilty party may not marry any person except the innocent party until the death of the latter (sec. 14.0707).

In divorce actions the court may issue orders for custody, care, and education of the children of the marriage (sec. 14.0724).

Alimony and maintenance

Although judgment of divorce is denied, the court may in a divorce action provide for the maintenance of the wife and children. An action for separate maintenance may be maintained without request for divorce on any grounds which would be grounds for divorce. In such cases the court has power to award temporary alimony, suit money, and permanent support for the wife and children (sec. 14.0727).

During pendency of divorce action, the court may require the husband to pay alimony for support of the wife and children, as well as money to prosecute or defend the action (sec. 14.0725).

If a divorce is granted for offense of the husband, the court may compel him to provide for the maintenance of children of the marriage and to make such suitable allowance to the wife for support as is just, having regard to the circumstances of the parties. If the divorce is granted for offense of either husband or wife, the court has full power to make an equitable division of the property belonging to either or both of them, having regard for equity and the circumstances of the parties (sec. 14.0726). The court may assign the homestead to the innocent party, either absolutely or for a limited period (sec. 14.0728).

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

The father and mother of a legitimate unmarried minor child are equally entitled to its services and earnings. If either the father or the mother is dead, refuses to take the custody, or has abandoned his or her family, the other is entitled to services and earnings of such child (sec. 14.0303).

A parent, whether solvent or insolvent, may relinquish to his child the right of controlling him and receiving his earnings. Abandonment by a parent is presumptive evidence of such relinquishment (sec. 14.0319).

25. Guardianship of a minor child

The father and mother of a legitimate unmarried minor child are equally entitled to its custody. If either parent is dead, refuses to take custody, or has abandoned his or her family, the other is entitled to the child's custody (sec. 14.0303). The parent entitled to the custody of a child must give it support and education suitable to the parent's circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability (sec. 14.0310).

The authority of a parent ceases on the marriage or emancipation of a child. No child can be emancipated unless he is in no manner dependent on his parents for support. Emancipation is expressed when it is by agreement of both parents, or the surviving parent, and the child. Emancipation is implied when there has been complete abandonment of parental responsibility and control and the child is actually obtaining support by other means. If other means of support fail, the parent of an emancipated child is under legal duty to support him (sec. 14.0308).

In awarding custody or in appointing a guardian of the person or property of a minor, the court is to consider the best interests of the child in respect to its temporal, mental, and moral welfare, and if the child is of sufficient age to form an intelligent preference, such preference will be considered in the selection of the guardian. As between parents adversely claiming the custody or guardianship, neither is entitled to it as of right, but if the child is of tender years, it should be given to the mother, other things being equal; if it is of an age to require education and preparation for labor or business, then to the father (sec. 14.0505). A parent has preference for appointment as guardian of his or her minor child (sec. 14.0506).

Every guardian appointed for the person and estate of a minor shall have the custody, care, and supervision of education of the minor un-

less such minor marries; and the care and management of the minor's estate until he is legally discharged (sec. 35.1805).

The parent, as such, has no control over the property of the child (sec. 14.0318). No person, whether parent or otherwise, has any power as guardian of property, except by appointment as provided by statute (sec. 14.0504).

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 (sec. 14.0305).

Neither parent nor child is answerable, as such, for the acts of the other (sec. 14.0309).

26. Appointment of testamentary guardian for a minor child

A guardian of the person or estate, or both, of a minor child may be appointed by will or by deed, to take effect upon the death of the parent appointing. The father of a legitimate child may make such an appointment, with the written consent of the mother; or either parent may so appoint a guardian if the other is dead or incapable of consent.

The mother of an illegitimate child may appoint a guardian for it by deed or will (sec. 14.0502).

27. Inheritance—child

When a person dies intestate, his parents share in his distributable estate in the following manner:

If the estate exceeds \$50,000 and the decedent left no issue but a husband or wife survives, one-half the excess above \$50,000 goes to the decedent's father and mother in equal shares; and if either is dead, the survivor takes the portions of both parents. If the decedent left no issue nor husband nor wife, the estate goes to his father and mother in equal shares, or the whole to the surviving parent (sec. 56.0104; 1953, p. 421). (See number 15 as to share of husband or wife.)

28. Child born out of wedlock

The mother of an illegitimate unmarried minor is entitled to its custody, service, and earnings (sec. 14.0304).

The parents of a child born out of wedlock and legitimated owe the child necessary maintenance, education, and support. They are also liable for the child's funeral expenses.

The obligation of the parent to support the child under the laws for support of poor relatives applies to children born out of wedlock.

The father is also liable to pay the expenses of the mother's pregnancy and confinement.

When the child's paternity has been determined, the court will give judgment so declaring and will order support from the father in annual amounts—equal or varying—and at stated intervals, in its discretion, to be paid until the child is 16 years of age. The order may provide also for necessary birth expenses incurred by or for the mother. Security is required for performance of the court's order, with provision for enforcement on default.

When the father does not have custody of a child born out of wedlock but paternity has been established or acknowledged as provided by statute, his failure—without lawful excuse—to support the child will be deemed a misdemeanor, subject to fine or imprisonment, or both. Failure of either parent to support such child when in his or her custody is governed by the laws applicable to failure to support a legitimate child (secs. 37.2101–37.2128).

A child born before wedlock becomes legitimate by the subsequent marriage of his parents (sec. 14.0301).

29. Inheritance—child born out of wedlock

When an illegitimate child who is not acknowledged or adopted by his father dies intestate and without lawful issue, his estate goes to his mother or—if she is dead—to her heirs at law (sec. 56.0106).

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. In all cases a child born out of wedlock is an heir of his mother and represents his mother equally with her legitimate children by inheriting any part of the estate of her kindred, either lineal or collateral (sec. 56.0105).

POLITICAL RIGHTS

30. Domicile of a married woman

In general, the domicile of the husband is the domicile of the wife, by rule of common law. But this rule does not apply when the parties have separated and an action for divorce is pending (sec. 14.0721).

The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto (sec. 14.0208).

31. Public office—eligibility of women

There is no constitutional or statutory provision which precludes women from holding public office.

32. Jury service—eligibility of women

Women are eligible for service as members of grand or trial juries on the same basis as men and are subject to the same exemptions (sec. 32.1001, 1952 Supp.).