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

REPORT FOR

**TEXAS**

as of January 1, 1964



WOMEN'S BUREAU BULLETIN 157-42 (Revised)

UNITED STATES DEPARTMENT OF LABOR

W. WILLARD WIRTZ, *Secretary*

WOMEN'S BUREAU

MARY DUBLIN KEYSERLING, *Director*

The Legal Status of Women  
in the  
United States of America

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U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1964

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Washington, D.C., 20402 Price 15 cents

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## CONTENTS

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

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

## INTRODUCTION

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

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

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

In Texas the community property system derived from the Spanish civil law has been modified. An 1840 law provided that the common law of England, so far as it is not inconsistent with the constitution and the laws of Texas, is the rule of decision in the courts. In general it has been the rule that in the absence of a specific statute and except so far as it is inapplicable to Texas conditions, the common law applies. However, to a large extent Texas has retained the principles of the Spanish law of community property.

Economic and social advances in the position of women in the United States have brought about marked changes in laws governing property and family rights and political status.

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

THE LEGAL STATUS OF WOMEN

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

The President's Commission on the Status of Women, established 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 its findings and makes recommendations for constructive action. A considerable number of States already have established Governors' Commissions on the Status of Women to implement the recommendations made in the report of the President's Commission.

INTRODUCTION

The Commission on the Status of Women was organized by Executive Order on December 14, 1961, to study the legal status of women in the United States and to make recommendations for their improvement. The Commission's report, submitted in October 1963, presents its findings and makes recommendations for constructive action. A considerable number of States already have established Governors' Commissions on the Status of Women to implement the recommendations made in the report of the President's Commission.

## SOURCES

Constitution of Texas  
Vernon's Annotated Texas Statutes  
Texas Reports  
Texas Civil Appeals Reports  
Texas Commission of Appeals Reports  
Southwestern Reporter  
Southwestern Reporter, Second Series  
Federal Reporter, Second Series

## EXPLANATORY NOTE

Bulletin 157-42 presents a digest of the constitutional and statutory provisions affecting the legal status of women in the State of Texas. It includes pertinent statutory changes enacted in that State up to January 1, 1964, and supersedes the previous report for Texas of January 1, 1959.

References to the State constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation "Const.," as "(Const., art. 16, sec. 15)," placed after the related subject matter.

References to code articles and sections are likewise in parentheses: Civil Statutes as "(C.S., art. 4614)"; Probate Code as "(P.C., sec. 118)"; Code of Criminal Procedure as "(C.C.P., art. 714)."

Other abbreviations used are:

Texas Reports—Tex.  
Texas Civil Appeals Reports—Tex. Civ. App.  
Texas Commission of Appeals Reports—Tex. Com. App.  
Southwestern Reporter—S.W.  
Southwestern Reporter, Second Series—S.W. (2d)  
Federal Reporter, Second Series—Fed. (2d)

THE LEGAL STATUS OF WOMEN

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 subject heading "Earnings of a married woman."

SOURCES

- Constitution of Texas
- Vernon's Annotated Texas Statutes
- Texas Reports
- Texas Civil Appeals Reports
- Texas Commission of Appeals Reports
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- Federal Reporter, Second Series—Fed. (2d)

# TEXAS

## CIVIL RIGHTS

### *Contracts and Property*

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

The age of majority is 21 years for both males and females who have never been married. Every female under 21 who marries in accordance with the laws of this State attains all of the rights and privileges of full age at her marriage. A male under age 21 who marries also is deemed to be of full age, with all the rights and privileges of full age at his marriage, unless otherwise apparent from the context of the statute (P.C., secs. 3(t), 404(b), subdiv. 2; C.S., art. 4625).<sup>1</sup>

A marriage which was not in accord with the law does not emancipate a minor female from the disabilities of minority, so as to preclude the juvenile court from exercising jurisdiction over her under the juvenile delinquency laws.<sup>2</sup>

A minor above the age of 19 years, in proper court proceeding, where it shall appear that it is to his or her material advantage, may have minority disabilities removed, and thereafter be considered of full age for all legal purposes except voting (C.S., art. 5921).

In addition, a minor above the age of 18 years who is in the Armed Forces of the United States or has been honorably discharged therefrom, where it shall appear that it is to his or her material advantage, may have disabilities of minority removed by court decree, and thereafter be considered of full age for all legal purposes except voting (C.S., art. 5921a). (See number 14 for right of a minor to make a will.)

The marriage of a minor shall cause the settlement and closing of the guardianship of the person and estate of such minor and the discharge of the guardian (P.C., sec. 404).

<sup>1</sup> *Pittman v. Time Securities* (1957), Tex. Civ. App.; 301 S.W. (2d) 521.

<sup>2</sup> *Williams v. State* (1949), Tex. Civ. App.; 219 S.W. (2d) 509.

## 2. Contractual powers of a minor

A minor's contracts are not void because of his nonage, but are voidable, with the exception of contracts for the reasonable value of necessities and contracts made in pursuance of statutory authority, which are binding.<sup>3</sup>

A minor's deed is voidable, not void. In order to avoid it, he must disaffirm it within a reasonable time after attaining majority.<sup>4</sup>

A minor capable of contracting marriage (see number 18) may enter into any matrimonial agreement prior to marriage which is not forbidden by statute, if there is written consent of the minor's parents or guardian (C.S., arts. 4610, 4611).

A minor of age 14 years or more and without a guardian of his estate may contract or otherwise acquire policies of life, term, or endowment insurance, or annuity contracts, and may exercise all rights and powers and give valid discharge of any benefits thereunder as if he were of full legal age. This is subject, however, to limitations with respect to the persons whose life can be insured, or who may be designated as beneficiary or beneficiaries. Also, the application for such policy, and all agreements, rights, and benefits thereunder must be signed or approved in writing by the minor's father or mother, or other designated persons. Such minor may not rescind, void, or repudiate such contract by reason of his minority. However, these provisions are inapplicable if the father or mother of the minor notifies the insurance company in writing that either or both of them do not elect to have such provisions apply to the specified minor child (Insurance Code, art. 3.49-2).

A minor is not qualified to be appointed as a guardian (P.C., sec. 110). In the Probate Code, minors are all persons under 21 years of age who have never been married, except persons under that age whose disabilities of minority have been removed generally, except as to the right to vote, in accordance with the laws of Texas (P.C., sec. 3(t)).

## 3. Property exemptions from seizure for debt

### A. RESPECTIVE RIGHTS OF MAN AND WOMAN

There must be protected from forced sale "a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female" (Const., art. 16, sec. 49).

The right to exemptions for a family may vest in a man or a woman, single or married, if the claimant represents a family, under

<sup>3</sup> *Clemmer v. Price* (1910), 59 Tex. Civ. App. 84; 125 S.W. 604.

<sup>4</sup> *Searcy v. Hunter* (1891), 81 Tex. 644; 17 S.W. 372.

the law;<sup>5 6</sup> that is, when the claimant has a legal or moral obligation to support the other member or members of the family, and there is a corresponding dependence on him or her for support by such other member or members.<sup>7</sup>

The exemption to persons "not constituents of a family" includes household and kitchen furniture; all wearing apparel; specified live-stock; provisions and feed for animals on hand for home use; all current wages for personal services; implements or equipment necessary to husbandry, a trade, or a profession (C.S., art. 3832); and the cash surrender value of any life insurance policy in force for more than 2 years, when a member or members of the family of the insured are beneficiaries under the policy, unless the debt arises under the policy or is secured by valid assignment of it (C.S., art. 3832a).

The exemption to persons "not constituents of a family" includes all wearing apparel; cemetery lot or lots; all tools, apparatus, and books belonging to any trade or profession; one horse, saddle, and bridle; and current wages for personal services (C.S., art. 3835).

#### B. HOMESTEADS

A homestead exemption is "reserved to every family" (Const., art. 16, sec. 50; C.S., art. 3832). Such homestead not in a town or city consists of not more than 200 acres, with improvements; the homestead in a town, city, or village consists of a lot or lots, valued at not more than \$5,000 when designated as a homestead, without reference to the value of improvements; provided the property is used as a home or as a place to exercise the calling or business of the head of a family. Temporary renting of the property does not affect the homestead right if no other homestead has been acquired (C.S., art. 3833).

A homestead occupied as such by husband and wife may not be mortgaged except for purchase money therefor, or for improvements to be placed upon it (Const., art. 16, sec. 50; C.S., art. 5460). The homestead, whether the separate property of the husband or wife, or the community property of both, shall not be disposed of except by the joint conveyance of the husband and wife, except where the husband or wife is insane, or where one spouse has permanently abandoned the other. In that event, if the homestead is the husband's or wife's separate property, he or she may convey it (C.S., art. 4618).

The homestead exemption does not apply where debt is due (a) for purchase money; (b) for taxes on the homestead; (c) for work and material used in constructing improvements, but if the owner is a

<sup>5</sup> *Central Life Assurance Society v. Gray* (1930), Tex. Civ. App.; 32 S.W. (2d) 259.

<sup>6</sup> *Standard Paving Co. v. Tolson* (1935), Tex. Civ. App.; 86 S.W. (2d) 789.

<sup>7</sup> *L. E. Whitham & Co. v. Briggs' Estate* (1933), Tex. Com. App.; 58 S.W. (2d) 49.

married man, the work and material must have been contracted for in writing with the consent of the wife (C.S., art. 3839).

The homestead, or allowance in lieu thereof, in an insolvent estate is exempt from execution or forced sale for any debts of the estate; and the widow, minor children, and unmarried daughters remaining with the family receive absolute title to such homestead, or allowance in lieu thereof (P.C., secs. 271, 279; C.S., arts. 3832, 3833).

A surviving spouse is entitled to the use or occupancy of the homestead during his or her lifetime (Const., art. 16, sec. 52; P.C., secs. 283, 284).

The homestead rights of a widow and children are the same whether the homestead is the separate property of the deceased or community property between the widow and the deceased, and the interests of the widow and children are the same in either case (P.C., sec. 282).

A husband or wife who owns the homestead as separate property, and who is abandoned by the spouse, or whose spouse becomes insane, may apply to the appropriate district court; and upon satisfactory proof of advantage to the applying spouse, the court shall make an order permitting the spouse to encumber or convey the homestead without the joinder of the other spouse (C.S., art. 4617).

Where title to property is in the husband or the community, the husband may make a valid sale of the excess over the homestead exemption without the joinder of the wife.<sup>8</sup>

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

All real and personal property owned or claimed by a wife before her marriage remains her separate property (Const., art. 16, sec. 15; C.S., art 4614). When a wife, by a contract before marriage, reserves to herself property or property rights, such reservation must be duly acknowledged and recorded, to be valid against any subsequent purchasers or creditors of her husband (Const., art. 16, sec. 15; C.S., art 4612).

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

Under Texas law, a married woman or a married man may own separate property, community property, or both.

##### **Separate property**

The separate property of a married man or woman consists of (a) all property, both real and personal, owned or claimed by him or her before marriage; (b) property acquired afterward by him or her by gift, under provisions of a will, or by inheritance; and (c) the in-

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<sup>8</sup> *Viersen v. Bucher* (1960), Tex. Civ. App.; 342 S.W. (2d) 203.

crease of all lands thus acquired (Const., art. 16, sec. 15, applies only to definition of wife's separate property; C.S., arts 4613, 4614). This increase of lands does not include rents and revenues, but only "such profit as may arise from the lands' own enhancement in value or such profit as may accrue from exchange of the lands for other more valuable property."<sup>9</sup> However, royalties, including bonuses with respect to oil and gas leases, represent proceeds from sale of land and are not "rents." Therefore, they constitute part of the separate estate.<sup>10</sup>

The husband has "the sole management, control, and disposition" of his separate property, both real and personal (C.S., art. 4613). By virtue of a 1963 law, a married woman is no longer required to make an election by a specified statutory procedure in order to have the management, control, and disposition of her separate property. It is now provided that during the marriage the wife shall have the sole management, control, and disposition of her separate property, both real and personal (C.S., art. 4614).

Upon the trial of any suit based upon a contract of the wife, the court shall decree that judgment may be levied upon her separate property, upon revenues from her separate property, or upon her personal earnings. If the husband is joined in any suit based upon a contract of the wife for necessities for herself and their common child or children, and the court finds that such contract was for such necessities and that the debts so contracted or expenses incurred were reasonable and proper, the court shall also decree that execution may be levied upon the common property or upon the separate property of the husband (C.S., art. 4624).

In 1963 the legislature also deleted the requirement that a married woman be declared a feme sole before she could contract or sue or be sued in respect to her separate property. It is now provided that a married woman shall have the same powers and capacity as if she were a feme sole, in her own name, to contract and be contracted with, sue and be sued, and all her separate property, her personal earnings, and the revenues from her separate estate which is not exempt from execution under the law shall be subject to her debts and be liable therefor, and her contracts and obligations shall be binding on her (C.S., art. 4626).

The husband may sue, either alone or jointly with his wife, for the recovery of the separate property of the wife. In the event he fails or neglects to do so, she may sue alone by authority of the court (C.S., art. 1983). This was held to be the only authority a married woman

<sup>9</sup> *Arnold v. Leonard* (1925), 114 Tex. 535; 273 S. W. 799 (Hist.).

<sup>10</sup> *Commissioner of Internal Revenue v. Wilson* (1935), 76 Fed. (2d) 766.

has for suing for her separate property.<sup>11</sup> (NOTE.—It is not known how the courts will interpret this section in relation to the recent statute giving the married woman absolute powers to sue or be sued in relation to her separate property.)

The statute which required joinder of the husband in any conveyance of the separate lands of the wife was repealed in 1963 (1963 Session laws, page 807).

No acknowledgment of a married woman to any conveyance or other instrument purporting to be executed by her shall be taken, unless she has had such instrument fully explained by the officer taking acknowledgment in an examination separate and apart from her husband; nor shall the officer certify the instrument unless she acknowledges that it is her act and deed, and that she has willingly signed and does not retract it (C.S., art. 6605).

A married woman has no power to contract under the common law, and the court has held that the Texas statutes do not give her general power to contract. In this decision, the contract of a married woman for other than necessities, or her separate estate, is considered voidable at her instance, and not at the instance of the party contracting with her; and when she avoids the contract, it is thenceforth void.<sup>12</sup> (NOTE.—It is not known if the 1963 changes in the law liberalizing the powers of a married woman to contract will be interpreted to give a married woman general powers to contract. Also, it is not known to what extent the changes in the law will affect this decision.)

The separate property of the husband shall not be subject to the debts contracted by the wife, either before or after the marriage, except for necessities furnished for herself and the children after her marriage with him, nor for the torts of the wife (C.S., art. 4613).

When a wife by a marriage contract reserves to herself any property or rights to property, whether in existence or expectancy, such reservation, to be valid against subsequent purchasers or creditors of her husband, must be acknowledged and recorded as provided by law (C.S., art. 4612).

A married woman has full control, management, and disposition of a contract of life insurance or annuity, without the joinder, participation, or consent of her husband. However, the husband may nullify such control, management, and disposition by furnishing a notice in writing to the insurance company (C.S., art. 4619).

Proceeds of an insurance policy on the husband's life payable to the wife, or on the wife's life payable to the husband, are the separate property of the wife or husband to whom paid, and not community

<sup>11</sup> *Barmore v. Darragh* (1921), Tex. Civ. App.; 227 S.W. 522.

<sup>12</sup> *Austin et al. v. United Credits Corp.* (1954), Tex. Civ. App.; 268 S.W. (2d) 793.

property. This is true although community funds were used to pay the premiums.<sup>13 14</sup>

A spouse who is not disqualified is entitled in preference to any other person to the guardianship of his or her incompetent spouse, or when it is necessary that a guardian be appointed to receive funds due from any governmental source (P.C., secs. 109(c), 228).

### Community property

Community property is "all property acquired by either the husband or wife during marriage, except that which is the separate property of either." All effects which the husband and wife possess at the time the marriage is dissolved are regarded as common effects or gains, unless the contrary is proved (C.S., art. 4619). Also, the rents and revenues of the husband's or wife's separate lands become assets of the community estate.<sup>15</sup>

During the marriage, the community property may be disposed of by the husband only. However, if the husband disappears for more than 1 year, upon the wife's petition, the court may grant her the same powers conferred by law upon the husband regarding the full control, management, and disposition of the community property until the husband returns to her and an affidavit stating the fact of the husband's return is made and filed by either the husband or wife. Such affidavit also may be recorded in the deed records of other counties where the community property is located (C.S., art. 4619).

A married woman cannot maintain a cause of action involving community property without alleging some emancipation from her husband or without his joining with her as a real party. The husband alone can recover community liability and damage.<sup>16</sup>

When a husband or wife is judicially declared to be incompetent, the other spouse, as surviving partner of the marital partnership, acquires full power to manage, control, and dispose of the entire community estate, including the part the incompetent spouse legally would have power to manage if competent, without administration, and whether or not there is a guardian of the estate of the incompetent spouse. Guardianship is not necessary when the other spouse is competent, unless the incompetent spouse owns separate property, and then as to such separate property only (P.C., sec. 157).

An assignment of wages, bill of sale, or chattel mortgage on household or kitchen furniture made by a married man is void unless made with the consent of his wife, evidenced by her signing her name to

<sup>13</sup> *Martin v. McAllister* (1901), 94 Tex. 567; 63 S.W. 624.

<sup>14</sup> *Johnson v. Cole* (1924), Tex. Civ. App.; 258 S.W. 850.

<sup>15</sup> *Arnold v. Leonard* (1925), 114 Tex. 535; 273 S.W. 799.

<sup>16</sup> *Hill v. Kelsey* (1935), Tex. Civ. App.; 89 S.W. (2d) 1017.

the document and by her separate acknowledgment certified to by the proper officer (C.S., art. 6165a, sec. 6).

#### **Antenuptial contracts**

Parties intending to marry may enter into such stipulations as they may desire, provided they are not contrary to good morals or to some rule of law. Agreements or renunciations are forbidden which would alter legal orders of descent of property with respect either to the parties intending to marry or to any children they may have in common or by any other person. The parties intending to marry shall not make any agreement to impair the legal rights of the husband over the persons of the children they may have in common. No matrimonial agreement may be altered after the celebration of the marriage (C.S., art. 4610).

Every matrimonial agreement must be acknowledged before an officer authorized to take acknowledgments to deeds and attested to by at least two witnesses (C.S., art. 4611).

#### **Postnuptial contracts**

A postnuptial agreement between husband and wife who have separated will be upheld when fair and equitable.<sup>17</sup>

A postnuptial contract to be enforceable must be fair and equitable as to appeal to the conscience of the court of equity.<sup>18</sup>

### **6. Earnings of a married woman**

The wages of the husband and wife received during marriage are community property, and as community property, they are subject to the control of the husband. The wife's personal earnings, although community property, are not subject to the payment of the husband's debts nor claims arising out of the torts of the husband. When the wife converts her personal earnings into other property, such property becomes subject to the payment of the husband's debts the same as any other community property (C.S., arts. 4616, 4619).<sup>19 20</sup>

The general rule is that the husband alone is entitled to maintain suits to recover the community property, and thus the wife may not sue in her own name to recover her personal earnings.<sup>21</sup> Except as otherwise provided by law, a married woman's earnings and income, rents, and revenues from her separate property shall be subject to the debts contracted by her (C.S., art. 4626).

<sup>17</sup> *Cow v. Mailander* (1915), Tex. Civ. App.; 178 S.W. 1012.

<sup>18</sup> *Bruce v. Permian Royalty Co. No. 2* (1945), Tex. Civ. App.; 186 S.W. (2d) 686.

<sup>19</sup> *Brand v. Brand* (1937), Tex. Civ. App.; 102 S.W. (2d) 310.

<sup>20</sup> *Strickland v. Wester* (1938), 131 Tex. 23; 112 S.W. (2d) 1047.

<sup>21</sup> *Pottorff v. J. D. Adams Co., Inc.* (1934), Tex. Civ. App.; 70 S.W. (2d) 745.

## 7. Liability for family support

The husband is obligated to furnish support for community living, and if no community funds are available, then he must utilize his separate funds, which are deemed to be a gift to the community for its well-being and use. The husband's separate estate is not entitled to reimbursement for separate funds spent for community living.<sup>22</sup>

A married woman may be held liable for necessaries furnished her if the indebtedness was contracted by her personally or by someone else with her authority.<sup>23</sup>

Liability of the wife on her contract for necessaries is personal, and does not depend on refusal or inability of the husband to supply her and her children with necessaries.<sup>24</sup>

The husband and wife must be jointly sued for all debts contracted by the wife for necessaries furnished to herself or children (C.S., art. 1984). If the court determines in such a suit that the contract was for such necessaries and that the debts so contracted or expenses incurred were reasonable and proper, the court shall decree that execution may be levied upon the common property or upon the separate property of the husband (C.S., art. 4624).

In the absence of equitable reasons for relieving the father of the primary obligation to support his child and imposing such obligation on the mother, the mother has the same right as a stranger to recover from the father for necessaries supplied by her for the child's support.<sup>25</sup>

Community property shall not be liable for debts or damages resulting from contracts of the wife, except for necessaries furnished to herself and children, unless the husband joins in execution of the contract (C.S., art. 4621).

An incompetent person who has no estate of his or her own shall be maintained by the wife or husband of such person if able to do so (P.C., sec. 423). Incompetent persons are persons of unsound mind, idiots, lunatics, insane persons, common habitual drunkards, and other persons who are mentally incompetent to care for themselves or to manage their property and financial affairs (P.C., sec. 3(p)).

A husband who willfully deserts, neglects, or refuses to provide for the support and maintenance of his wife who may be in necessitous circumstances, or a parent who willfully deserts, neglects, or refuses to provide for the support and maintenance of his or her children under 18 years of age is guilty of a misdemeanor (Penal Code, art.

<sup>22</sup> *Norris v. Vaughan* (1953), 152 Tex. 491; 260 S.W. (2d) 676.

<sup>23</sup> *Jordan v. Junkin* (1935), Tex. Civ. App.; 83 S.W. (2d) 1045.

<sup>24</sup> *Daggett v. Neiman-Marcus Co.* (1961), Tex. Civ. App.; 348 S.W. (2d) 796.

<sup>25</sup> *Hartman v. Chumley* (1924), Tex. Civ. App.; 266 S.W. 444.

(602). A second conviction for nonsupport constitutes a felony (Penal Code, art. 602A).

Both parents have a legal obligation to support and educate their children, but such obligation rests primarily upon the father as head of the family, and he is not relieved from such obligation by a divorce decree awarding custody of the children to the mother; nor can he avoid such duty even though the children are in the custody of other persons.<sup>26</sup>

While the marriage relation exists, a suit for the support of a child may be brought in the district court against any parent who fails to provide for the support and maintenance of his or her child under 18 years of age. Such suit may be brought by the parent with whom the child resides, or by any person having legal custody of such child. When the parents are living separate and apart, but the marriage relation exists, one parent is authorized to bring suit against the other to fix the legal custody of their child under the age of 18 years (C.S., art. 4639b).

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

A married woman now has the same powers and capacity as if she were a feme sole, in her own name, to contract and be contracted with, sue and be sued, and all her separate property, her personal earnings, and the revenues from her separate estate which is not exempt from execution under the laws of Texas shall be subject to her debts and be liable therefor, and her contracts and obligations shall be binding on her (C.S., art. 4626). (See number 7.)

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

The 1963 Texas legislature enacted significant amendments to statutes governing a married woman's control and management of her separate property. It is now specifically stated that during marriage a wife shall have the sole management, control, and disposition of her separate property, both real and personal (C.S., art. 4614). (See number 5 for definition of "separate property".)

Neither a wife's separate estate, nor any income or revenue from it, nor her personal earnings are liable for the husband's debts or torts (C.S., art. 4616). (See number 6 for liability of wife's personal earnings for husband's debts.)

Neither a wife nor her separate funds are legally liable for a community debt.<sup>27</sup>

(See number 5 for right of court action.)

<sup>26</sup> *Dilger v. Dilger* (1951), Tex. Civ. App.; 271 S.W. (2d) 169.

<sup>27</sup> *Lusk v. Parmer* (1938), Tex. Civ. App.; 114 S.W. (2d) 677.

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

The community-property system of Texas is derived from the Spanish civil law. Back of the system is the conception, as announced in court decisions, that the wife's capacity to own and hold property is as complete as that of the husband; that each marital partner owns an estate in the community property equal to that of the other partner; and that statutes empowering the husband to manage the community assets make the husband essentially a trustee accountable as such to the community.<sup>28 29</sup>

The Texas Court of Civil Appeals has defined common property as property acquired by husband or wife during their marriage, except that acquired by gift, devise, or descent; and the property acquired during marriage is presumed under the law to be common property until the contrary is proved, even though the title to the property is taken in the wife's name.<sup>30</sup> However, funds on deposit in a bank account are presumed to be the separate property of the person in whose name the account stands; and unless the bank is notified to the contrary, it shall be governed accordingly in honoring checks and orders against such account (C.S., art. 4622). This presumption is rebuttable. It is inapplicable in a contest between the spouses or their successors, and it is not intended to supplant the presumption that all property acquired by either the husband or wife during the marriage is community property.<sup>31 32</sup>

### Management and control

The wife has no control over the common property during the marriage, so long as the husband lives with her and is sane. The husband, if not under the disability of lunacy, has the absolute right while the marriage exists to dispose of the community property, except the homestead, without the consent of his wife, so long as it is not for the purpose of defrauding the wife (P.C., secs. 157-159; C.S., arts. 4618, 4619).<sup>33</sup>

The community property shall be liable for the debts of the husband and the wife contracted during the marriage, except in cases specially excepted by law (C.S., art. 4620). The community property, with the exception of the wife's personal earnings and the revenues from her separate property, shall not be liable for debts or damages resulting from her contracts, except those for necessities

<sup>28</sup> *Arnold v. Leonard* (1925), 114 Tex. 535; 273 S.W. 799 (Hist.).

<sup>29</sup> *Castelo v. Castelo* (1936), Tex. Civ. App.; 89 S.W. (2d) 1033.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Callaway v. Clark* (1947), Tex. Civ. App.; 200 S.W. (2d) 447.

<sup>32</sup> *Cook v. Cook* (1959), Tex. Civ. App.; 331 S.W. (2d) 77.

<sup>33</sup> *Rowlett v. Mitchell* (1908), 52 Tex. Civ. App. 589; 114 S.W. 845.

furnished herself and children, unless the husband joins in the execution of the contract, provided that her rights in the community property on permanent abandonment by the husband shall not be affected by this provision (C.S., art. 4621).

A husband and wife, without prejudice to preexisting creditors, by written instrument may partition between themselves, in severalty or into equal undivided interests, all or any part of the community property, or exchange between themselves the community interest of one spouse in any property for the community interest of the other spouse in other community property. Property or interest set aside to each spouse by such instrument shall constitute separate property. If the instrument proposes to divide unequally, it shall not be valid unless approved by the court upon written application of the spouses, setting out the facts showing that the transaction is not to the wife's disadvantage (C.S., art. 4624a).

Each spouse has the right to dispose of his or her half of the community estate by will (P.C., secs. 57, 58).

(See number 5 for control of the community property when one spouse is insane, or when the husband abandons the wife. See number 15 for disposition of the community property on the death of a spouse leaving no will. See number 23 for rights of each spouse in the community property after filing for divorce.)

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

Damages for personal injuries to husband or wife constitute community property, and the husband alone may sue for recovery as such.<sup>34</sup>

Damages obtained for injury to the wife's business are community property and recoverable only by her husband.<sup>35</sup>

An award of workmen's compensation paid to one marital partner because of sustained injury becomes the community property of both the husband and wife.<sup>36</sup>

A wife may sue alone and recover damages for the alienation of her husband's affections.<sup>37</sup>

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

A wife cannot maintain a suit against her husband to recover damages for a tort inflicted upon her by him.<sup>38</sup>

<sup>34</sup> *Texas & Pacific Railway Co. v. Leatherman* (1961), Tex. Civ. App.; 351 S.W. (2d) 633.

<sup>35</sup> *Ainsa v. Moses* (1907), Tex. Civ. App.; 100 S.W. 791.

<sup>36</sup> *Piro v. Piro* (1959), Tex. Civ. App.; 327 S.W. (2d) 335.

<sup>37</sup> *Norris v. Stoneham* (1932), Tex. Civ. App.; 46 S.W. (2d) 363.

<sup>38</sup> *Nickerson v. Nickerson* (1886), 65 Tex. 281.

A wife may sue her husband for the protection of her separate property in his possession against waste or damages, and for the recovery of her separate estate wrongfully converted by him. She also may sue to have a resulting trust declared in her favor, or to quiet title to land claimed as her separate property to which her husband is asserting title adverse to her.<sup>39</sup>

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

Either spouse may testify for the other in all criminal actions; but neither spouse can be a witness against the other, except in a criminal prosecution for an offense committed by one against the other (C.C.P., art. 714).

Either spouse is fully competent as a witness in civil actions. Both the husband and wife, however, are incompetent to testify as to confidential communications between themselves (C.S., art. 3715).

Husband and wife are competent witnesses for and against each other in divorce suits, but neither party may be compelled to testify as to any other matter which will incriminate him or her. No divorce is granted upon the evidence of either husband or wife, if there is any collusion between them (C.S., art. 4633).

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. In such proceedings, husband and wife are competent witnesses and may be compelled to testify to any relevant matter including marriage and parentage (C.S., art. 2328b—3, sec. 18).

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

Every person 19 years of age or over, or who is or has been lawfully married, or who is a member of the Armed Forces of the United States, or of the auxiliaries thereof, or of the maritime service at the time the will is made, if of sound mind, is empowered to make a last will and testament, under the rules and limitations prescribed by law, disposing of both real and personal property (P.C., secs. 57, 58).

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

#### **Separate property**

When a person dies intestate, leaving a separate estate, if there is issue, the surviving spouse takes an estate for life in one-third of the land, and takes one-third of the personal estate absolutely. If

<sup>39</sup> *Borton v. Borton* (1916), Tex. Civ. App. ; 190 S.W. 192.

there is no issue, but there are surviving parents or brothers or sisters or their descendants, the surviving spouse takes absolutely one-half of the real estate, and all of the personalty; if no issue, nor parents, nor brothers or sisters or their descendants are living, the surviving spouse takes an absolute estate in all the real and personal property (P.C., sec. 38).

#### **Community property**

The surviving spouse of an intestate deceased person takes one-half of all the community property, if the deceased leaves issue; but if there is no issue, the entire community property passes to the surviving husband or wife. In every case the community estate, except that which is exempt from forced sale, passes charged with the debts against it (P.C., secs. 45, 156).

When either spouse dies intestate, or becomes insane, having no children and no separate property, the community property passes to the survivor charged with the debts of the community. No administration or guardianship of the estate is necessary (P.C., sec. 155). (See number 5 for control of estate of an insane spouse.)

#### **Joint tenancies**

There is no right of survivorship in an estate, real, personal, or mixed, held by two or more persons. Upon the death of a joint owner, his interest therein descends and becomes vested in his heirs or legal representative the same as if such interest had been severed and ascertained, unless the joint owners of the property have established the right of survivorship in themselves by a written agreement. It is specifically provided that any husband and his wife, by written agreement, may create a joint estate out of their community property, with rights of survivorship (P.C., sec. 46).

#### **Partnership property**

A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin (C.S., art. 6132b, sec. 25(2) (e)).

A partner's rights in specific partnership property are not community property; a partner's interest (share of partnership profits and surplus) in the partnership may be community property; a partner's right to participate in the management is not community property (C.S., art. 6132b, sec. 28-A, (1), (2), (3)).

A partnership is not dissolved by the death of a partner's spouse, unless the agreement between the partners provides otherwise (C.S., art. 6132b, sec. 28-B).

## 16. Provision for survivors during administration of estate

### Provision for spouse

A widow or surviving husband is entitled to the use or occupancy of the homestead during her or his lifetime. A guardian of the minor children of the deceased also may be permitted to occupy the homestead by court order. Such homestead may not be partitioned among the heirs of the deceased so long as the surviving spouse elects to use or occupy it, or the court permits the guardian of the minor children to live there (Const., art. 16, sec. 52; P.C., secs. 283-285).

### Provision for widow and/or minor children

Immediately after the inventory, appraisal, and list of claims have been approved, the court must fix an allowance for the widow and minor children (P.C., sec. 286), of sufficient amount for support for 1 year from the date of the decedent's death (P.C., sec. 287). The allowance is fixed with regard to the facts or circumstances then existing and those anticipated to exist during the first year after such death. But no such allowance will be made for the widow when she has separate property adequate for her maintenance, nor for the minor children when they have property in their own right adequate for their maintenance (P.C., sec. 288). When this allowance is ordered, it becomes a preferential charge against the estate, except for expenses of the funeral and last sickness of the decedent (P.C., sec. 290). If the decedent is survived by both a widow and minor child or children, the family allowance is paid to the widow for herself and those minor children of whom she is the mother; if there are minor children of whom she is not the mother, a portion of the allowance is paid to their guardian; if there are minor children, but no widow, the allowance is paid to their guardian; if only a widow survives, she receives the whole allowance (P.C., sec. 291).

If the estate is insolvent, the widow and minor children and unmarried daughters remaining with the family receive absolute title to all property of the estate exempt by statute from execution or forced sale (P.C., secs. 271, 279). The exempt property includes the homestead; all wearing apparel; household furniture; various articles of equipment and personal property; and the cash surrender value of a life insurance policy in force for more than 2 years, but only to the extent that it represents the beneficiary interest of a member of the family of the insured, except that such interest is not exempt from debts arising under the policy, nor debts secured by lawful assignment of the policy (C.S., arts. 3832, 3833).

When the estate on final settlement proves to be solvent, the exempt property, except the homestead, or any allowance in lieu thereof,

which has been set apart for the family, becomes subject to partition and distribution among the heirs and distributees in like manner as the other property of the estate (P.C., sec. 278).

The allowance in lieu of homestead shall not exceed \$5,000, and the allowance for other exempt property shall not exceed \$1,000, exclusive of the allowance provided for the support of the widow and minor children (P.C., sec. 273).

When no one has qualified as executor or administrator of the estate of a deceased spouse, the surviving spouse, without qualifying as community administrator, has all the powers necessary to preserve the community property, discharge community obligations, and wind up community affairs (P.C., sec. 160). Whenever an interest in community property passes by intestacy to someone other than the surviving spouse, such spouse may qualify as community administrator (P.C., sec. 161). The remarriage of a surviving wife shall not terminate her powers or liabilities as a qualified community administratrix; nor shall it terminate her powers as a surviving partner (P.C., sec. 176).

#### Small estates

Special provisions are made for handling small estates when the value of such estates, excluding the homestead and exempt property, does not exceed \$1,000 in value; or does not exceed the amount to which the surviving spouse and minor children of the decedent are entitled as a family allowance; or if the value of the entire assets, exclusive of the homestead, exempt property, and the family allowance, does not exceed the amount sufficient to pay certain specified claims (P.C., secs. 137, 139, 143).

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

There is no statutory provision for election by a surviving spouse against the will of a deceased husband or wife.

However, if the husband makes a will giving certain property to the wife, but at the same time attempting to dispose of all or a portion of her share in the community or other property to third parties, the wife has the alternative either of taking the property as willed or of rejecting the will and claiming her own property under the statute. If she chooses to take under the will, she is bound by all its provisions, including those disposing of the property belonging to her.<sup>40</sup>

A will and codicils thereto, devising and bequeathing all of the testator's real and personal property presently owned or subsequently acquired by him to his wife, disposed of the testator's property only,

<sup>40</sup> *Lee v. McFarland* (1898), 19 Tex. Civ. App. 292; 46 S.W. 281.

and not the entire community estate of the spouses, so that the wife was not required to elect whether to take under or against the will.<sup>41</sup>

### *Marriage and Divorce*

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

Men at 21 and women at 18 years of age may marry without parental consent; and at 16 and 14 years, respectively, with written consent under oath of the parent or guardian, or if no parent or guardian, the consent of the county judge where the minor resides. The judge, in his discretion, may waive the parental consent and other specified requirements (C.S., art. 4605). Males under 16 and females under 14 years of age are forbidden to marry (C.S., art. 4603).

#### **19. Common-law marriage**

Common-law marriages are recognized. The announced policy of the courts with reference to marriages, both statutory and common-law, is a liberal one where the legality of the relationship is in question.<sup>42 43</sup>

#### **20. Premarital requirements**

Laws regulating marriage in Texas require that anyone who desires to marry must obtain a license before the marriage ceremony may be performed by an individual authorized to celebrate the rites of matrimony between persons legally permitted to marry (C.S. arts. 4602, 4604).

The application for a marriage license of a male under 21 years of age or a female under 18 years of age must remain on file in the county clerk's office for a period of not less than 3 days before a license may be issued. This requirement, however, may be waived by a judge (C.S., art. 4605 (b)).

Before a marriage license is issued, each applicant must file with the county clerk a doctor's certificate stating that the applicant has been given a medical examination, including a standard serological test for syphilis, within 15 days prior to the issuance of the license, and that the applicant has no infectious venereal disease (C.S., art. 4604d, secs. 1-5).

The required medical examination may be waived and a license issued on the order of a county or district court judge, when he is

<sup>41</sup> *Long v. Long* (1952), Tex. Civ. App.; 252 S.W. (2d) 235.

<sup>42</sup> *Houston Oil Co. of Texas v. Griggs* (1916), Tex. Civ. App.; 181 S.W. 833, affirmed 1919, 213 S.W. 261.

<sup>43</sup> *Williams v. White* (1953), Tex. Civ. App.; 263 S.W. (2d) 666.

satisfied by proof that sufficient cause for such action exists and that the public health and welfare will not be adversely affected (C.S., art. 4604d, sec. 8).

A marriage license becomes invalid and of no effect unless the marriage is solemnized within 15 days from the date of the medical examination of both parties as disclosed by the county clerk's certificate (C.S., art. 4604d, sec. 10).

### Penalty

Any person or agency who misrepresents any fact required to be stated on any form, or fails to comply to or conform with all the premarital requirements shall be guilty of a misdemeanor and, upon conviction, is subject to a fine (C.S., art. 4604d, sec. 13).

## 21. Interstate cooperation in marriage-law enforcement

The law of the State in which a marriage was celebrated generally affords the criterion for testing its validity, and Texas follows this rule.<sup>44</sup>

## 22. Annulment

A marriage may be dissolved because of natural or incurable impotency of the body at the time of entering into the marriage contract or any other impediment that renders such contract void (C.S., art. 4628). Other impediments include fraud, duress, mental incapacity, or other equitable grounds for such relief. This statute, and the statute providing that males under 16 and females under 14 years of age shall not marry, declare the settled policy of the State in annulment proceedings.<sup>45</sup>

The marriage of a female under age 18 without parental consent is not void, but merely voidable at the suit of the female and not her relatives, not even her parents, unless with the consent of the female. Marriage of a girl under the age of 18 years without parental consent is not in itself a ground for divorce, but it must be accompanied by fraud, coercion, or deceit in order to form a ground for annulment of the bonds of matrimony.<sup>46</sup>

A female minor who married 5 days before she became 14 years of age, which marriage was in violation of the statute, could not claim that her marriage was not subject to annulment.<sup>47</sup>

Marriage is prohibited on certain interracial grounds, and marriages violating this provision are null and void (C.S., art. 4607).

<sup>44</sup> *Thompson v. Thompson* (1918), Tex. Civ. App.; 202 S.W. 175.

<sup>45</sup> *Portwood v. Portwood* (1937), Tex. Civ. App.; 109 S.W. (2d) 515.

<sup>46</sup> *Williams v. White* (1953), Tex. Civ. App.; 263 S.W. (2d) 666.

<sup>47</sup> *Williams v. State* (1949), Tex. Civ. App.; 219 S.W. (2d) 509.

**Court costs**

Generally, when the husband brings a suit to annul a marriage, and the wife defends by claiming validity of the marriage, an allowance for suit expenses and counsel fees may be granted the wife on proper showing, by virtue of the general equity jurisdiction of the court, even though the court directs a verdict for the husband.<sup>48</sup>

**23. Divorce**

A divorce may be granted for any of the following causes: (a) cruelty; (b) conviction of a felony subsequent to marriage, with imprisonment in the State penitentiary, provided 12 months have elapsed since the conviction, nor then if pardoned by the Governor, and provided the conviction was not based on the testimony of the other spouse; (c) living apart without cohabitation for 7 years; (d) permanent insanity as adjudged by the court, or an adjudication of insanity and confinement to a private or public institution for the insane in Texas or of a sister State for 5 years; (e) adultery; or (f) voluntary leaving of either spouse for 3 years with the intention of abandoning the other spouse (C.S., art. 4629).

**Custody and support of children**

Divorce of parents does not affect the legitimacy of the children. In all divorce suits, the court may give the custody and education of the children to either parent and may issue any injunction or make any order that the safety and well-being of the children may require, provided that in the judgment of the court in a jury trial, cause may not contravene the jury's determination of child custody. In any hearing held in the State concerning the custody of a child whether pursuant to a divorce cause or not, any party to the hearing may, upon assumption of jury costs, demand a jury to determine the custody of the child, and the court must conform to such determination. However, the court may require either parent to contribute to the support of a child (C.S., arts. 4639, 4639a).

The court may also require and enforce support payments for any unmarried child, whether a minor or not, who was born of a marriage sought to be dissolved, if it is proven that such child is physically or mentally unsound and requires custodial care; that he cannot adequately take care of or provide for himself; and that he has no personal estate or income sufficient to provide for his reasonable and necessary care (C.S., art. 4639a-1).

A suit for the custody and support of a child under the age of 18 years may be brought by a parent against the parent who fails to

<sup>48</sup> *Portwood v. Portwood* (1937), Tex. Civ. App.; 109 S.W. (2d) 515.

provide support and maintenance for such child when a divorce decree granted in another jurisdiction is silent as to the custody and support provisions (C.S., art. 4639c).

#### **Division of property**

In decreeing a divorce, the court shall order division of the estate of the parties, having regard to the rights of each and of their children, but this shall not be construed to compel either party to divest himself or herself of title to real estate (C.S., art. 4638). In dividing property between the parties in a divorce action, the court may take into consideration any disparity between earning capacity and ability of the parties, and the benefits which the party not at fault would have derived from the estate of the other party through a continuance of the marriage.<sup>49</sup>

Pending a divorce suit, a wife, for the preservation of her rights, may require an inventory and appraisal of both the real and personal estate in her husband's possession, and may secure an injunction restraining him from disposing of such property (C.S., art. 4635).

Pending a suit for divorce, the court or the judge may make such temporary orders respecting the property and parties as are deemed necessary and equitable (C.S., art. 4636).

On or after the filing of a divorce suit, it shall not be lawful for the husband to contract any debts on account of the community, nor to dispose of the lands belonging to it; and any alienation made by him after that time shall be null and void, if it is made with a fraudulent view of injuring the rights of the wife (C.S., art. 4634).

Where the husband and wife owning community property are divorced without the court dividing the property, they become "tenants in common" in such property or "joint owners" thereof just as if they were never married, and the former husband no longer represents the former wife nor the community estate.<sup>50 51</sup>

In a wife's action for divorce, the trial court did not err nor abuse its discretion in awarding the wife, unless she remarries, a life estate in the homestead located on the husband's separate land, together with the usual rentals from the farm thereon.<sup>52</sup>

#### **Alimony and maintenance**

##### *Temporary alimony*

If a wife, whether complainant or defendant, has insufficient income for her maintenance during the pendency of a divorce suit, the court

<sup>49</sup> *Hendrick v. Hendrick* (1949), Tex. Civ. App.; 222 S.W. (2d) 281.

<sup>50</sup> *Taylor v. Catalon* (1942), 166 S.W. (2d) 102.

<sup>51</sup> *Roemer v. Traylor* (1910), 60 Tex. Civ. App. 437; 128 S.W. 685.

<sup>52</sup> *Bush v. Bush* (1950), Tex. Civ. App.; 237 S.W. (2d) 708.

may allow her a sum for her support in proportion to her husband's means (C.S., art. 4637).

#### *Permanent alimony*

Texas courts are not authorized to grant permanent alimony payable at periodic times in the future.<sup>53</sup>

#### **Change of name**

On the final disposition of a divorce suit, the court, in its discretion, may enter a decree changing the name of either party specially praying for such change (C.S., art. 5931). The court's power to restore the maiden name to the wife granted a divorce is not restricted to cases where there are or will be no children of the marriage.<sup>54</sup>

#### **Court costs**

The court may award costs to the party in whose behalf the divorce decree is granted, or may require each party to pay his or her own costs as the court deems reasonable (C.S., art. 4641).

#### **Period for remarriage**

Where a divorce is granted upon the ground of cruel treatment, neither party to the divorce shall marry any other person for 12 months after the divorce is granted, but the parties so divorced may marry each other at any time. In all other cases, either party may marry again after the dissolution of the marriage (C.S., art. 4640).

#### **Effect of divorce on will**

If the testator is divorced after making a will, all provisions in the will in favor of the testator's spouse so divorced, or appointing such spouse to any fiduciary capacity under the will, or with respect to the estate or person of the testator's children, are null and void and of no effect (P.C., sec. 69).

#### **Legal separation**

There is no provision in the Texas statutes for a limited divorce or legal separation. However, a husband and wife may agree to a separation providing for the support of the wife or division of the community property; and such agreement will be upheld if entered into without coercion or undue influence, if fair and equitable, and if made after the parties have separated with the intention of remaining permanently apart. Such agreement will not be upheld if it

<sup>53</sup> *McElreath v. McElreath* (1961), 345 S.W. (2d) 722.

<sup>54</sup> *Hartman v. Chumley* (1924), Tex. Civ. App.; 266 S.W. 444.

was made while the parties were living together with the intention of effectuating a separation and divorce.<sup>55</sup>

### *Parents and Children*

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

The earnings of the minor children become part of the community estate, shared equally in ownership by both parents, but controlled by the father.<sup>56</sup> Where a husband abandoned his wife and failed to contribute to the family's support, the wife can sue individually for the lost services of an injured minor child.<sup>57</sup>

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

The father is the natural guardian of the person of a minor child if the parents are living together. If one parent is dead, the survivor is the natural guardian of the child's person. The natural guardian is entitled to be appointed guardian of the child's estate. The rights of parents who do not live together are equal; the guardianship of a minor child is assigned in such cases so as to serve the best interests of the child (P.C., sec. 109(a)). The court has the duty to appoint a guardian for a minor where the parent is unfit.<sup>58</sup>

A parent cannot appoint himself guardian of his minor child's estate and dispose of the property without the sanction of the court; his guardianship by nature does not give him such power.<sup>59</sup> Parents cannot by agreement constitute one of them the guardian of their minor child's estate.<sup>60</sup>

When a married woman is appointed guardian, she may execute such bond as the law requires, either jointly with her husband or without him. Such bond binds her separate estate, but does not bind her husband unless it is signed by him (P.C., sec. 199).

The remarriage of a woman does not incapacitate her from acting as the guardian of her minor children by a former marriage. On the contrary, by statute, she is given preference as the guardian of such children.<sup>61</sup>

Only one person can be appointed as guardian of the person or estate of a ward; but one person may be appointed as guardian of the

<sup>55</sup> *Wheat v. Wheat* (1922), Tex. Civ. App.; 239 S.W. 667.

<sup>56</sup> *Insurance Company of Texas v. Stratton* (1956), Tex. Civ. App.; 287 S.W. (2d) 320.

<sup>57</sup> *Loving v. Laird* (1931), Tex. Civ. App.; 42 S.W. (2d) 483; Tex. Com. App., 1933; 61 S.W. (2d) 812.

<sup>58</sup> *McGeorge v. Thomason* (1925), Tex. Civ. App.; 275 S.W. 683; affirmed 1926, Tex. Com. App.; 285 S.W. 285.

<sup>59</sup> *Vineyard v. Heard* (1914), Tex. Civ. App.; 167 S.W. 22.

<sup>60</sup> *Field v. Rudes* (1947), Tex. Civ. App.; 204 S.W. (2d) 1; reversed on other grounds, 146 Tex. 133; 204 S.W. (2d) 5.

<sup>61</sup> *Wright v. Wright* (1913), Tex. Civ. App.; 155 S.W. 1015.

person, and another as guardian of the estate of such ward, if the court is satisfied that it is to the best interest of the ward to do so. However, there is no prohibition against the appointment of a husband and wife as joint guardians, or of a guardian or coguardians of a ward duly appointed under the laws of another State, territory, country, or the District of Columbia (P.C., secs. 116, 124).

The guardian of the person of a minor is entitled to the charge and control of the person of such minor, and the care of his support and education. It is the duty of such guardian to take care of the person of such minor, to treat him humanely, and to see that he is properly educated; and, if necessary for his support, to see that he learns a trade or adopts a useful profession. The guardian of the estate of a ward is entitled to the possession and management of all properties belonging to the ward, to collect all debts, rentals, and claims due such ward, to enforce all obligations in his favor, and to bring and defend suits for or against him. It is the duty of such guardian to manage the estate as a prudent man would manage his own property. The guardian of both the person and estate of a ward has all the rights and powers, and shall perform all the duties, of the guardian of the person and of the guardian of the estate (P.C., secs. 229-231).

When a minor attains the age of 14, he may choose a guardian for his person, estate, or both, subject to the approval of the court, if no other guardian has been appointed; or he may select another guardian, if he has a guardian appointed by the court, or if the guardian appointed by will or written declaration of a parent of such minor dies, resigns, or is removed from guardianship (P.C., sec. 118).

When from any cause the estate of a minor, or an incompetent, appears to be in danger of injury, loss, or waste, and in need of a representative, there being no guardian of such estate qualified in the State of Texas and no necessity for one, the court of the county where such minor or incompetent resides, or where the endangered estate is located, shall appoint by order, with or without an application, a suitable person as receiver to take charge of such estate, specifying the duties and powers and requiring bond of such person in an amount deemed necessary (P.C., sec. 136).

The marriage of a minor shall cause the settlement and closing of the guardianship of the person and estate of such minor and the discharge of the guardian (P.C., sec. 404).

The parents of a minor under 18 and over 10 years of age are civilly liable for his malicious and willful destruction of property in an amount not to exceed \$300, except that this provision is not applicable to parents whose parental custody and control of such child has been removed by court order (C.S., art. 5923-1).

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

The surviving parent, by will or written declaration, may appoint a testamentary guardian for the person of a minor child; and if such guardian is qualified, he shall be entitled also to be appointed as guardian of the minor's estate (P.C., sec. 117).

**27. Inheritance—child**

The inheritable separate estate of a person dying intestate descends to his parents, if living, as follows:

If there is a spouse, but no issue nor their descendants, one-half of the real property to the parents equally. But if only one parent survives, such one-half is divided into two equal parts, one of which passes to the surviving parent, and the other to any living brothers and sisters of the deceased, and to their descendants.

If there is no spouse, nor children, nor their descendants, the entire estate in equal portions to the parents. But if only one parent survives, all of such estate is divided in two equal portions, one of which passes to the surviving parent, and the other to any living brothers and sisters of the deceased, and to their descendants; but if none such survive, then the whole passes to the surviving parent (P.C., sec. 38).

**28. Child born out of wedlock**

There is no provision of law to establish the identity or legal responsibility of the father of a child born out of wedlock.

When a man having a child or children born out of wedlock shall afterward intermarry with their mother, such child or children shall thereby be legitimate and capable of inheriting his estate. The issue of marriages deemed null and void are legitimate (P.C., sec. 42).

In Texas, the common-law rule that an illegitimate child is incapable of inheriting from any source governs the relation of an illegitimate child to his father, and does not recognize any right in such child to any interest in his father's estate.<sup>62</sup>

A child born of a putative marriage (one in which the man knows the woman is pregnant and believes the child is his) entered into in good faith is legitimate.<sup>63</sup>

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

For the purpose of inheritance to, through, and from a child born out of wedlock, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit

<sup>62</sup> *Hayworth v. Williams* (1909), 102 Tex. 308; 116 S.W. 43.

<sup>63</sup> *Gravley v. Gravley* (1961), Tex. Civ. App.; 353 S.W. (2d) 333.

from his mother and from his maternal kindred, descendants, ascendants, and collaterals in all degrees; and they may inherit from him (P.C.,sec. 42).

## POLITICAL RIGHTS

### 30. Domicile of a married woman

The general rule of law applies, that the wife's domicile follows that of the husband. But the court recognizes that this rule is not without exceptions.<sup>64</sup>

While generally a wife's domicile follows that of her husband, a wife is free to choose her own domicile after she permanently separates from her husband under circumstances justifying such separation.<sup>65</sup>

When the law authorizes a suit for divorce by the wife and makes the jurisdiction depend upon her residence, as does the Texas divorce statute, the provision would be idle if her domicile were of necessity to be the domicile of her husband.<sup>66</sup>

#### Voting

The husband has the right to establish the residence of the family. The place of residence of a married woman for voting purposes is where her husband resides.<sup>67</sup>

### 31. Public office—eligibility of women

The State Supreme Court, ruling affirmatively on women's eligibility for public office, said: "Consideration of the true nature of public office will suffice to show that it would be wholly inconsistent with our law recognizing the capacity of married women to become agents and trustees, to deny married women the capacity to hold office. . . . An office is essentially a trust or agency for the benefit of the public. The supreme qualification is unselfish fidelity to duty. Who will say that her sex prevents a women from displaying this virtue in as marked a degree as the greatest of men?"<sup>68</sup>

### 32. Jury service—eligibility of women

Women are eligible for jury service. However, special exemptions applicable to women only are: women having legal custody of children under 16, and wives of men summoned to serve on the same jury panel (Const., art. 16, sec. 19; C.S., arts. 2133, 2135; C.C.P., art. 339).

<sup>64</sup> *Hare v. Hare* (1853), 10 Tex. 355.

<sup>65</sup> *Postle v. Postle* (1955), Tex. Civ. App.; 280 S.W. (2d) 633.

<sup>66</sup> *Jones v. Jones* (1883), 60 Tex. 451.

<sup>67</sup> *Harwell v. Morris* (1940), Tex. Civ. App.; 143 S.W. (2d) 809.

<sup>68</sup> *Dickson v. Strickland* (1924), 114 Tex. 176; 265 S.W. 1012 (Hist.).