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The Legal Status of Women in the United States of America

REPORT FOR
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WOMEN'S BUREAU BULLETIN 157-44 (Revised)

UNITED STATES DEPARTMENT OF LABOR

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WOMEN'S BUREAU

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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 48 States and the District of Columbia.

Material for Alaska and Hawaii will be incorporated in the United States Summary when the latter is revised.

SOURCES

Constitution of Vermont
1958 Revision of Vermont Statutes
Vermont Reports
Atlantic Reporter

EXPLANATORY NOTE

This pamphlet, Bulletin 157-44, presents a digest of the Constitution and statutory provisions affecting the legal status of women in the State of Vermont. It includes pertinent statutory changes enacted in that State up to January 1, 1959, and supersedes the previous report and addendum for Vermont.

References to the State Constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation "Const.," as (Const., art. 6, sec. 4), placed after the related subject matter.

References to the code sections are likewise in parentheses, as (T. 9, sec. 5153).

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 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."

VERMONT

CIVIL RIGHTS

Contracts and Property

1. Age of majority

Persons are considered of age at 21 years and are minors until they attain that age (T. 1, sec. 173).

The marriage of a female minor under guardianship discharges her guardian from all right to her custody and education, but not from his right to her property (T. 14, sec. 3002).

2. Contractual powers of a minor

A minor is bound to pay a reasonable price for necessities sold and delivered to him, such necessities being goods suitable to his condition in life and his actual requirements at the time of delivery (T. 9, sec. 1502).

Every personal contract to which a minor is a party, if not entered into for necessities which he has actually received, may be avoided by him, whether fully executed or not, unless he has confirmed such contract by his acts or words after arriving at the age of 21 years.¹

A deed executed and delivered by a minor conveying land remains good and valid until it is avoided by him. As he alone has the power of avoiding the deed and rescinding the contract, he is bound, after he comes of age and is competent to exercise a discretion upon the subject, to make his election and give notice of his intention. Unless he makes known his determination in a reasonable time, the contract becomes enforceable against him.²

A minor may hold shares of stock in cooperative savings and loan associations in his own name and under his own control (T. 8, sec. 1506).

¹ *Abell v. Warren* (1832), 4 Vt. 149.

² *Bigelow v. Kinney* (1830), 3 Vt. 353; 21 Am. Dec. 589.

The trustees of a bank may pay to a minor such sum as is deposited to his credit. Receipt from the minor constitutes a full discharge for the amount given (T. 8, sec. 812). Bank deposits to the credit of a minor, earned by or belonging to him, are exempt from trustee process (T. 8, sec. 813).

The earnings of a minor are exempt from trustee process in an action against a parent of such minor (T. 12, sec. 3020).

A bank, insurance company, or other financial institution is authorized to make loans secured by a mortgage on real estate to a husband and wife where the wife is a minor over 18 years old and where said real estate is to be used as a home by them, and may make any contract relating thereto with such minors. Minority is not a defense in any lawsuit in which the mortgage or contract is material (T. 8, sec. 131).

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

3. Property exemptions from seizure for debt

A. RESPECTIVE RIGHTS OF MAN AND WOMAN

A debtor may hold exempt from execution for debt any or all of the various articles of personal property enumerated in the statute, and according to the limits of value there specified. The exemption includes among other items: Suitable apparel, bedding, tools, arms, household furniture necessary for sustaining life, sewing machine; foodstuffs, fuel, livestock and provisions for it through one winter; and mechanical or professional equipment for use in earning a living. Personal property is not exempt from debts for purchase price, nor for material or labor expended on it (T. 12, sec. 2739).

Wages or compensation due to a person for his work or labor performed before service of the trustee process on the employer are exempt to the amount of \$25, or one-half of such wages or compensation, whichever amount is the lesser (T. 12, sec. 3020).

Accumulations upon shares in a cooperative savings and loan association held by any person are exempt from levy to the amount of \$1,000 (T. 8, sec. 1512).

A sum payable to a policyholder for loss by fire of property exempt from attachment and execution is likewise exempt in the hands of the insurance company against the policyholder's debts. Nor is a life-insurance company subject to trustee process on funds in its hands not exceeding \$500 due or payable under a policy of life insurance (T. 12, sec. 3020).

A policy of insurance on the life of a person expressed to be for the benefit of a married woman inures to her separate use and benefit and that of her children. Neither the husband, nor the person whose

life is insured, nor any creditor or representative of either of these, has any right, title, or interest in such policy or the benefits from it (T. 15, sec. 143).

B. HOMESTEAD

The homestead consisting of a dwelling house, outbuildings, and the land used in connection with them, valued at not more than \$2,500, owned and used or kept as a homestead, together with the rents, issues, profits, and products from it, is exempt, in general, from attachment and execution (T. 27, sec. 101).

The homestead is subject to levy of execution on causes of action existing at the time the homestead is acquired (T. 27, sec. 107) for taxes assessed against it (T. 27, sec. 108); for material and labor expended on the property (T. 9, secs. 1921-1922, 1927-1928); and for maintenance of division fences between the property and adjoining lands (T. 24, sec. 3814).

If the owner of a homestead is a married person, both husband and wife must join in any conveyance of the property, except a mortgage given for the purchase-money at the time the homestead is acquired (T. 27, sec. 141). Any mortgage on real property to secure a present debt and any future advances are a lien upon the mortgaged property for the full amount of debt directly created between the parties. If the mortgaged property includes a homestead, however, the spouse of the mortgagor must consent in writing to the creation of any subsequent indebtedness (T. 13, sec. 3307).

Statutory provision is made for conveyance of the homestead when the spouse owning the property is under guardianship (T. 27, sec. 142), or when the owner's husband or wife is insane (T. 27, sec. 143). Provision is also made for protection of funds for the best interest of all concerned (T. 27, sec. 143; T. 27, secs. 184, 185).

On the death of the owner the statutory homestead passes to and vests in the surviving spouse, free from debts of the decedent unless such debts were legally charged against it in the owner's lifetime (T. 27, sec. 105). But if there are minor children living, the homestead right of the surviving spouse may be lost through his or her fault in not residing at the homestead together with the deceased spouse for the 2 years immediately prior to decedent's death. It may also be lost by residing away from the homestead with the intention of abandoning the minor children, or through leaving the homestead so that his or her whereabouts cannot be found after diligent search by the estate's representatives (T. 27, sec. 106).

The homestead right of the surviving spouse cannot be destroyed by the will of the deceased owner.³

³ *In re O'Rourke's Estate* (1934), 106 Vt. 327; 175 Atl. 24 (hist.).

4. Ownership and control of property owned at marriage

All personal property and rights of action acquired by a woman prior to her marriage are her separate property. Such property and the rent, issues, income, and products from it are not subject to her husband's control or liable for his debts (T. 15, secs. 66, 68).

A married woman may convey or mortgage by her separate deed the real estate owned or acquired by her for her sole and separate use as if she were unmarried (T. 15, sec. 64). When a married woman deeds or conveys real property acquired under some name other than her present one, her conveyance must show both her former and present name (T. 15, sec. 65).

A married man is not liable for a debt contracted by his wife before marriage (T. 15, sec. 69).

(See also number 9 for status of land.)

5. Contractual powers of a married woman

A married woman may make contracts with any person other than her husband, and bind herself and her separate property as if she were unmarried. She may sue and be sued as to all such contracts made by her, either before or during marriage, without the joinder of her husband; and execution may issue against her and be levied on her sole and separate goods, chattels, and estate. A married woman may become a general or limited partner in a business in which her husband also is a partner, and be a partner with him. She may contract with him for that purpose (T. 15, sec. 61). Under this statute, a wife is liable on her surety contract for her husband.⁴

No assignment of or order for payment of any salary, wages, or other compensation for services earned or to be earned, or chattel mortgage on household furniture in use and possession of the borrower is valid if the borrower is married, unless it is signed in person by both husband and wife. However, the written assent of a spouse is not required when husband and wife have been living separate and apart for at least 5 months prior to the making of such assignment (T. 8, sec. 3028).

A policy of insurance issued within the State on the life of a husband for the benefit of his wife, whether taken out by the husband or the wife, may be assigned by the wife with the husband's written consent (T. 15, sec. 141). A woman may cause the life of her father or brother to be insured for her sole use for a definite period or during his lifetime (T. 15, sec. 144).

A married woman may serve as executrix, administratrix, guardian, or trustee. The marriage of a single woman does not affect her

⁴ *McNamara v. Pickett* (1938), 109 Vt. 500; 1 Atl. (2d) 716.

authority to act in any such capacity under a previous appointment (T. 14, sec. 912; T. 15, sec. 63; T. 14, sec. 3001).

A married woman is eligible for appointment as guardian of a spendthrift, insane, or absconding person, whether he is her husband or any other person. Upon appointment under the statute authorizing such guardianship, she has the same rights, powers, and privileges, and is subject to the same liabilities as if unmarried (T. 14, sec. 2692).

The surviving husband or wife has preference for appointment as administrator of the estate of a deceased spouse. Unless a widow or next of kin applies for administration, or requests that it be granted to some other person, within 30 days after the husband's death, administration may be granted to one or more principal creditors, if qualified (T. 14, sec. 903).

(See number 9 as to control of real property.)

The marriage of a woman during litigation to which she is a party does not abate the action. The fact that the marriage was contracted may be shown upon the record, but the case proceeds as if she had remained unmarried (T. 15, sec. 62).

6. Earnings of a married woman

Earnings of a married woman are her separate property and are not subject to seizure for her husband's debts (T. 15, sec. 66).

7. Liability for family support

It is the husband's duty to support the family and he is liable for necessaries. A wife is liable for necessaries furnished the family when she has contracted for them (T. 15, sec. 61).

Unless there is just cause or lawful excuse, if financially and physically able to do so, a husband or wife must provide for the support and maintenance of the other, and a parent must provide for the support and maintenance of his child, when any of these is in destitute or necessitous circumstances.

Any parent who deserts, willfully neglects, or refuses to provide for the support and maintenance of his child without lawful excuse, is liable to criminal prosecution, and on conviction subject to imprisonment or fine or both (T. 15, sec. 202). A wife who is supporting her husband is liable for the payment of a poll tax or an old-age-assistance tax. A husband living with or supporting his wife is liable for such taxes assessed against her. Payment of these taxes is required to qualify citizens for voting in town meeting (T. 32, sec. 5011; T. 24, sec. 701).

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

No formal statutory procedure is required for a married woman to engage in a separate business.

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

All personal property and rights of action acquired by a woman before or after marriage, except by gift from her husband, are her separate property. Neither such property nor the rents, issues, income, and products from it is subject to her husband's control or liable for his debts (T. 15, secs. 66, 68).

Ownership and control of real estate

A married woman may convey or mortgage by her separate deed the real estate which she owns in her own right for her "sole and separate use," as if she were unmarried. By her deed she may convey or mortgage, and may manage and control any other real estate acquired by her on or after February 13, 1919. However, a homestead interest in such property and the real estate which she owns jointly with her husband are exempt and may be conveyed or mortgaged only by the joint deed of herself and husband (T. 15, sec. 64).

To convey land acquired by her prior to February 13, 1919, not her separate property, the statute provides: "A husband and wife may, by their joint deed, convey the real estate of the wife as she might do by her separate deed if unmarried" (T. 27, sec. 343).

The husband does not have a freehold interest in the real estate of his wife which is not held by her for her sole and separate use.⁵

A tenancy by the entirety is created by a conveyance to husband and wife. The parties take the property as one person, and have but one title, each owning the whole. When one party dies, the estate continues in the survivor. Neither acting alone can convey the property to bind the other. A conveyance to husband and wife is expressly excepted from the operation of the statute (T. 27, sec. 2), preferring tenancies in common to joint tenancies.⁶

Real estate and tangible personal property with the products from them, owned as an estate by entirety, are chargeable during the husband's lifetime for debts contracted by him for the necessary upkeep of the property. The liability is as complete as if he owned the property in his name only (T. 15, sec. 67).

The income from the real estate of a married woman; the profits from the sale of such real estate; and her husband's interest in the real estate, which belonged to her before marriage or which she acquired during marriage, are exempt from attachment for the sole

⁵ *Proulx v. Parrow* (1947), 115 Vt. 232, 56 Atl. (2d) 623.

⁶ *Corinth v. Emery* (1891), 63 Vt. 505; 22 Atl. 618.

debts of her husband. However, annual products may be attached for a debt of the husband for necessities for his wife and family, and for debts for labor or materials furnished for cultivation or improvement of such real estate (T. 15, sec. 68). The real estate of a married woman may be charged with a mechanic's lien when she assents to the contract (T. 9, sec. 1928).

10. Property acquired by joint efforts of husband and wife

In the absence of a statute to the contrary, the common-law rule governs that property acquired by joint efforts belongs to the husband. The court has ruled that presumption of ownership of personal property in the joint possession of parties who are husband and wife is in favor of the husband, until proved otherwise.⁷

The statute giving a married woman the absolute right in her personal property and rights of action, and declaring such property free from liability for her husband's debts, expressly provides that "nothing herein contained shall authorize a claim by either husband or wife against the other for personal services" (T. 15, sec. 66).

The fact that a wife assisted her husband in his business and in caring for the money which was the product of their joint labor does not make any part of the money thus accumulated the property of the wife.⁸

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

A married woman may sue and be sued as to all contracts which she is authorized by statute to make (T. 15, sec. 61). In general, all rights of action acquired by a woman, either before or after her marriage, are her sole and separate property (T. 15, sec. 66).

A married man is not liable for the torts of his wife unless committed by his authority or direction (T. 15, sec. 69).

12. Damages for injury by spouse to person or property

Neither spouse has a right of civil action against the other for a tort committed upon the one spouse by the other.

The statute empowering a married woman to sue and be sued on her contracts does not give the wife a right of action against her husband for his torts against her. In passing that statute, the legislature intended only parity between the spouses and did not intend to give to the wife a remedy which the husband did not possess against her either at common law or under the statute.

The purpose of the statute was not to abolish the legal identity of husband and wife, but to empower the wife, while that status exists, to

⁷ *State v. Kamuda* (1925), 98 Vt. 466; 129 Atl. 306.

⁸ *Monahan v. Monahan* (1904), 77 Vt. 133; 59 Atl. 169; 70 L. R. A. 935.

sue and be sued in her own name as a femme sole in those instances where a right of action arises by reason of injuries to her committed by someone other than her husband.⁹

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

Husband and wife are competent witnesses for or against each other in all causes, civil or criminal, except that neither may be allowed to testify against the other as to a statement, conversation, letter, or other communication made to the other or to another person. Neither spouse may testify in any case as to a matter which, in the opinion of the court, would lead to a violation of marital confidence. However, this statute does not prevent the parties to a divorce suit from testifying as to all matters in such proceeding (T. 12, sec. 1605).

In actions against a bank by a husband to recover for moneys deposited by his wife in her name or as her money, the wife may be a witness as if she were an unmarried woman (T. 8, sec. 814).

Both husband and wife are competent to testify against each other in matters related to actions for desertion and nonsupport of family (T. 15, sec. 207).

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 (T. 15, sec. 268).

14. Right to dispose of separate property by will

A person of age and sound mind may devise, bequeath, and dispose of his estate, real and personal, and of any right or interest which he has in any real or personal estate, by his last will and testament. The word "person" includes a married woman (T. 14, sec. 1).

The rights of a surviving spouse are paramount to all others, even to the power of the other to dispose of property by will. Until these rights are satisfied, no will can be effective.^{10 11}

15. Inheritance rights in deceased spouse's estate

The real and personal estate of a deceased person, not passing by will and not otherwise appropriated and distributed as directed by statute, descends, with reference to a surviving spouse, in the following manner:

⁹ *Comstock v. Comstock* (1934), 106 Vt. 50; 169 Atl. 903.

¹⁰ *In re Peck's Estate* (1907), 87 Vt. 194, 212; 88 Atl. 568.

¹¹ *In re O'Rourke's Estate* (1934), 106 Vt. 327; 175 Atl. 24 (hist.).

Share under inheritance laws

If no issue survives the decedent, the living spouse takes the entire estate when not in excess of \$8,000. In an estate of greater value, such survivor is entitled to \$8,000 and one-half the remainder. The surviving spouse receives the entire estate, regardless of its value, if the decedent left no kindred.

Share of widow in lieu of dower

A widow's statutory share entitles her absolutely to one-third in value of all the real estate which her husband owned at death. If the husband is survived by only one heir and such heir is the issue of the widow or the heir by adoption of both spouses, the widow is entitled absolutely to one-half in value of such real estate (T. 14, sec. 461).

The widow is entitled to a third in value of the equity of redemption of lands mortgaged by her husband or which he held at the time of his decease under the mortgagor. She may pay a third of the amount due on the mortgage and have a third in value of the land, as against the administrator, heirs, and creditors of her deceased husband (T. 14, sec. 462). The homestead right is additional to the widow's interest in lieu of dower. Moreover, such interest is not subject to payment of unsecured debts.¹²

But the widow may be barred of these rights when: (a) A jointure or some pecuniary provision was settled on her before marriage by her husband or some other person with or without her agreement or consent, or after her marriage with her consent, to be effective at the husband's death, and expressed to be in lieu or discharge of her one-third interest in the husband's real estate; (b) the husband by will makes provision for her which, in the judgment of the probate court, was intended to be in lieu of such one-third interest; or (c) the husband dies leaving no children or their representatives and the widow is thereby entitled to the provisions made by statute in such cases (T. 14, sec. 465).

Within the time provided by statute, the widow may waive the provisions made for her in her husband's will or the jointure or pecuniary provision made for her, and take instead her share in lieu of dower in the husband's real estate, notifying the court in writing of her election. If the widow was not the first wife of the decedent, and he leaves no issue by her, and an agreement was entered into between them regarding the widow's claim in lieu of the one-third interest, and if she has sufficient provision for her comfortable support during life, the court may deny to her such one-third part of the real estate, or any provision other than such as is provided by the agreement between the parties (T. 14, sec. 465).

¹² *Blanchard v. Blanchard's Estate* (1938), 109 Vt. 454; 199 Atl. 233 (hist.).

A surviving husband is entitled absolutely to one-third in value of all the real estate which his wife had at the time of her death. If the wife is survived by only one heir who is the issue of the husband or the heir by adoption of both spouses, the husband is entitled absolutely to one-half in value of such real estate. The husband may be barred from such one-third or one-half interest, when he is entitled to and takes under the inheritance law or accepts a provision made for him in his wife's will (T. 14, sec. 474).

16. Provision for survivors during administration of estate

Until the third or one-half in value of the husband's real estate is set out to the widow, she may continue to occupy it, with the decedent's children and family, or may receive one-third of the rents, issues, or profits of such estate (T. 14, sec. 461; T. 14, sec. 470). A widow who elects to waive her husband's will and take under the statute giving her one-third in value of the husband's realty, is entitled also to this provision.¹³

The probate court may make a reasonable allowance for the maintenance of the widow and the minor children, or either, constituting the family of a deceased person. This allowance may be taken from his personal estate or the income of his real estate, from date of his death until settlement, or in case of an insolvent estate for not longer than 8 months (T. 14, sec. 404).

The surviving husband or wife receives from the decedent's personal estate, not disposed of by will, all the articles of wearing apparel and ornament, and such other part of the personal estate as the probate court assigns to the surviving husband or wife, according to his or her circumstances and the estate and degree of the deceased. This may not be less than a third, after payment of debts, funeral charges, and expenses of administration (T. 14, sec. 401).

The same allowance will be made: (a) When the surviving husband or wife waives the provision made for him or her in the decedent's will (except that if the decedent dies without issue, the living spouse may take estate as if the decedent had made no will); (b) when the widow waives the jointure or pecuniary provisions substituted for her statutory interest in lieu of dower; or (c) when either spouse waives the provisions of the law in case the decedent died without issue. Such allowance is to be in lieu of his or her claim to the personal estate (T. 14, sec. 402).

If the husband dies leaving a widow and/or minor children, or if the wife dies leaving minor children and no husband, and the estate does not exceed \$300, the probate court may, in its discretion, assign

¹³ *Blanchard v. Blanchard's Estate* (1938), 109 Vt. 454; 199 Atl. 233 (hist.).

the whole estate to the widow and/or minor children, for their use and benefit (T. 14, sec. 409).

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

A surviving spouse has the right to reject the provisions of a decedent's will and take a statutory share of the estate (T. 14, sec. 475).

A voluntary conveyance of land made by a husband during marriage to take effect at his death in order to defeat his widow's share in his real estate does not bar her right (T. 14, sec. 473).

Marriage and Divorce

18. Age of consent to marriage

Men at 21 years of age and women at 18 years may marry without parental consent (T. 1, sec. 173). If the male is under 21 or the female is under 18 years of age, parental consent in writing is required.

A marriage license may not be issued when the male is under 18 and the female is under 16 unless the clerk is furnished with a certificate from a judge of the county, stating that public good requires the license to be issued (T. 18, sec. 5142).

19. Common-law marriage

Common-law marriages have never been recognized in this State. The subject of marriage is regulated by statute.¹⁴

20. Premarital requirements

A marriage ceremony may not be performed until 5 days after issuance of the license, excluding the date of issue (T. 18, sec. 5145).

Each party to an application for license to marry must file a licensed physician's certificate, showing that both applicants have been given the necessary examination for discovery of syphilis, including a standard serological test, within the 30 days immediately preceding the date of application for license. The certificate must show that in the opinion of the physician, the person named in the certificate either is not infected with syphilis, or if so infected, is not in a stage of the disease which is or may become communicable to the marital partner. The premarital test may be waived upon authority of the probate judge in specified cases (T. 18, secs. 5132—5138).

"A person, having been told by a physician that he or she was infected with gonorrhoea or syphilis in a stage which is or may become communicable to a marital partner, or knowing that he or she is so

¹⁴ *Morrill v. Palmer* (1895), 68 Vt. 1; 33 Atl. 829; 33 L. R. A. 411 (hist.).

infected, who marries, without assurance and certification from a legally qualified practitioner of medicine and surgery or osteopathy that he or she is free from such a disease, in a stage which is or may become communicable to the marital partner shall be imprisoned not less than 2 years or fined not less than \$500 or both" (T. 18, sec. 1105).

If a person while infected with gonorrhoea or syphilis, has sexual intercourse, he or she is subject to imprisonment for not more than 2 years or a fine of not more than \$500 (T. 18, sec. 1106).

21. Interstate cooperation in marriage-law enforcement

A marriage is void for all purposes in the State of Vermont if contracted outside the State by any of its residents for the purpose of evading the Vermont marriage laws and with the intention of returning to Vermont for continued residence after marriage (T. 15, sec. 5).¹⁵

A marriage is prohibited and void if contracted within the State of Vermont by a resident of another State, when the marriage is forbidden by the laws of such other State, and the party intends to return to that State to reside after marriage (T. 15, sec. 6).

22. Annulment

Marriages prohibited because of forbidden degrees of relationship between the parties or because either has a former wife or husband living, if solemnized within the State, are void without any court action (T. 15, secs. 4, 511). It should be noted that when a divorce has been granted, it is unlawful for the defendant to marry any person other than the former spouse within 2 years of the date the divorce is granted, unless the former spouse has died within such time or permission of the court is obtained (T. 15, sec. 559).

If a marriage is alleged to be void or its validity is doubted for the causes mentioned above, either party may file a suit for annulment. Upon proper proof, the marriage will be declared void by a decree of nullity (T. 15, sec. 511).

The marriage may be annulled when, at the time of marriage, either party was under 16 years of age, or was an idiot or lunatic or physically incapable of entering into the married state, or when the consent of either party was obtained by force or fraud (T. 15, sec. 512).

When the validity of a marriage is denied or doubted by either of the parties, the other party may begin a court action for affirming it, and upon proper proof of its validity, the marriage will be declared valid by court decree (T. 15, sec. 7).

Children of annulled marriages are legitimate and succeed to the real and personal estate of both parents (T. 15, sec. 520).

¹⁵ *Wheelock v. Wheelock* (1931), 103 Vt. 417; 154 Atl. 665.

The court decrees custody of children of marriages annulled on the ground of force and fraud to the innocent party, and may provide for their education and maintenance out of the estate of the guilty party (T. 15, sec. 517).

23. Divorce

An absolute divorce may be granted: (*a*) For adultery by either party; (*b*) when either party is under sentence to imprisonment and hard labor for life, or for 3 years or more, and is actually confined in prison at the time the divorce action is brought; (*c*) for intolerable severity in either party; (*d*) for willful desertion for 3 consecutive years, or when either party has been absent for 7 years and not heard of during that time; (*e*) for the incurable insanity of either party when established as required by statute; (*f*) upon petition of a wife when her husband has sufficient pecuniary or physical ability to provide suitable maintenance for her, and, without cause, persistently refuses or neglects to do so; or (*g*) if husband and wife have lived apart for 3 years without fault of the petitioner, and resumption of marital relations is not reasonably probable (T. 15, sec. 551).

A partial divorce, that is, "a divorce from bed and board," forever or for a limited time, may upon petition be decreed for any of the causes for which an absolute divorce may be granted (T. 15, sec. 554).

Alimony and maintenance

Pending or on granting a decree for an absolute or a limited divorce or separate maintenance, the court may make orders concerning the care, custody, maintenance, and education of the minor children of the marriage (T. 15, secs. 293, 556, 600, 671).

When a husband fails to furnish suitable support for his wife without just cause or has deserted her, or when the wife is actually living apart from her husband for a justifiable cause, the court may prohibit the husband from imposing restraint on her personal liberty. Upon application of the husband or wife the court may make such orders as it deems expedient concerning support of the wife and care, custody, education, and maintenance of the minor children. It may determine with which of the parents the children shall remain (T. 15, sec. 291). Either party may apply to the court for temporary relief. The court may then make such order as is just in regard to temporary alimony and funds to support the wife and minor children and to maintain the litigation during pendency of the action (T. 15, sec. 672).

During the pendency of divorce, the court may enjoin either party from interfering with the possession, use, and control of property belonging to the other party. The court may make mandatory orders with respect to the real and personal property of the wife, the minor

children, the husband, or the husband and wife jointly (T. 15, sec. 673).

On granting either a limited or absolute divorce or in annulling a marriage, the court may make disposition of the property owned by the parties separately, jointly, or by the entirety, as appears just and equitable. This disposition is made taking into account the respective merits of the parties, to the condition in which they will be left by such divorce, to the party through whom the property was acquired, and to the burden imposed upon it for the benefit of the children (T. 15, sec. 751).

In granting a limited divorce decree, the court may assign to the petitioner separate maintenance out of the estate or property of the other party, in such manner and of such amount as it may deem necessary (T. 15, sec. 555).

Parents and Children

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

Vermont has no specific statute relating to a parent's right to control the earnings of a minor child. However, a married woman whose husband deserts her, becomes incapacitated, or neglects to provide for his family, may make contracts for the labor of her minor children. She is entitled to their wages and may sue for and recover such wages in her own name (T. 15, sec. 101).

(See number 25 as to joint guardianship.)

25. Guardianship of a minor child

The father and mother of a legitimate minor child, if competent, are the joint guardians of such child. The surviving parent, if competent, becomes the sole guardian (T. 14, sec. 2641). The mother of an illegitimate minor child is guardian of such child until another is appointed (T. 14, sec. 2643).

When a minor is entitled to any estate, a guardian must be appointed to receive it, even though the minor has a parent living who is authorized to act as guardian (T. 14, sec. 2646); but in such case the parent so authorized may be appointed as guardian if approved by the court (T. 14, sec. 2647). A guardian of a minor appointed by the probate court has the care and management of the child's estate and, except as otherwise provided, the custody and tuition of the minor. The guardian is required to furnish him suitable employment, provide for his education and instruction in science or some trade or profession according to his circumstances, and may bind him out to service as provided by law (T. 14, sec. 2652).

A minor 14 years or over may select his guardian subject to court approval, (T. 14, sec. 2649).

26. Appointment of testamentary guardian for a minor child

A father may, by his last will, appoint a guardian for his minor child, whether such child is living at the time of making the will or born afterward, and the guardian is to be governed by the laws applicable to guardians appointed by the probate court (T. 14, sec. 2655).

27. Inheritance—child

The real and personal estate of a deceased person, not disposed of by will nor otherwise appropriated and distributed under the statute, may be inherited by his or her parents as follows: When the decedent is a married person and leaves no issue, the remaining portion of the estate, after the share of the surviving husband or wife has been set apart, descends to the father and mother of the decedent in equal shares, if both are living, or to the survivor of them if one is dead (T. 14, sec. 551).

When the decedent leaves neither spouse nor issue, the father and mother take the estate in equal shares, or, if one is dead, the survivor takes the entire estate (T. 14, sec. 551).

The estate of an intestate decedent, not otherwise appropriated and distributed in pursuance of law, passes in equal shares to the children (T. 14, sec. 551).

28. Child born out of wedlock

When the paternity of a child born, or to be born, out of wedlock has been established under the judicial proceeding provided by statute, the adjudged father is ordered by the court to support the child. With the assistance of the mother the adjudged father must provide for the child in such manner and proportion as the court judges proper and for such time as the child is likely to be unable to support itself, but no longer. He must also pay to the mother at such time as the court directs that proportion of expenses already incurred which the court deems just, and costs of the proceeding (T. 15, sec. 339). Bond is required of the father for performance of the court's orders (T. 15, sec. 340). Failure to supply bond and make required payments subjects the adjudged father to jail commitment (T. 15, sec. 341), and his refusal to make required payments will cause judgment to be entered and execution issued to enforce payment (T. 15, sec. 342).

If a mother of a child born out of wedlock does not charge a person with being the father within 30 days after the child's birth, she may be brought before the court and examined in writing, under oath, and

thereupon the court may issue a warrant causing the person charged by her with being the father to be brought before the court (T. 15, secs. 373, 374). On trial of the issue of paternity, the woman is a competent witness and may be compelled to testify unless rendered incompetent by conviction of a crime which by law disqualifies her from being a witness in any cause. Her testimony in any paternity proceeding may not be used against her in a criminal prosecution, except by perjury (T. 15, sec. 337). A woman may not be compelled to testify or answer questions as to her pregnancy until 30 days after delivery of the child (T. 15, sec. 338).

When the parents of a child born out of wedlock intermarry, the child is considered legitimate and capable of inheriting, if recognized by the father as his child (T. 14, sec. 554).

29. Inheritance—child born out of wedlock

The estate of a person born out of wedlock who dies intestate and without issue or spouse surviving, descends to the decedent's mother, and if the mother is dead, through the mother's line as if the decedent had been born in wedlock (T. 14, sec. 553).

POLITICAL RIGHTS

30. Domicile of a married woman

In the absence of an express statute the common law governs that the wife's domicile is determined by that of her husband.

For the purposes of relief, the domicile of a married woman is that of her husband, and such domicile continues even though such woman becomes a widow, is divorced, or legally separated from her husband. However, a woman may gain a separate domicile in the same manner as any other person after the death of her husband, by divorce, by legal separation, or if he has deserted her for a period of three years. When a widow, divorced woman, or unmarried mother gains a new domicile by marriage, or otherwise, the domicile of her minor child follows that of his mother (T. 33, sec. 741).

For the purpose of voting at a general election, a person's residence is determined by the residence of his family if within the State and supported by him. If he has no such family, his residence is in the town where he has actually spent his time the 90 days preceding the election (T. 17, sec. 64).

31. Public office—eligibility of women

A person may not be debarred on account of sex from holding any office or position of trust or responsibility under the State, including United States Senator and Representative to Congress, or any county, town, city, village, town school district, or incorporated fire, lighting, or school district office (T. 1, sec. 273).

32. Jury service—eligibility of women

Women are eligible for jury duty on the same terms and conditions as men (T. 12, secs. 1401, 1431, 1433, 1451, 1501, 1503).

