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The Legal Status of Women in the United States of America

REPORT FOR
WASHINGTON
as of December 1, 1963



WOMEN'S BUREAU BULLETIN 157-45 (Revised)

UNITED STATES DEPARTMENT OF LABOR
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The Legal Status of Women in the United States of America

INTRODUCTION

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

In addition, those far western and southwestern States which were 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 Washington the community-property system has been modified by a law providing that the common law of England, so far as it is not inconsistent with the Constitution and laws of the United States, or of the State of Washington, nor incompatible with the institutions and conditions of society in Washington, 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 Washington conditions, the common law applies.

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 woman in the marriage relation, since the legal status of the unmarried woman is practically identical with that of the unmarried man. To increase the usefulness of the material, more attention has been given in the current revision to differences in the legal treatment of men and women.

The United States Summary of the Legal Status of Women in the United States of America, Bulletin 157, last brought up to date as of January 1, 1953, is being revised. The revised Summary will be compiled from the reports for 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 Political and Civil Rights to review the civil and political rights of women. The Commission's report, submitted in October 1963, presents findings and makes recommendations for constructive action.

THE LEGAL STATUS OF WOMEN

SOURCES

Constitution of Washington
Revised Code of Washington, Annotated
Washington Decisions
Washington Reports
Washington Reports (Second Series)
Pacific Reporter
Pacific Reporter (Second Series)

EXPLANATORY NOTE

This pamphlet, Bulletin 157-46, presents a digest of the State constitutional and statutory provisions affecting the legal status of women in the State of Washington. It includes pertinent statutory changes enacted in that State up to December 1, 1963, and supersedes the previous report for Washington of January 1, 1957.

References to the State constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation "Const.," as "(Const., art. 3, sec. 25)," placed after the related subject matter.

References to code sections likewise are in parentheses, as "(sec. 42.04.020)."

Other abbreviations are:

Pacific Reporter—Pac.

Pacific Reporter, Second Series—Pac. (2d)

Washington Decisions—Wash. Dec.

Washington Reports—Wash.

Washington Reports, Second Series—Wash. (2d)

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 U.S. Summary. Cross references employ these numbers for brevity, as "(See number 6.)" which refers to the subject heading "Earnings of a married woman."

WASHINGTON

CIVIL RIGHTS

Contracts and Property

1. Age of majority

All persons are considered of full age for all purposes at the age of 21 years (sec. 26.28.010). Any female married to a person of full age is considered of full age (sec. 26.28.020).

For the purposes of guardianship, all persons are declared to be of full and legal age when they become 21 years old, and females under 21 years are considered of full and legal age when they have been legally married with the consent of a parent or guardian (sec. 11.92.010).

2. Contractual powers of a minor

A minor is liable for the reasonable price of necessities supplied him, if suitable and actually required (sec. 63.04.030).

A minor is bound also by his other contracts, unless he disaffirms them within a reasonable time after attaining majority and restores to the other party all money and property received by virtue of the contract and remaining within his control at any time after attaining majority (sec. 26.28.030). No contract can be disaffirmed when, on account of the minor's misrepresentations as to his majority, or from his having engaged in business as an adult, the other party had good reason to believe the minor capable of contracting (sec. 26.28.040).

If legally married to a person of full age, a female minor has the same rights of contract as if she were 21 (sec. 26.28.020).

Credit union shares may be issued and deposits received in the name of a minor. Payments made to either the minor, his parent, or guardian shall release the corporation from liability. A minor under 18 has no right to vote in credit union elections (sec. 31.12.140).

A minor, a married woman, or a person under disability may make bank deposits in his or her name and draw checks thereon (sec. 30.20.030).

A minor may redeem property sold for taxes at any time after sale and within 3 years after issuance of the tax deed, upon the payment

of the amount for which such property was sold, plus interest of 12 percent a year from the date of sale, and payment of the reasonable value of all improvements made on the property in good faith, less the value of the use thereof. This redemption may be made by the minor himself or by any person in his behalf (sec. 84.64.070).

Minors may not serve as executors or administrators (sec. 11.36.010).

3. Property exemptions from seizure for debt

A. RESPECTIVE RIGHTS OF MAN AND WOMAN

Exemptions of personal property are to persons, householders, families, and certain occupational and professional classes. The statute defines a householder as used in the exemption laws as (a) the husband and wife, or either; or (b) every person who has residing with him or her, and under his or her care and maintenance, any of certain specified classes of dependents (sec. 6.16.010).

A man living on premises with his illegitimate minor child cannot claim exemption as head of family or householder.¹

Twenty dollars of each week's wages or salary for personal services rendered by any person having a family dependent upon him for support are exempt from garnishment (sec. 7.32.280).

Property exempt from seizure for debt includes: (a) all wearing apparel of every person and family; (b) private libraries not over \$500 in value; all family pictures and keepsakes; (c) family beds and bedding; other household goods not over \$500 in value; (d) specified livestock, bees, domestic fowls, and feed for 6 months, or in lieu thereof, property not over \$250 in value; provisions and fuel for maintenance of the family for 6 months; (e) to a farmer: certain livestock and feed for 6 weeks; farming utensils not over \$500 in value; certain grain, vegetables, and potatoes in specified amounts for seeding purposes; (f) a mechanic's tools, and material not over \$500 in value; (g) a library not over \$500 in value for a physician, and not over \$1,000 in value for attorneys, clergymen, and other professional men; specified items used in such professions not over \$200 in value; (h) certain tools of specified value used in certain debtors' business; (i) a boat and rigging not over \$250 in value; and (j) firearms kept for the use of any person or family (sec. 6.16.020).

Also exempt from seizure for debt are U.S. pensions (sec. 6.16.030) and proceeds from fire insurance (sec. 6.16.050).

The proceeds of life insurance, other than an annuity, which inure to the separate use and benefit of any person are exempt, unless it is shown that the premiums on such insurance were paid in fraud of creditors (sec. 48.18.410).

¹ *Peerless Pacific Co. v. Burckhard* (1916), 90 Wash. 221; 155 Pac. 1037.

B. HOMESTEADS

The head of a family may have exempted to him a homestead not exceeding \$6,000 in value, consisting of the claimant's residence actually used as such, to be selected and claimed in lands and improvements (sec. 6.12.050). The designation "head of the family" as here used includes: (a) the husband or wife, when the claimant is a married person, or a widow or widower still residing upon the premises occupied by her or him as a home while married; and (b) every person who has residing on the premises with him or her, and under his or her care and maintenance, any of the specified classes of dependent persons (secs. 6.12.010, 6.12.290, 6.12.040).

The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is so conveyed or encumbered is executed and acknowledged by both husband and wife (sec. 6.12.110). A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged by both husband and wife if the claimant is married, or by the claimant if unmarried (sec. 6.12.120). If the claimant is married, the homestead may be selected from the community property, the separate property of the husband, or with the wife's consent from her separate property (sec. 6.12.020). If selection is made from the community property, on the death of one spouse the property vests in the survivor. If the homestead is selected from the separate property of one spouse, on the death of such spouse it descends to his or her heirs and devisees, subject to the power of the court to assign it for a limited period to the family of the decedent (sec. 6.12.080).

If a homestead has been selected in the manner provided by law, then regardless of whether the selection of such homestead results in vesting the complete or partial title in the survivor, upon petition of any interested person and upon being satisfied that the value is not in excess of \$6,000, the court may enter a decree setting off and awarding the homestead to the surviving spouse. If there is a minor child or incompetent heir of the decedent, the court shall appoint a guardian for the purposes of a suit to represent the interest of such minor child or incompetent heir in such homestead (sec. 11.52.020).

The proceeds of a voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead and also the new homestead acquired with such proceeds are exempt for 1 year (sec. 6.12.090).

If either the husband or wife shall become hopelessly insane, upon application of the competent husband or wife to the superior court of the county in which the homestead is located, and upon proof of such insanity of the other spouse, the court may make an order per-

mitting the husband or wife not insane to sell and convey or mortgage the homestead (sec. 6.12.300).

The homestead is subject to execution or forced sale in satisfaction of judgments obtained: (a) on debts secured by mechanics', laborers', materialmen's, or vendors' liens upon the premises; (b) on debts secured by mortgages on the premises executed and acknowledged by the husband and wife or by any unmarried claimant (sec. 6.12.100).

4. Ownership and control of property owned at marriage

The property and pecuniary rights of every married woman at the time of her marriage are not subject to the debts or contracts of her husband; and she may manage, lease, sell, convey, encumber, or will such property, to the same extent and in the same manner that her husband may deal with property belonging to him (sec. 26.16.020).

If either a husband or wife obtains possession or control of property belonging to the other before marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if he or she were unmarried (sec. 26.16.180).

5. Contractual powers of a married woman

Contracts may be made and liabilities incurred by a wife, and may be enforced by or against her to the same extent and in the same manner as if she were unmarried (sec. 26.16.170). This statute relates to a wife's separate property, giving her power with reference to her separate property but not with reference to the community property.²

Every married person has the same right and liberty to acquire, hold, enjoy, and dispose of every species of property, and to sue and be sued as if he or she were unmarried (sec. 26.16.150).

All laws which impose or recognize civil disabilities upon a wife that are not imposed or recognized as to the husband are abolished, and for any unjust usurpation of her natural or property rights she shall have the same right as a husband to appeal in her own individual name to the courts of law or equity for redress and protection. However, this cannot be construed to confer upon the wife any right to vote or hold office, except as otherwise provided by law (sec. 26.16.160).

A wife may transfer her shares of stock without her husband's signature and control them in other ways as if she were unmarried (sec. 23.01.220).

A husband or wife may appoint the other as his or her attorney in fact (that is, as agent for the other) to manage, control, or dispose of his or her property, with the same power of revocation or substitution

² *Hammond v. Jackson et al.* (1916), 89 Wash. 510; 154 Pac. 1106.

as could be exercised if they were unmarried persons (sec. 26.16.060).

A husband or wife may make and execute powers of attorney for the sale, conveyance, transfer, or encumbrance of his or her separate estate, both real and personal, without the other spouse joining in the execution thereof (sec. 26.16.070).

A husband or wife may appoint the other as attorney in fact, or they may jointly appoint a third person, to sell, convey, transfer, or encumber his or her community interest or estate, and execute any instrument by which the conveyed or transferred property is released from any claim as community property (sec. 26.16.090).

Either a husband or wife may appoint a third person as attorney in fact to join with the other in the conveyance of any interest, either in the separate real estate of either or in the community estate held by such husband or wife in any real property (sec. 26.16.090).

Every avenue of employment shall be open to women; and any business, vocation, profession, and calling followed and pursued by men may be followed and pursued by women. No person shall be disqualified from engaging in or pursuing any business, vocation, profession, calling, or employment or excluded from any place of work or employment on account of sex (sec. 49.12.200). (See number 31.)

Wage assignment

Assignment of future wages of a married man is invalid without his wife's written consent attached to the assignment (sec. 49.48.100).

6. Earnings of a married woman

A wife may receive the wages of her personal labor, maintain an action to recover them in her own name, and hold them in her own right; she may prosecute and defend all actions at law for the preservation and protection of her rights and property as if unmarried (sec. 26.16.130).

This statute does not declare status of property, but is merely enabling legislation permitting a wife individually to have the assistance of the courts in enforcing her rights as to property which is in fact her separate estate.³

The earnings and accumulation of a wife and of her minor children living with her, or in her custody, while she is living separate from her husband, are her separate property (sec. 26.16.140).

Only by agreement between a husband and wife can the personal earnings of either become the separate property of the one through whose efforts they accrue. Under such an agreement, property purchased with the separate earnings becomes the separate property of

³ *Kotmorgan v. Schaller* (1957), 51 Wash. (2d) 94; 316 Pac. (2d) 111.

the contributing spouse; however, such agreement does not affect existing creditors.⁴

7. Liability for family support

The expense of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and the spouses may be sued jointly or separately for such debts (sec. 26.16.205).

The separate estate of an insane wife is liable for necessary and actual support of her aged and indigent husband, even though the spouses are not living together, where the marital relationship had not been severed and there was no intentional separation; and accrued debts for such husband are family expenses.⁵

A wife who voluntarily absents herself from the household with the intention of disavowing her marital obligations forfeits her right to family support provided by the statute.⁶

A father is liable for the support of his children, whether or not he is divorced, but the obligation of the father and mother is joint and several where custody of the children is entrusted to the mother and the decree of divorce is silent as to support.⁷

With respect to minor children, the duty of support rests on both parents, and in each case following a divorce it is recognized that parental responsibilities to minor children are equal.⁸

Any person is guilty of the crime of family desertion or nonsupport who (a) deserts, with intent to abandon, a child dependent upon him or her for care, education, or support; (b) willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, or medical attendance for his or her child; (c) willfully abandons and leaves his wife in a destitute condition when he has sufficient ability to provide or earn the means for her support; or (d) refuses or neglects to provide his wife with necessary food, clothing, shelter, or medical attendance, unless he is justified by her misconduct in abandoning her. A person convicted of such crime is subject to imprisonment for a stated term (sec. 26.20.030).

A wife's refusal or neglect to make provision for her husband's support does not make her liable for such failure, although the husband would be liable for his wife's support if he were financially able.⁹

⁴ *Fisher v. Marsh et al.* (1912), 69 Wash. 570; 125 Pac. 951.

⁵ *In re DeNisson's Guardianship* (1938), 197 Wash. 265; 84 Pac. (2d) 1024.

⁶ *Yates v. Dohring* (1946), 24 Wash. (2d) 877; 168 Pac. (2d) 404.

⁷ *State v. Rutledge* (1922), 122 Wash. 281; 210 Pac. 669.

⁸ *Scott v. Holcomb* (1956), 49 Wash. (2d) 387; 301 Pac. (2d) 1068.

⁹ *Christiansen v. Department of Social Security* (1942), 15 Wash. (2d) 465; 131 Pac. (2d) 189.

If any payment of public assistance is made to or for the benefit of any dependent child by the State department of public assistance because of the failure of the responsible parent or parents to provide adequate support without a lawful excuse, such parent or parents shall be liable to the extent of all the public assistance so paid. Provision is made for the compromise of any claim where the collection of the full claim would result in insolvency of the parent or impose undue hardship upon him (sec. 74.20, Ch. 322, as amended by Ch. 206, S.B. No. 275, Laws 1963). Any person who fails to cooperate with the public assistance officials in such circumstances is guilty of a misdemeanor (sec. 74.20.060).

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

A married woman may engage in any business in her own name without court order, if she uses her separate property (secs. 4.08.030, 26.16.130). However, where personal services belonging to the community are combined in the business, the income and insurance may be considered community property in the absence of contemporaneous segregation of income between community and separate estate or agreement relating thereto.¹⁰

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

The property and pecuniary rights of every married woman held at the time of her marriage or acquired afterward by gift, devise, or inheritance, with the rents, issues, and profits thereof, are not subject to the debts or contracts of her husband; and she may manage, lease, sell, convey, encumber, or will such property, to the same extent and in the same manner that her husband may deal with property belonging to him (sec. 26.16.020).

Property and pecuniary rights owned by the husband before marriage and property acquired by him afterward by gift, bequest, devise, or descent, with the rents and profits thereof, are not subject to the debts or contracts of his wife; and he may manage, lease, sell, convey, encumber, or will such property without the wife joining in, as fully and to the same extent as if he were unmarried (sec. 26.16.010).

If either a husband or wife obtains possession or control of property belonging to the other either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if he or she were unmarried (sec. 26.16.180).

The wife's separate property and her personal earnings are specifically exempt from seizure for any liability against the husband

¹⁰ *Hamlin v. Merlino* (1954), 44 Wash. (2d) 851; 272 Pac. (2d) 125.

during her life or that of any minor heirs of her body; her separate property is liable for debts owed by her at the time of her marriage (sec. 6.16.070). When a wife's personal earnings are community property, they are not exempt from execution on a judgment against the community.¹¹

10. Property acquired by joint efforts of husband and wife

The community-property system exists in this State. Excluding any property received through gift, will, or inheritance, and its rents, issues, and profits, all property acquired by husband and wife, or either of them, after marriage is owned in community by the spouses (secs. 26.16.010, 26.16.020, 26.16.030).

Property acquired by a man and woman who are not married but are living together as husband and wife is not community property and, in the absence of some trust relation, must be regarded as belonging to the one in whose name the legal title stands.¹²

The husband has the management and control of community personal property and may dispose of it as if it were his separate personal property, except that he may not dispose of more than one-half of it in his will (sec. 26.16.030).

The husband has the management and control of the community real property. He cannot sell, convey, or encumber the community real estate, unless the wife joins with him in executing the deed or other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or instrument must be acknowledged by both spouses. Such real estate is subject to the liens of mechanics and materialmen and judgments for community debts (sec. 26.16.040).

A husband or wife may give, grant, sell, or convey directly to the other his or her community rights, title, interest, or estate in all or any portion of their community real property. Every such deed shall operate to divest the real estate from any claim or demand as community property, and shall vest the same in the grantee as separate property. The grantor in all such deeds or the party releasing the community interest or estate shall sign, seal, execute, and acknowledge the deed as a single person without the joinder of the married party named as grantee, provided that the conveyance shall not affect any existing equity in favor of the grantor's creditors at the time of the transfer, gift, or conveyance (sec. 26.16.050).

A husband and wife may agree jointly concerning the status or disposition of the whole or any portion of the community property then owned by them or afterward to be acquired, the agreement to

¹¹ *Fisher v. Marsh et al.* (1912), 69 Wash. 570; 125 Pac. 951.

¹² *Engstrom v. Peterson* (1919), 107 Wash. 523; 182 Pac. 623.

take effect at the death of either. Such an agreement may be made at any time by the husband and wife by the execution of an instrument in writing under seal, executed as required for deeds, and may be altered or amended in like manner, provided rights of creditors are protected (sec. 26.16.120).

A husband, as the statutory agent of the community and manager of community personal property, may enter into partnership without the consent of his wife.¹³

A wife's interest in community property is not a contingent or expected interest. She has a present, existing, undivided one-half interest in and to community property during the lifetime of her husband.¹⁴ The interest of the respective spouses in community property is separate and distinct from the separate estate of each.¹⁵ The character of separate or community property is determined by considering the sources from which the property was acquired; the intention of the parties and acts expressive of their intention; the extent, effect, and result of commingling of property; and the ease or difficulty of tracing, identifying, and segregating property.¹⁶

The separate or community character of property may be changed by deed, by agreement between the parties, by operation of law, or by some form of estoppel (that is, some act of the parties or their failure to act).¹⁷

When a wife's personal earnings are community property, they are not exempt from execution on a judgment against the community.¹⁸

Separate property of a member of the marital community and income therefrom remain separate property during the marriage, but when separate funds are commingled with community property so that it is impossible to distinguish between the two, all such funds become community property.¹⁹

A wife is not personally liable for a community contract made by her husband.²⁰ A separate judgment against the husband does not become a lien against the community property of husband and wife.²¹

When spouses indicate by their conduct that they no longer have the will to continue the marital union, neither may reap the benefits of community property laws to which they would be entitled had

¹³ *Fields et al. v. Andrus* (1944), 20 Wash. (2d) 452; 148 Pac. (2d) 313.

¹⁴ *In re Coffey's Estate* (1938), 195 Wash. 379; 81 Pac. (2d) 283.

¹⁵ *Stafford v. Stafford* (1941), 10 Wash. (2d) 649; 117 Pac. (2d) 753.

¹⁶ *State ex rel. Van Moss v. Sailors, Mayor, et al.* (1934), 180 Wash. 269; 39 Pac. (2d) 397.

¹⁷ *In re Madsen's Estate* (1956), 48 Wash. (2d) 675; 296 Pac. (2d) 518.

¹⁸ *Fisher v. Marsh et al.* (1912), 69 Wash. 570; 125 Pac. 951.

¹⁹ *In re Allen's Estate* (1959), 54 Wash. (2d) 616; 343 Pac. (2d) 867.

²⁰ *Cunningham v. Zane* (1926), 139 Wash. 176; 245 Pac. 913.

²¹ *Stafford v. Stafford* (1941), 10 Wash. (2d) 649; 117 Pac. (2d) 753.

their community relationship remained undisturbed and, conversely, the innocent spouse cannot be penalized by torts of the offending spouse.²²

Joint tenancy

A husband and wife may create a joint tenancy or a form of co-ownership in community or other property owned by them, to themselves, or to themselves and others, or to one of them and to another or others, or when granted or devised to executors or trustees as a joint tenancy, provided such transfer shall not take away from the rights of creditors. Such joint tenancy has the rights of survivorship and severability as at common law, and is created only by a written agreement, transfer, deed, will, or other instrument of conveyance which expressly states that it is a joint tenancy (sec. 64.28.010).

Every interest created in favor of two or more persons in their own right is an interest in common, unless: (a) acquired by them in partnership, for partnership purposes; (b) declared in its creation to be a joint tenancy, as provided in sec. 64.28.010; (c) acquired as community property; or (d) acquired by executors or trustees (sec. 64.28.020).

These provisions shall not restrict the creation of a joint tenancy in a bank deposit or in other choses in action as heretofore or hereafter provided by law, nor restrict the power of husband and wife to make agreements as provided by statute (sec. 64.28.030).

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

Husband and wife may join in all causes of action arising from injuries to the person or character of either or both, or from injuries to the property of either or both of them. If a husband and wife are sued together, the wife may defend for her own right, and if the husband neglects to defend, she may defend for his right also. She may defend in all cases in which she is interested, whether or not she is sued with her husband (sec. 4.08.040).

In an action by a married woman for damages for personal injuries, the husband is a necessary party to the suit if the right of action arises during the existence of the community between the spouses.²³

A married woman may bring an action alone for alienation of her husband's affections regardless of whether any damages recovered would become community or separate property.²⁴

²² *Mackenzie et al. v. Sellner* (1961), 158 Wash. Dec. 90; 361 Pac. (2d) 165.

²³ *Schneider v. Biberger* (1913), 76 Wash. 504; 136 Pac. 701.

²⁴ *Stevens v. Depue* (1929), 151 Wash. 641; 276 Pac. 882.

A married woman living separately and apart from her husband may sue in her own name for a personal injury negligently inflicted on her.²⁵

An unmarried female over 21 years of age may maintain an action for her own seduction and recover damages, but the prosecution of an action to judgment by her father, mother, or guardian is a bar to an action by her (sec. 4.24.030).

If a married woman is a party to a suit, her husband must be joined with her, except that she may sue or be sued alone when: (a) the action concerns her separate property, or her right of claim to the homestead property; (b) the action is between herself and her husband; or (c) she is living separate and apart from her husband (sec. 4.08.030).

It is no defense for a married woman charged with the commission of a crime that the alleged crime committed by her was committed in the presence of her husband (sec. 9.01.113).

Damages may be recovered from a married woman for all injuries committed by her, and her husband is not responsible therefor, except where he would be jointly responsible with her if the marriage did not exist (sec. 26.16.190).

12. Damages for injury by spouse to person or property

Neither husband nor wife has the right to sue the other for a tort committed by one upon the other during the marriage.²⁶

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

Neither spouse may testify for or against the other without the other's consent; nor can either be examined as to private communications between them during the marriage without the consent of the other. This exception does not apply, however, to a civil action or proceeding by one against the other, nor to a criminal proceeding for a crime committed by one against the other (sec. 5.60.060).

Husband and wife are competent witnesses for or against each other with respect to privileged communications between them in prosecutions under the abandonment or nonsupport statutes, and they may testify to any relevant matter, including marriage and parentage (Ch. 10, Laws 1963).

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 com-

²⁵ *Horton v. City of Seattle* (1909), 53 Wash. 316; 101 Pac. 1091.

²⁶ *Schultz v. Christopher* (1911), 65 Wash. 496; 118 Pac. 629.

elled to testify to any relevant matter, including marriage and parentage (sec. 26.21.170).

14. Right to dispose of separate property by will

Every person of sound mind who has attained 21 years of age, or who has legally married and has attained the age of 18 years, or who has attained 18 years and is actively engaged with the Armed Forces of the United States or employed on a vessel of the U.S. merchant marine may will all of his or her real and personal estate (sec. 11.12.010). His or her estate includes all of the separate estate owned by the testator, together with one-half the community estate existing at the date of death (secs. 11.04.050, 26.16.010, 26.16.020).

If after making a will the testator marries and the spouse is living at the time of the testator's death, such will is revoked unless provision has been made for the survivor by marriage settlement or unless such survivor is provided for in the will or mentioned therein so as to show an intention not to make such provision. A divorce subsequent to the making of a will revokes the will as to the divorced spouse (sec. 11.12.050).

15. Inheritance rights in deceased spouse's estate

The estates by dower and curtesy do not exist (sec. 11.04.060).

Disposition of separate property

Real property

The separate real property of an owner-spouse descends, upon the owner's death intestate and after payment of debts, to the surviving spouse as follows:

(a) One-half, if only one child or the lawful issue of one child are living.

(b) One-third, if more than one child, or one child and the lawful issue of one or more deceased children, are living.

(c) One-half, if no issue survive and the decedent's father and mother, or either, are living.

(d) One-half, if no issue nor parent survive but there are brothers and sisters of the decedent, or any children of deceased brothers or sisters.

(e) All, if no issue nor father, mother, sister, brother, nephew, or niece of the decedent survive (sec. 11.04.020).

Personal property

After allowances for family maintenance and for payment of the debts and charges of settling the estate, the residue, if any, of the personal property not disposed of by will is distributed as follows: If

the intestate left a spouse and issue, the spouse is entitled to one-half; if no issue survive, the living spouse takes the whole residue (sec. 11.04.030).

Disposition of community property

All property acquired after marriage by either husband or wife or both, other than separate property, is community property (sec. 26.16.030).

Upon the death of either husband or wife, one-half of the community property, subject to the community debts, goes to the surviving spouse; the other half, subject also to the community debts, is distributed according to the testamentary disposition of the deceased spouse. If no will was made, it descends equally to the legitimate issue of either or both. If no issue nor their descendants survive, then this share also goes to the surviving spouse, subject to community debts, family allowance, and charges and expenses of administration (sec. 11.04.050).

A surviving spouse is entitled to administer the community property notwithstanding any provisions of the will to the contrary, if the court finds the spouse to be otherwise qualified. Failure to make application for appointment within 40 days following the decedent's death is considered a waiver of the right of administration (sec. 11.28.030).

16. Provisions for survivors during administration of estate

If a widow accepts the provisions of her husband's will, or if he has died intestate, she is allowed all articles of her apparel or ornament, according to the degree and estate of her husband, together with provisions and other necessaries for herself and the family under her care (sec. 11.04.030, 11.52.024, 11.52.040).

If no homestead has been claimed, a surviving spouse is entitled to have awarded to him or her property of the estate, either community or separate, of not more than \$6,000 in value in lieu of the homestead (sec. 11.52.010); but the award in lieu of homestead shall lie in the discretion of the court if it appears to the court that either (a) there are minor or incompetent children of the deceased by a former marriage or by adoption prior to the marriage, or (b) the petitioning spouse abandoned his or her minor children or wrongfully failed to provide for them, or (c) the surviving spouse is entitled to receive life insurance on the deceased spouse in the sum of \$5,000 or more (sec. 11.52.022).

If the homestead selected has a net value of less than \$6,000, the surviving spouse is entitled to have additional property of the estate awarded so that, taken with the homestead, the entire statutory allowance of \$6,000 is made (sec. 11.52.022).

In addition, the court may authorize a reasonable cash allowance for family maintenance, according to their circumstances, during administration (sec. 11.52.040). When no administration has been granted, not over \$300 of wages payable to a deceased person may be paid to the surviving spouse on request (sec. 49.48.120).

If there is no surviving spouse, the court shall award and set aside to the minor children, if any, and in such proportion as it considers proper, property of the estate not exceeding \$6,000 in value, for care and support until the minors become of age (sec. 11.52.030).

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

The rights of a surviving spouse in the estate of a deceased husband or wife are protected by the community-property provisions. (See numbers 10 and 15.)

There is no statute giving a surviving spouse any right to elect to take against the will of the deceased spouse. However, where one spouse attempts by will to dispose of the other spouse's share of the community property, the latter has the right to elect whether to take under the will, or under his or her own right as owner of one-half of the community property.²⁷

Marriage and Divorce

18. Age of consent to marriage

If otherwise capable, males of the age of 21 years and females of the age of 18 years may marry without parental consent. If the consent in writing of the father, mother, or legal guardian is obtained, a license to marry may be granted in cases where the male or female has attained the age of 17 years. Every marriage entered into in which a party shall not have attained the age of 17 years is void unless approved by a superior court judge of the county in which the female resides on a showing of necessity (secs. 26.04.010, 26.04.210).

When either party to a marriage is incapable of consenting thereto for want of legal age, such marriage is voidable (sec. 26.04.130). Prior to the new provision that any unapproved marriage entered into by one not 17 years of age is void, the court held that the legal age for marriage in Washington was not established by statute. Under this decision, the age of consent to marriage is governed by the common-law rule of 14 years for males and 12 years for females.²⁸

²⁷ *Collins et al. v. Collins et al.* (1929), 152 Wash. 499; 278 Pac. 186.

²⁸ *Tisdale v. Tisdale* (1922), 121 Wash. 138, 141; 209 Pac. 8.

(NOTE.—It is not known whether the new provisions establish age 17 as the legal age of consent to marriage for both males and females, or whether the common-law rule still prevails.)

19. Common-law marriage

Common-law marriage may not be consummated or contracted in this State.^{29 30}

A common-law marriage is valid in this State if contracted and consummated in another State where common-law marriages are lawful.³¹

20. Premarital requirements

A waiting period of 3 days must elapse between the application for a license to marry and the issuance of the license. A marriage license shall become void if the marriage is not solemnized within 30 days of the date of the issuance of such license (sec. 26.04.180).

Each applicant must file an affidavit with the license officer of the county showing that he or she is not feeble-minded, insane, an imbecile, a common drunkard, afflicted with pulmonary tuberculosis in its advanced stages, nor, in the case of a male applicant, afflicted with any contagious venereal disease. Also, the affidavit of some disinterested credible person showing that neither applicant is an habitual criminal, and that the female is over the age of 18 years and the male is over the age of 21 years must be filed (sec. 26.04.210).

Marriages are prohibited between parties within specified degrees of kinship, or when either party has a husband or wife living at the time of marriage (sec. 26.04.020).

No woman under 45 years of age, or man of any age unless he marries a woman over 45 years of age, who is a common drunkard, habitual criminal, imbecile, feeble-minded, idiot, insane, or afflicted with hereditary insanity, advanced pulmonary tuberculosis, or a contagious venereal disease shall be allowed to marry in this State (sec. 26.04.030).

21. Interstate cooperation in marriage-law enforcement

The general rule is followed that a marriage will be held valid if it is valid where contracted. However, this does not apply to incestuous and polygamous marriages prohibited by natural law, nor to marriages prohibited by positive law.³² (See also number 19.)

A divorce obtained in another jurisdiction shall be of no force or effect in this State if both parties to the marriage were domiciled

²⁹ *In re McLaughlin's Estate* (1892), 4 Wash. 570; 30 Pac. 651 (Hist.).

³⁰ *Meton v. State Industrial Insurance Department* (1919), 104 Wash. 652; 177 Pac. 696.

³¹ *Nelson v. Carlson* (1908), 48 Wash. 651, 654; 94 Pac. 477.

³² *State v. Fenn* (1907), 47 Wash. 561, 563; 92 Pac. 417.

in this State at the time the divorce proceeding was commenced (sec. 26.08.200).

22. Annulment

Consent obtained through force or fraud, or mental incapacity to contract through nonage or want of sufficient understanding, renders a marriage voidable at the suit of the party under disability or upon whom the force or fraud was imposed (sec. 26.04.130).

When there is any doubt as to the facts rendering a marriage void, either party may apply for, and on proof obtain, a decree of nullity of marriage (sec. 26.08.050).

Children of void marriages are legitimate. Pending action or at the time of decreeing a marriage void, the court may make orders for the custody, care, maintenance, education, and support of such children (sec. 26.08.060).

23. Divorce

Divorce may be granted on application of the injured party for the following reasons: (a) when consent to marriage was obtained by force or fraud, and there has been no voluntary cohabitation after discovery of the fraud; (b) when a party was incapable of consenting to marriage for want of legal age or sufficient understanding; (c) adultery, if unforgiven and application is made within 1 year after it has come to the knowledge of the party applying for divorce; (d) impotency; (e) abandonment for 1 year; (f) cruel treatment, or personal indignities rendering life burdensome; (g) habitual drunkenness; (h) imprisonment, if the complaint is filed during the prison term. The wife may secure a divorce if the husband fails to make suitable provision for the family. A divorce may be granted to either or both parties when they have lived separate and apart for 5 consecutive years. Divorce may be granted also for chronic mania or dementia, established by competent medical testimony to have existed for 2 years prior to filing of the complaint (sec. 26.08.020).

Interlocutory order

A period of 6 months must elapse between the court's interlocutory order declaring the party in whose favor the court decides entitled to a decree of divorce, and the actual decree granting the divorce. Until such final decree is granted, the marriage is not dissolved (sec. 26.08.230).

Alimony and maintenance

Temporary alimony

Pending an action for divorce or annulment, the court may make, and by attachment enforce, such orders for the disposition of the per-

sons, property, and children of the parties as the court may deem right and proper (sec. 26.08.090).

Alimony is an allowance made to a woman for her support out of the estate or income of her husband, or of him who was her husband, upon her legal separation or divorce from him, or during suit therefor.³³

During pendency of an action for divorce or annulment, the court can make proper provisions for the support of the children.³⁴

A wife need not pay her husband for his temporary maintenance during her suit for divorce.³⁵

Permanent alimony

On granting a divorce or annulment, the court may make provision for costs, and for the custody, support, and education of the minor children of the marriage. The decree as to alimony, care, custody, support, and education of the children may be modified, altered, and revised by the court as circumstances require (sec. 26.08.110). Under this section, the court has the power to award permanent alimony for the support of the spouse in case of absolute divorce, though there are no minor or dependent children.³⁶ To a considerable extent the matter of alimony lies within the discretion of the court.³⁷ Fault of a wife does not necessarily deprive her of alimony on divorce.³⁸

Alimony is not a matter of right, and when a wife has ability to earn a living, it is not the policy of this State to give her a perpetual lien on her divorced husband's future income.³⁹

Subsequent remarriage of a divorced husband does not relieve him from obligation to pay alimony for support of his divorced wife and their children, even though additional burdens occasioned by his remarriage may seriously affect his ability to comply with the terms of the decree, or may tend to exhaust his earnings. Nor does remarriage of a divorced wife, of itself, terminate the obligation of her former husband to pay alimony as prescribed in the divorce decree, although ordinarily it constitutes strong reason for exercise of the court's discretion if it is supported by some recognized ground for equitable intervention.⁴⁰

³³ *Davis v. Davis* (1942), 15 Wash. (2d) 297; 130 Pac. (2d) 355.

³⁴ *Brown v. Brown* (1950), 35 Wash. (2d) 686; 214 Pac. (2d) 706.

³⁵ *Christiansen v. Department of Social Security* (1942), 15 Wash. (2d) 465; 131 Pac. (2d) 189.

³⁶ *Loomis v. Loomis* (1955), 47 Wash. (2d) 468; 288 Pac. (2d) 235.

³⁷ *Murray v. Murray* (1946), 26 Wash. (2d) 370; 174 Pac. (2d) 296.

³⁸ *Patrick v. Patrick* (1953), 43 Wash. (2d) 139; 260 Pac. (2d) 878.

³⁹ *Morgan v. Morgan* (1962), 159 Wash. Dec. 654; 369 Pac. (2d) 516.

⁴⁰ *Fisch v. Marler* (1939), 1 Wash. (2d) 698; 97 Pac. (2d) 147.

Disposition of property

On granting a divorce or annulment, the court may make such disposition of community or separate property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, to the condition in which they will be left by divorce or annulment, to the party through whom the property was acquired, and to the burdens imposed on it for the benefit of children. A decree as to the dissolution of the marital relation and to the custody, management, and division of property shall be final and conclusive upon both parties, subject only to the right of appeal (sec. 26.08.110).

Community property undisposed of in a decree of divorce becomes the property of the former spouses as tenants in common, that is, they hold an estate in land under different titles with unity of possession.⁴¹

Change of name

In all actions for divorce or annulment the court, for just and reasonable cause, may change the name of the woman, who shall thereafter be known and called by such name as the court may order (sec. 26.08.130).

Restraining orders

The court has power at all times to grant such restraining orders as may be necessary to protect the parties and secure justice in divorce or annulment proceedings (sec. 26.08.110).⁴²

Separate maintenance

If the court determines that no divorce or annulment may be granted, it may enter a decree of separate maintenance in favor of the party entitled thereto; may make all necessary orders required for support, attorney's fees, costs, and for the care, custody, support, and education of minor children; and may set property aside for the benefit of the wife and children, and impose a lien on community property to compel obedience to the decree. Such decree may be modified, altered, or revised by the court on showing that conditions have changed or no longer exist, and it is appealable (sec. 26.08.120).

To be entitled to separate maintenance, the wife must show that the parties are separated because of her husband's conduct and in addition that he refuses to support her.⁴³

Court costs

In any action for divorce or annulment the court may enter an order granting the wife attorney's fees and suit expenses sufficient to insure

⁴¹ *Smith v. McLaren* (1961), 158 Wash. Dec. 902; 365 Pac. (2d) 331.

⁴² *Troubridge v. Troubridge* (1946), 26 Wash. (2d) 181; 173 Pac. (2d) 173.

⁴³ *Hoffman v. Hoffman* (1961), 157 Wash. Dec. 589; 359 Pac. (2d) 153.

her a fair and impartial trial. Upon the entry of any judgment or by subsequent action relating thereto in an action for divorce, annulment, or separate maintenance, the court may award attorney's fees and costs to either party (secs. 26.08.090, 26.08.190).

Residence

Any person who has been a resident of the State for 1 year may file his or her complaint for a divorce in the superior court of the county where he or she resides (sec. 26.08.030). The term residence as used in this statute is construed to mean domicile.⁴⁴

Parents and Children

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

The rights and responsibilities of the parents in the absence of misconduct are equal, and the mother shares equally with the father in the earnings of the children (sec. 26.16.125). Parents are entitled to the earnings of a minor child, unless he has been emancipated (released from the disabilities of minority) or a parent voluntarily relinquishes the right to his child's earnings.⁴⁵

When a contract for personal services of a minor has been made with him alone, and those services have been performed, payment made to such minor in accordance with the terms of the contract is full satisfaction thereof, and the parents or guardian cannot recover the value of the services (sec. 26.28.050).

25. Guardianship of a minor child

Parents have equal rights with respect to custody and control of their minor children. In the event of the father's death, the mother comes into as full and complete control of the children and their estate as the father does in case of the mother's death (sec. 26.16.125).

The statute makes no distinction between the father and the mother in prescribing the qualifications for the guardian of their minor child (secs. 11.88.010, 11.88.020).

A parent is primarily entitled to care of his child, provided he is a suitable person to be charged therewith.⁴⁶

The primary right of a parent to custody of his child must yield to a consideration of the welfare of the child.⁴⁷

The obligation to support, protect, and educate a child rests equally upon both parents in the absence of a divorce decree providing that the

⁴⁴ *Thomas v. Thomas* (1961), 158 Wash. Dec. 375 ; 363 Pac. (2d) 107.

⁴⁵ *Hines v. Cheshire* (1950), 36 Wash. (2d) 467 ; 219 Pac. (2d) 100.

⁴⁶ *Ex parte Ward et ux.* (1952), 39 Wash. (2d) 894 ; 239 Pac. (2d) 560.

⁴⁷ *Ex parte Day* (1937), 189 Wash. 368 ; 65 Pac. (2d) 1049.

husband pay a specified amount to the wife for support of their child.⁴⁸

A father, or in case of his death or desertion of the family, a mother, may maintain an action for the seduction of a daughter, even though the daughter is not living with or in the service of the plaintiff at the time of seduction or afterward and there is no loss of service (sec. 4.24.020).

An unmarried female over 21 years of age may maintain an action for her own seduction and recover damages, but the prosecution of an action to judgment by her father, mother, or guardian is a bar to an action by her (sec. 4.24.030).

The parents of a minor child under 18 years of age and living with such parents are liable for the willful or malicious destruction of property by such child in the amount not exceeding \$300. This shall in no way limit the recovery against the parents for their own common-law negligence (sec. 4.24.190).

26. Appointment of testamentary guardian for a minor child

When either parent of any minor child is dead, the surviving parent, by last will in writing, may appoint a guardian or guardians for such minor child (sec. 11.88.080).

A mother, by testamentary disposition cannot deprive a father of his natural legal right to custody and control of their children, even though she was awarded their custody in divorce proceedings, since on her death the right of the father is renewed, unless he is completely unfit to have custody.⁴⁹

27. Inheritance—child

Inheritance from a child

The separate property of a deceased child not devised by will descends to his parents as follows:

Real property

If decedent leaves no issue, but a husband or wife survives, one-half in equal shares to the father and mother, or to the surviving parent, if only one is living. If no issue nor husband or wife survive, all to the father and mother, or to the survivor of them (sec. 11.04.020).

Personal property

If no issue nor spouse survive, all to the father and mother, or to the survivor of them (sec. 11.04.030).

Inheritance from a parent

See number 15.

⁴⁸ *Sanges v. Sanges* (1953), 44 Wash. (2d) 35; 265 Pac. (2d) 278.

⁴⁹ *In re Neff et al.* (1899), 20 Wash. 652; 56 Pac. 383.

28. Child born out of wedlock

When the paternity of a child born out of wedlock has been determined by legal proceedings, the court shall order the adjudged father to pay in quarterly installments a sum specified by the court until the child reaches the age of 16 years for the care, education, and support of such child; and the father shall be charged with the mother's confinement expense and costs of the suit. Bond is required to secure such payments and costs (sec. 26.24.090).

If the mother of a child born out of wedlock is a suitable person, she shall be awarded custody and control of the child in paternity proceedings. If the mother is not suitable, the court may give the care and custody to any reputable person, including the accused father. The order and judgment of the court may provide that the surname of the father shall be the lawful surname of the child (sec. 26.24.190).

Children born out of wedlock are legitimated by the subsequent intermarriage of their parents with each other (sec. 26.04.060).

If he is fit, the father of an illegitimate child has the right to the custody and control of such child if the mother has died or abandoned it.⁵⁰

29. Inheritance—child born out of wedlock

The estate of an illegitimate child who dies intestate without lawful issue descends to his mother, or if she is dead, to her heirs at law (sec. 11.04.090).

Every child born out of wedlock is considered an heir of the person who, in a written document signed in the presence of a competent witness, acknowledges himself to be the father of such child. In all cases such child is an heir of his mother and shall inherit her estate in the same manner as if born in lawful wedlock. Such child is not allowed to claim as representing his father's or mother's kindred, either lineal or collateral, unless before his death his parents have intermarried and his father, after such marriage, has acknowledged him and adopted him into his family (sec. 11.04.080).

POLITICAL RIGHTS**30. Domicile of a married woman**

Generally speaking, it is the privilege of the husband to fix the family domicile. His duty to maintain and support the family and his right to establish the domicile are correlative. But if the husband

⁵⁰ *Wade v. State* (1951), 39 Wash. (2d) 744; 238 Pac. (2d) 914.

has deserted the wife, or if there has been a mutual abandonment of the marriage relation so that every purpose of marriage is destroyed, the reason for the rule that the husband can fix the family domicile ceases, and the rule ceases. The wife is then at liberty to establish a separate domicile for all purposes including administration of her estate.⁵¹

31. Public office—eligibility of women

Women are eligible for election to public office (Const., art. 3, sec. 25; also Amend. 5); (sec. 42.04.020).

32. Jury service—eligibility of women

Women are eligible for jury service, but they cannot be compelled to serve as jurors. They may claim exemption by giving proper notice to the sheriff before the date for appearance (sec. 2.36.060). If a woman files her claim for exemption with the tax assessor when the jury lists are in preparation, she will not be included on the list (sec. 2.36.080).

⁵¹ *Buchholz v. Buchholz* (1911), 63 Wash. 213; 115 Pac. 88.



POLITICAL RIGHTS

30. Domicile of a married woman

Generally speaking, the domicile of a married woman is the domicile of her husband. This rule is subject to the following exceptions: (1) If the husband is absent from the state for a long period of time, the wife may acquire a separate domicile. (2) If the husband is insane, the wife may acquire a separate domicile. (3) If the husband is a minor, the wife may acquire a separate domicile.

THE LEGAL STATUS OF WOMEN