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See pp 6 and 7

UNITED STATES DEPARTMENT OF LABOR

FRANCES PERKINS, Secretary

WOMEN'S BUREAU
MARY ANDERSON, Director



U.S. Women's Bureau.

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

January 1, 1938

REPORT FOR
CALIFORNIA

*An advance printing of individual State material, constituting
part of a compilation now being prepared to show the present
legal status of women in the United States of America*



BULLETIN OF THE WOMEN'S BUREAU, No. 157-4

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1939

For sale by the Superintendent of Documents, Washington, D. C. - - - - - Price 5 cents

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FAWCETT COLLECTION

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THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

In response to urgent requests for such information, a report as to the legal status of women in the United States of America is being prepared by the Women's Bureau, the official agency in this country having to do with the conservation and advancement of the welfare of women.

The report is based on an original search of, and compilation from, the Constitutions, official statutes, and related decisions of courts of last resort of the Federal Government and the several States, as well as pertinent law texts of recognized authority.

This pamphlet presents a digest of the material compiled for a single State, which later will be incorporated in the complete report.

A copy of a preliminary summary of the incomplete report for the United States was sent by the Women's Bureau, at the request of the Secretary of Labor, to the Secretary of State for transmission to the Secretary-General of the League of Nations. It was printed as an official League of Nations document, September 29, 1937 (League of Nations, Official No. A. 14 (e) 1937. V). A mimeographed copy of this preliminary summary can be obtained from the Women's Bureau.

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LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR,
WOMEN'S BUREAU,
Washington, June 28, 1939.

MADAM: I have the honor to transmit to you a report on the legal status of women in California. This is a section of a full report, now in progress, to include all the States, a type of information for which the Women's Bureau has had repeated requests. A preliminary report, including complete material for some States, partial information for others, has been sent to Geneva by the Secretary of State in response to a request from the Secretary-General of the League of Nations.

The section for each State represents a thorough search of statutes and decisions of appellate courts construing statutes or establishing judicial policy.

These studies are the work of Sara L. Buchanan, of the Women's Bureau research staff and member of the bar of Mississippi and the District of Columbia, under the general direction of Mary Elizabeth Pidgeon, chief of the research division. Miss Buchanan was assisted by Mary Loretta Sullivan.

After completion of the report for each State, the material was sent for approval or suggestions by competent persons within the State. Respectfully submitted.

MARY ANDERSON, *Director.*

Hon. FRANCES PERKINS,
Secretary of Labor.

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THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

INTRODUCTION

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

The common-law rules of property sprang from various causes, notably tradition, military or economic exigency, natural male dominance, and the social status of women. Shifts in these have effected an almost complete overturn in laws governing the property owned by a woman prior to her marriage and that coming into her individual ownership after her marriage, by gift, inheritance, will, or accumulation from her premarital possessions.

In general, it has been the rule that where specific statutes abrogating them have not been enacted, common-law principles apply. In the century just past, much ground has been covered in superseding by specific laws the old common-law injustices to women. The largest remaining area to be reformed to the present-day trend lies in the matter of ownership and control of property acquired by the efforts of husband and wife after marriage.

The material considered centers largely around the woman in the marriage relation, since at the present time the legal status of the unmarried woman is practically identical with that of the unmarried man, with the exception of discriminations occurring in some States in certain political privileges (such as jury service, election or appointment to public office), or variance between men and women in the statutory age of majority or age of consent to marriage, or rights of property exemptions from seizure for debt.

CALIFORNIA

SOURCES

Constitution of California.
General Laws, Deering, 1937.
Deering's 1937—
Civil Code.
Probate Code.
Code of Civil Procedure.
Penal Code.
Political Code.
California Reports.
California Appellate Reports.
Pacific Reporter.

EXPLANATORY NOTE

References to the State Constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation Const., as (Const., art. 20, sec. 18), placed after the related subject matter.

The General Laws have the abbreviation G. L. followed by both act and section numbers thus (G. L., Act 652, sec. 15a).

References to the Special Codes show the section numbers preceded by the abbreviations indicated:

The Civil Code as (C. C., sec. 162); the Probate Code as (Prob. C., sec. 401); the Code of Civil Procedure as (Code Civ. Proc., sec. 370); the Penal Code as (Pen. C., sec. 270); and the Political Code as (Pol. C., sec. 1239).

Case citations, definitely construing statutes or declaring judicial policy in the absence of express statutory provision, are indicated by numerical footnote references, and appear immediately after the related paragraphs. Cases showing historical development of a statute or policy are followed by the abbreviation (Hist.).

Subject headings are preceded by numbers, which remain constant for their respective topics through the entire State series. Cross references among topics employ these numbers for brevity, as "See Number 6," which refers to the subject heading "Separate Earnings of Married Woman—Ownership and Control."

CALIFORNIA

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

Minors are all persons under 21 years of age, except that any female who has contracted a lawful marriage and is 18 years of age or over is declared to be of age and an adult person for the purpose of entering into any engagement or transaction respecting property or her estate, or for entering into any contract, as fully as if she were 21 years of age (C. C., sec. 25).

2. Contractual Powers of Minors.

A minor cannot give a delegation of power, nor, under the age of 18, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control (C. C., sec. 33). He may make any other contract as if adult, but subject to his power of disaffirmance as prescribed by law (C. C., sec. 34).

The general rule governing disaffirmance of contracts is that if the agreement was entered into when the minor was under 18 years of age, he may disaffirm, before majority or within a reasonable time afterwards, except in specified instances; if he was over 18 years at the time of contracting, he may disaffirm only upon restoring the consideration or paying its equivalent (C. C., sec. 35). A minor cannot disaffirm his contract, entered into when he was not under the care of a parent or guardian, to pay the reasonable value of things necessary for his support, or that of his family, when these things have been actually furnished to him or to his family. Nor can a minor disaffirm a contract, otherwise valid, to perform or render services as actor, actress, or other dramatic services where such contract has been approved by the superior court of the county where such minor resides or is employed (C. C., sec. 36). A minor capable of contracting marriage may make a valid marriage settlement (C. C., sec. 181).

Minors are authorized to own investment shares in building and loan associations, and after attaining the age of 14 years may withdraw, transfer, or pledge such shares and receive payments accruing from them as if adult (G. L., Act 986, sec. 8.03).

The wages of a minor employed in service may be paid to him until the parent or guardian entitled to such wages gives notice to the

employer of his claim on them (C. C., sec. 212). See Number 24 as to right of parent.

As to contract rights of a married female minor, see Number 1.

As to making of will by minor, see Number 14.

3. Property Exemptions from Seizure for Debt—Respective Rights of Men and Women.

Personal property.

Exemption of various articles of personal property, as enumerated in the statute, is available to a judgment debtor, generally without regard to sex (Code Civ. Proc., secs. 690-690.24).

The exemption may include: One-half of the debtor's earnings for personal services rendered within the 30 days immediately preceding the levy for debt, where such one-half is necessary for the use of the debtor or of his family wholly or partially supported by him. All of such earnings, if necessary for the use of the debtor's family residing in the State and wholly or partially supported by him, unless the debts sued on are incurred: (1) By the debtor, his wife, or family, for necessaries, or (2) for personal services rendered by an employee of the debtor (Code Civ. Proc., sec. 690.11).

Homestead.

The right to some homestead exemption is guaranteed by the Constitution, which requires the legislature to make provision for exemption from forced sale of a certain portion of the homestead and other property of heads of families (Const., art. 17, sec. 1).

A homestead, consisting of the dwelling house in which the claimant resides and the land on which it is situated, may be selected in the manner provided by statute (C. C., sec. 1237). It is exempt from execution or forced sale (C. C., sec. 1240), except for record liens as provided by the homestead statutes (C. C., sec. 1241).

Any head of a family, as defined by law, may select and claim a homestead not exceeding \$5,000 in value; any other person is entitled to a homestead not exceeding \$1,000 in value (C. C., sec. 1260).

The term "head of a family" includes: (1) The husband, when the claimant is a married person; (2) every person who has residing on the premises with him or her, and under his or her care and maintenance, any of the relatives enumerated in the statute (C. C., sec. 1261).

The homestead may be selected from the community property or the separate property of the husband, or, subject to the assent of the wife, from the property held by the spouses jointly or as tenants in common, or from the separate property of the wife. When the claimant is not married but is the head of a family, as defined by law, or when the claimant is an unmarried person, other than the head of a family, the homestead may be selected from any of his or her property (C. C., secs. 1238, 1239).

The homestead of a married person cannot be conveyed or encumbered unless such instrument of conveyance or encumbrance is executed and acknowledged by both husband and wife (C. C., sec. 1242), except that the court may authorize sole action in the interest of the family when either spouse is insane or incompetent (C. C., secs. 1269a, 1269c).

In order to select a homestead, the husband or other head of a family must execute and acknowledge in the same manner as for a grant of real property a declaration of homestead, and file it for record. When a husband has not made such a selection, the wife may do so, but her declaration must state that her husband has not declared a homestead and that she therefore makes her claim for their joint benefit (C. C., secs. 1262, 1263). As explained by the court:

"The code does not contemplate that a husband may establish a valid \$5,000 homestead, and that the wife, under the category of 'other persons,' may have an additional and separate \$1,000 homestead."¹

Any person other than the head of a family, in the selection of a homestead, must execute and acknowledge, in the same manner as for a grant of real property, a "declaration of homestead" (C. C., sec. 1266).

A homestead can be abandoned only by a declaration of abandonment, or a grant duly executed and acknowledged by: (1) Both husband and wife, if the claimant is married; (2) by the claimant, if unmarried (C. C., sec. 1243).

Disposal of homestead after death of owner.

A homestead, when formally declared by a married person from the community property or the separate property of the spouse making or joining in the selection, vests in the survivor on the death of either of the spouses, subject to no other liability than such as exists or has been created under the provisions of the homestead statute. In other cases, upon the death of the person whose property was selected as a homestead, the title passes to the heirs or devisees, but the superior court may assign occupancy of it for a limited period to the family of the decedent, subject only to the liabilities allowed by the homestead law. If the owner sells the homestead, the proceeds to the value of the statutory homestead allowance are exempt for the 6 months following the sale (C. C., sec. 1265). See also Number 16.

It is to be noted that the wife may declare a homestead upon the husband's separate property, but he has no such power as to her separate property,² unless she consents to the action (C. C., sec. 1239).

¹ *Hansen v. Union Savings Bank* (1905), 148 Cal. 157, 159; 82 Pac. 768.

² *Swan v. Walden* (1909), 156 Cal. 195, 200; 103 Pac. 931; 134 A. S. R. 118; 20 Ann. Cas. 194.

4. Property of Married Woman Owned at Marriage—Ownership After Marriage.

All property of the wife with the rents, issues, and profits from it, owned by her before marriage, is her separate property (C. C., sec. 162).

5. Contractual Powers of Married Women.

A husband and wife may hold property as joint tenants, tenants in common, or as community property (C. C., sec. 161).

Either spouse may enter into any engagement or transaction with the other or with any other person, respecting property, as if unmarried, but subject, in transactions between themselves, to the same general rules which control the confidential relations of trustee and beneficiary (C. C., secs. 158, 2235). However, the relation of husband and wife is not that of trustee and beneficiary.¹

The wife may convey her separate property without the consent of her husband (C. C., sec. 162).

Any bank deposit made by or in the name of a married woman is for her exclusive right and benefit, and free from the control or lien of all other persons except creditors (G. L., Act 652, sec. 15a). Building and loan association shares or certificates issued to or in the name of a married woman are under a similar provision (G. L., Act 986, sec. 8.03). A married woman or her agent may transfer corporation stock standing in her name, without her husband's signature, as if she were unmarried; also she may receive dividends and enjoy and exercise all the rights of a shareholder (C. C., sec. 328c).

The separate property of the wife is liable for her own debts contracted before or after her marriage (C. C., sec. 171). See also Numbers 7 and 9.

For civil injuries committed by a married woman, damages may be recovered from her alone. Her husband is not liable for them, except in cases where he would be jointly liable with her if the marriage did not exist (C. C., sec. 171a). She may be sued without the joinder of her husband (Code Civ. Proc., sec. 370). See Number 11.

If husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend she may defend for his right also (Code Civ. Proc., sec. 371).

Marriage does not disqualify a woman from serving as executrix (Prob. C., sec. 401); or as administratrix (Prob. C., sec. 420). The surviving spouse, or some competent person requested by him or her, is preferred for appointment as administrator (Prob. C., sec. 422).

Spouses cannot by contract with each other alter their legal relations, except as to property, but they may make a written agreement as to an immediate separation, and provide for support of either of them and of their children during the separation (C. C., sec. 159).

As to limitations on the right of a married woman to engage in business, see Number 8.

Either spouse may have recorded in the county of residence an inventory of his or her separate personal property (C. C., sec. 165).

For contract rights regarding Community Property, see Number 10.

¹ *Diamond v. Sanderson* (1894), 103 Cal. 97, 101; 37 Pac. 189; 6 Cal. Jur. 203.

6. Separate Earnings of Married Woman — Ownership and Control.

When a wife is living separate from her husband, her earnings and accumulations, as well as those of her minor children living with her or in her custody, are her separate property (C. C., sec. 169).

But her earnings and accumulations acquired from them while living with her husband become community property (C. C., secs. 162, 164) in the absence of a marriage settlement contract making other disposition of them (C. C., sec. 177), or a subsequent agreement concerning them (C. C., sec. 159). See Number 9.

“* * * The earnings of a wife during marriage, and while living with her husband and in his house, are community property, and, as such, are subject to the management, control, and disposition of the husband; but the husband may relinquish to the wife the right to such earnings, and when he has done so they become the separate property of the wife. * * * Section 158 of the Civil Code provides that

‘either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property which either might if unmarried’; and section 159 of the same code provides that a husband and wife may by contract alter their legal relations as to property, and the succeeding section [160] makes the mutual consent of the parties thereto a sufficient consideration for such an agreement. Under these sections there can be no doubt that a husband and wife may agree between themselves without any other consideration than their mutual consent, that money earned by the wife in performing any work or service which does not devolve upon her by reason of the marriage relation shall belong to her as her own, and, when money has been earned by the wife under such an understanding or agreement with the husband, it is her separate property, and she may maintain an action to recover the same. An agreement between husband and wife, by which the husband relinquishes all claim to the earnings of the wife, is one which relates to the acquisition of property by the wife, and is an engagement or transaction respecting property, within the meaning of section 158 of the Civil Code above cited.”^{1 2}

As community property, the wife's earnings are under the management and control of the husband (C. C., sec. 172). Generally, the wife's earnings are liable for her contracts made before or after marriage (C. C., sec. 167); they are not liable for the debts of the husband, but may become liable for debts contracted by either spouse for necessities furnished to them or either of them while they are living together (C. C., sec. 168).

See also Number 10.

FAWCETT COLLECTION

¹ *Wren v. Wren* (1893), 100 Cal. 276, 279; 34 Pac. 775; 38 A. S. R. 287.
² *Kaltschmidt v. Weber* (1904), 145 Cal. 596, 599; 79 Pac. 272.

7. Liability of Married Woman for Family Necessaries.

Husband and wife contract towards each other obligations of mutual respect, fidelity, and support (C. C., sec. 155).

The wife must support the husband, out of her separate property, when he has not deserted her and has no separate property, there is no community property, and he is unable from infirmity to support himself (C. C., sec. 176).

“The general rule is that upon the husband is imposed the duty to maintain his wife and children and where the wife living with her husband obtains on credit shelter or supplies needed in the conduct of this common domestic enterprise, she is his agent and incurs no personal liability.

“There is, however, a well-recognized exception to this general rule and it is this: Where the proof is clear and convincing that the wife, although living with her husband, contracted the debt in her own behalf, or intended to bind her separate property for its payment, she will be held personally liable, even though the debt be for necessaries of life for herself and husband while living together.”¹

See also Number 9.

The statute provides that if the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability (C. C., sec. 196).

Under the penal provisions covering the abandonment and neglect of children, the mother of either a legitimate or an illegitimate minor child becomes subject to the law and criminally liable for the support of the child if the father is dead, or during the period in which he is unable by reason of physical or mental infirmity to furnish it with necessary food, clothing, shelter, or medical attendance or other remedial care (Pen. C., sec. 270).

¹ *Lane v. McAlpine* (1931), 115 Cal. App. 607, 610; 2 Pac. (2d) 184.

8. Formal Procedure Required for a Married Woman to Engage in a Separate Business.

The Constitution provides that:

"No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession" (Const., art. 20, sec. 18).

When a husband consents to have his wife retain her earnings as her separate property, and she enters a business of her own, her earnings from the business and any property purchased with them are her separate property.¹

The statute declares that either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried (C. C., sec. 158).

But the statute provides in detail the mode by which a married woman may engage in business as a "sole trader." She may become a "sole trader" by judgment of the superior court of the county in which she has resided for the 6 months immediately preceding her application (Code Civ. Proc., sec. 1811). The procedure requires that newspaper notice of intention to become a sole trader be published weekly for 4 successive weeks, stating the day on which application will be made, the nature and place of business to be engaged in, and her husband's name (Code Civ. Proc., sec. 1812). Her petition, duly verified, must be filed 10 days prior to the date of application named in the newspaper notice, and must state: (a) That the application is in good faith, to enable the applicant to support herself, or herself and dependents whose names and relationship must be shown; (b) that her husband's support is insufficient, and the reason, if known; (c) any other grounds of application constituting good causes for divorce, with the reason for not seeking a divorce; and (d) the nature of the business proposed to be conducted, the capital to be invested, if any, and the sources from which it is derived (Code Civ. Proc., sec. 1813).

Not more than \$500 of community funds or of the separate property of the husband may be invested in the business (Code Civ. Proc., sec. 1814).

Any creditor of the husband may by proper proceeding contest the application (Code Civ. Proc., sec. 1815).

Upon hearing by the court, if the evidence sustains the wife's application, judgment is rendered authorizing her to conduct the business (Code Civ. Proc., secs. 1816-1817) and she must then file an affidavit avowing her good faith, her necessity and dependents, and that not more than \$500 of the capital came directly or indirectly from her husband. This affidavit, together with a certified

copy of the court's decree, must be recorded in any county where the sole trader engages in the business specified (Code Civ. Proc., secs. 1818-1819). When these requirements have been met, the wife is entitled to conduct the business in her own name, and the property invested and the profits accruing from it belong exclusively to her, and are not liable for the husband's debts; she may invoke, and is subject to, all laws governing debtors and creditors, and may sue and be sued alone without the joinder of her husband (Code Civ. Proc., sec. 1819). As sole trader, she is responsible and liable for the maintenance of her minor children (Code Civ. Proc., sec. 1820). Her husband is not liable for any debts contracted by her in the conduct of her business, unless he consents to them in writing (Code Civ. Proc., sec. 1821).

[It should be noted that the husband has the general control and management of the community estate during the marriage (C. C., secs. 172, 172a) with some limitations. Under this authority he is free, without his wife's consent, to use the personal property of the community in a business enterprise. His power to mortgage such property is illustrated in *Schwartzler v. Lemas* (1936), 11 Cal. App. (2d) 442, 450, 53 Pac. (2d) 1039. For exact limitations on his right of management and control see Number 10.]

A commentator in California advises that: "In spite of the elaborate statutory procedure set up for sole traders, as a matter of fact it is almost never used."

¹ *Von Glahn v. Brennan* (1889), 81 Cal. 261, 264; 22 Pac. 596.

9. Married Woman's Separate Property—Control During Marriage—Liability for Husband's Debts.

All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterward by gift, devise, or descent, is their respective separate property (Const., art. 20, sec. 8).

The statute provides that property acquired after marriage "by gift, bequest, devise, or descent, with the rents, issues, and profits thereof" by wife or husband is respectively their separate property (C. C., secs. 162, 163).

Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling (C. C., sec. 157).

The separate property of the wife is not liable for any debt or obligation secured by a mortgage, deed of trust, or other hypothecation of the community property, unless she expressly consents in writing to such liability (C. C., sec. 171b).

Generally, the wife's separate property is not liable for her husband's debts, unless such debts were contracted by husband or wife for the necessities of life furnished to them or either of them while they are living together. In this latter instance any separate property which the wife may have owned at the time of the marriage or which she has acquired since that time by devise, succession, or gift, other than gift from her husband, is still exempt (C. C., sec. 171). [Such separate property as she may have acquired by gift from her husband, or by release of her earnings under an agreement with her husband, may thus be liable for debts incurred for necessities.]

Tenancies by the entirety are not recognized (C. C., secs. 161, 164, 682).¹

¹ *Swan v. Walden* (1909), 156 Cal. 195, 196; 103 Pac. 931; 134 A. S. R. 118; 20 Ann. Cas. 194.

10. Property Acquired After Marriage Through Cooperative Efforts of Spouses—Ownership and Control.

Development of marital property statutes.

California's community system of property rights between husband and wife was derived from Mexican law.¹ Changes in the statute at various times have limited increasingly the husband's control and power of disposition over both real and personal property belonging to the community estate, but they did not vary the character of the wife's interest in such property^{2 3} until the enactment in 1927 of what is now section 161a of the Civil Code. This section declares the respective interests of the husband and wife in community property during marriage to be "present, existing, and equal" as to ownership, but that the husband retains the management and control as limited by sections 172 and 172a of the Civil Code.

Until the enactment of this statute, the rule of property in such cases, as adhered to by the courts consistently, was that "during the marriage the husband is the sole and exclusive owner of all the community property and the wife has no title thereto, nor interest or estate therein, other than a mere expectancy as heir, if she survive him."⁴

In tracing the statutory history of the present concept of the wife's interest in the community, the court has said:

"* * * the wife has always had at least a limited interest in the community property (*Stewart v. Stewart* 199 Cal. 318; [249 P. 197]). In 1891 her rights were enlarged to require her written consent to gifts and voluntary transfers of it. In 1917 again her rights were enlarged to allow a division of the common property under certain conditions without a dissolution of the marriage ties, also requiring her signature to convey or encumber it. Again in 1923, sections 1401 and 1402 of the Civil Code were amended to give her equal testamentary power with the husband over it and in the absence of a will by the husband, she, to the exclusion of the children, takes the whole of it. Lastly, in 1927, section 161a was added to the Civil Code investing her with full title to one-half thereof, ceding alone to the husband the management and control thereof."⁵

Community and separate property distinguished.

All property acquired after marriage by either spouse through gift, will, or inheritance, together with the rents, issues, and profits from it, is the separate property of the spouse so acquiring it (C. C., secs. 162, 163).

The earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are her separate property (C. C., sec. 169), as are also the property and gains of a sole trader. See Number 8.

All other property acquired after marriage by either husband or wife, or both, including real property situated in the State and personal property wherever situated, acquired while domiciled elsewhere,

which would not have been the separate property of either if acquired while domiciled in California, is community property.

But it will be presumed, until a different ownership is legally proved, that any real or personal property, or any interest in it or encumbrance on it, acquired by a married woman by an instrument in writing, is her separate property; and that, if acquired by a married woman and any other person, she takes the part acquired by her as tenant in common [that is, she holds a separable interest] unless a contrary intention is expressed in the instrument of conveyance; but any such property acquired by husband and wife by an instrument in which they are described as husband and wife, is presumed to be community property of such husband and wife unless a different intention is expressed in the instrument (C. C., sec. 164).

[A California commentator states: "The legislature has attempted in this definition of community property to include all property acquired after marriage by either husband or wife, including real property situated in the State and personal property wherever situated, acquired while domiciled elsewhere, which would not have been the separate property of either if acquired while domiciled in California. The Supreme Court has held, however, that this section of the code, in so far as it attempts to affect the title to personal property acquired while the spouses are domiciled elsewhere, is unconstitutional. See *Estate of Thornton* (1934), 1 Cal. (2d) 1, 33 Pac. (2d) 1."]

Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either (C. C., sec. 687).

Management and control of community property.

The husband has the management and control of the community personal property, with like absolute power of disposition, other than testamentary, as he has of his separate estate; however, he cannot make a gift of such community personal property or dispose of it without a valuable consideration, or sell, convey, or encumber the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the wife or minor children that is community, without the written consent of the wife (C. C., sec. 172).

The husband has the management and control of the community real property, but the wife or her duly authorized agent must join with him in executing any instrument by which such property or any interest in it is sold, conveyed, or encumbered, or leased for a longer period than 1 year. This section, however, does not apply to a lease, mortgage, conveyance, or transfer of real property or of any interest in real property between husband and wife. It will be presumed, until legally proved otherwise, that the sole lease, contract, mortgage, or deed of the husband, holding the record title to community real property, to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, is valid. No action to avoid such a sole instrument of the husband may be commenced after expiration of 1 year from the date such instrument is duly filed for record (C. C., sec. 172a).

When either husband or wife has been adjudged insane or incompetent, the other spouse may be empowered by court proceeding to

sell and convey, mortgage, lease, or execute a deed of trust upon community real property. Any sale of the property is subject to the court's confirmation (C. C., secs. 172b-172d).

Character of interests in community property.

The respective interests of the husband and wife in community property during continuance of the marriage relation are "present, existing and equal interests" under the management and control of the husband, within the limitations prescribed by statute [see sections 172, 172a above] (C. C., sec. 161a).

It must be noted that this statute applies only to property acquired after its effective date, July 29, 1927 [1927 Session Laws, p. 484].

The court has held that:

"* * * This section of the code, whatever effect it may have upon community property acquired subsequent to its effective date, cannot in any manner relate to or govern the ownership of property acquired prior thereto."⁶

In another case the court said:

"* * * It has been consistently and repeatedly held by this court, * * * that amendments whereby it was sought to lessen, enlarge or change in any manner the rights of the respective spouses in community property will not be given retroactive effect so as to affect the respective rights of the parties in community property acquired prior to the enactment of such amendments * * *."

* * * * *

"* * * the law in force at the date of the acquisition of the property is determinative of the rights of the parties therein."⁷

Liability of the community property for debts.

In general, the property of the community is not liable for the contracts of the wife made after marriage unless such contracts are secured by the husband's pledge or mortgage of the community property (C. C., sec. 167). See Number 6 as to when the wife's earnings are excepted from this rule, and Number 7 as to liability of her earnings for community debts for necessities.

However, the debts of the wife incurred before marriage become debts of the husband also, to the extent of the community property in his hands,⁸ except that his earnings are not subject to such debts (C. C., sec. 170).

Generally, the community property appears to be subject to the debts incurred by the husband in any of his contracts or business operations, as well as for the benefit of the community, including family support for which he is primarily liable [see Civil Code, sections 174, 175] (C. C., secs. 172, 172a). See statement by the court in *Spreckels v. Spreckels* (1897), 116 Cal. 339; 48 Pac. 228.

Succession to community property.

On the death of either husband or wife, one-half of the community property belongs to the surviving spouse. The other half is subject to disposition by the will of the deceased, but if no will was made, this portion goes to the surviving spouse, subject to the provisions of sections 202 and 203 of the Probate Code, regulating payment of debts and control during administration (Prob. C., sec. 201).

On the death of either husband or wife, one-half of all personal property, wherever situated, acquired after marriage by either or

both of them while living outside the State, which would not be the separate property of either if acquired during California domicile, becomes the property of the surviving spouse. The other half of such property is subject to disposition by the decedent's will, but in the absence of a will goes to the surviving spouse, subject to the decedent's debts and to administration and disposal as provided by statute (Prob. C., sec. 201.5). [This section was added to the Probate Code in 1935, after the decision in *Estate of Thornton* (1934), 1 Cal. App. (2d) 1, 33 Pac. (2d) 1, declaring unconstitutional that portion of section 164 of the Civil Code which attempts to affect the title to personal property acquired by the spouses while domiciled elsewhere. This section is an attempt to accomplish by a succession statute what the legislature was not allowed to do in a statute affecting title, and has not yet been passed on by the courts.]

Community property passing from the control of the husband, either by reason of his death or under the wife's will, is subject to his debts and to administration and disposal according to the provisions of the statute [Probate Code, Division III]. In the event of testamentary disposition by the wife, the husband retains, pending administration, the same power to sell, manage, and deal with the community personal property that he had during the wife's lifetime (Prob. C., sec. 202).

He has full power to sell, lease, mortgage, or otherwise deal with and dispose of community real property, after 40 days from the wife's death, unless legal notice is given that an interest in the property is claimed by another under the wife's will (Prob. C., sec. 203).

Effect of marriage settlement.

The property rights of husband and wife are governed by statutory provisions unless a valid marriage settlement is made between them containing agreements contrary to the statute (C. C., secs. 177-181).

¹ *Spreckels v. Spreckels* (1897), 116 Cal. 339, 346; 48 Pac. 228; 58 A. S. R. 170; 36 L. R. A. 497. (Hist.)

² *Roberts v. Wehmeyer* (1923), 191 Cal. 601; 218 Pac. 22.

³ *Stewart v. Stewart* (1926), 199 Cal. 318, 340; 249 Pac. 197. (Hist.)

⁴ *Stewart v. Stewart* (1928), 204 Cal. 546, 553; 269 Pac. 439.

⁵ *Siberell v. Siberell* (1932), 214 Cal. 767, 772; 7 Pac. (2d) 1003.

⁶ *Stewart v. Stewart* (1928), 204 Cal. 546, 555; 269 Pac. 439.

⁷ *McKay v. Lauriston* (1928), 204 Cal. 557, 566, 567; 269 Pac. 519.

⁸ *Johnson v. Taylor* (1931), 120 Cal. App. 771; 4 Pac. (2d) 999.

11. Damages Recovered for Injury by Strangers to a Married Woman's Person, Property, or Character—Ownership and Control.

Damages for injuries sustained during coverture by either husband or wife are community property.¹

Damages for personal injuries to a wife are not recoverable unless she is a party plaintiff in the cause instituted to recover such damages.²

A married woman may sue without her husband being joined as a party in all actions, including those for injury to her person, libel, slander, false imprisonment, or malicious prosecution, or for the recovery of her earnings, or concerning her right or claim to the homestead property (Code Civ. Proc., sec. 370).

A husband and wife may be properly joined in a suit for personal injuries sustained by the wife; and where consequential damages are

sought in behalf of the husband for loss of services of the wife or for medical expenses or other costs incurred by him on account of her injuries, both spouses may be joined (Code Civ. Proc., sec. 427).³

¹ *Cavagnaro v. Delmas* (1938), 29 Cal. App. (2d) 252; 84 Pac. (2d) 274.

² *Redwing v. Moncravie* (1933), 131 Cal. App. 569, 572; 21 Pac. (2d) 986.

³ *Martin v. Costa* (1934), 140 Cal. App. 494, 498; 35 Pac. (2d) 362.

12. Action to Recover Damages for Willful or Negligent Injuries to the Person or Property of One Spouse by the Other—Respective Rights of Husband and Wife.

The court has ruled that the provisions of the Civil Code which recognize the separate property of husband and wife and authorize contracts between them concerning it necessarily imply that actions by one against the other for the protection of such property and the enforcement of contracts relating to it may be maintained; but the court declared that it discovered nothing in the statute that can be construed to show an intention to permit actions for tort between husband and wife.¹

¹ *Peters v. Peters* (1909), 156 Cal. 32, 35, 36; 103 Pac. 219.

13. Competency of Spouses to Testify For or Against Each Other.

Husbands and wives are subject to the same restrictions in testifying for or against each other, whether in civil or criminal proceedings.

Neither may testify for or against the other, or as to any communication made by one to the other during the marriage, unless the other spouse consent, though this rule does not apply in certain classes of actions excepted by statute (Code Civ. Proc., sec. 1881, subsec. 1). Neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties, except with the consent of both or in certain cases enumerated in the statute (Pen. C., sec. 1322).

14. Disposition of Separate Property by Will—Extent of Married Woman's Right.

Every person of sound mind, over the age of 18 years, may dispose of his or her separate property, real and personal, by will (Prob. C., sec. 20).

If a person marries after making a will, and the spouse survives the maker, the will is revoked as to the living spouse, unless provision has been made for him or her by marriage contract or by the will, or an intention not to provide for the spouse is clearly expressed in the will (Prob. C., sec. 70).

Every person of sound mind, over the age of 18 years, may dispose of one-half of the community property by will (Prob. C., secs. 21, 201); also of one-half of all personal property, wherever situated, acquired after marriage by either spouse or both of them, while domiciled elsewhere, which would not have been the separate property of either if acquired while domiciled in the State (Prob. C., sec. 201.5). But see comment under "Succession to community property", Number 10, as to 1935 amendment.

The right of testamentary disposition granted to the wife in 1923 over one-half of the community property has been held not to be

retroactive, and accordingly the wife has no right to dispose by will of community property acquired before that time.^{1,2}

Restrictions upon bequests or devises to charitable or benevolent societies or corporations, or for charitable uses, apply equally to the wills of men and women (Prob. C., sec. 41).

¹ *Estate of Phillips* (1928), 203 Cal. 106, 111; 263 Pac. 1017.

² *McKay v. Lauriston* (1928), 204 Cal. 557, 566; 269 Pac. 519.

15. Estate of Deceased Husband or Wife—Share of Surviving Spouse.

Dower and curtesy do not exist in California (C. C., sec. 173).

A married person at death may own both separate and community property.

Separate property.

Subject to the limitation of any marriage or other contract and to the provisions of statute relating to administration of estates and to personal property acquired outside the State, the separate property as to which the decedent dies intestate passes to the surviving spouse as follows (Prob. C., sec. 220):

When the deceased leaves issue:

One-half the estate, if only one child or its lawful issue survive. One-third of the estate if more than one child, or one child and the lawful issue of any deceased children, are living (Prob. C., sec. 221).

When no issue survives:

One-half of the estate; and the decedent's parents take the other half in equal shares, or the survivor of them, or their issue if both are dead, takes the portions of both (Prob. C., sec. 223).

The surviving spouse takes the whole estate, if the decedent leaves no issue, parent, brother, sister, nor descendant of a deceased brother or sister (Prob. C., sec. 224).

As to community property see Number 10.

16. Provision for the Surviving Spouse During Administration of the Estate.

The surviving spouse and minor children of a decedent are entitled to remain in possession of the homestead, the family wearing apparel, household furniture, and other property of the decedent, exempt from execution until the inventory is filed. Afterwards, upon petition for such action, the court may in its discretion set apart to the surviving spouse all or any part of the property which is exempt from execution and must set apart to such spouse the homestead selected according to statute, from either the community property or the separate property of the person selecting or joining in the selection of it (Prob. C., sec. 660). Such homestead vests absolutely in the survivor on the death of one spouse (Prob. C., sec. 663). Likewise, other exempt property set apart is the property of the surviving spouse, if no minor children survive; one-half of it belongs to him or her if children survive (Prob. C., sec. 667).

The widow and minor children are entitled as provided by law to such reasonable allowance out of the estate, during its administration, as may be necessary for their maintenance according to their circumstances. This allowance constitutes one of the preferred debts of the estate (Prob. C., sec. 680).

But if the widow or any minor child has a reasonable maintenance from other property, and there are other persons entitled to a family allowance, the allowance will be granted only to those without such maintenance (Prob. C., sec. 682).

When a decedent leaves within the State no real property, but had personal property of the character described in the statute, not exceeding \$1,000 in value, a surviving spouse is entitled to receive it, on proper affidavit, without formal administration or probate of will (Prob. C., sec. 630).

Bank deposits not exceeding \$500, in estates not over \$5,000 in value, may be collected without formal administration by the surviving spouse if entitled by succession or by decedent's will to such funds (Prob. C., sec. 630.5).

If the net value of a decedent's estate over and above all record liens does not exceed \$2,500, petition may be made to the court, as provided by statute, to have such estate set aside to the widow, if there be one, and when so set aside the title to the property vests absolutely in the widow, subject to record liens existing at decedent's death. But no such assignment can be made to a widow who has other estate of the value of \$5,000 (Prob. C., secs. 640-646).

17. Disinheritance of Husband or Wife by Will of Deceased Spouse—Survivor's Alternative.

A widow has the right to elect between the provisions of her husband's will and her rights under the community-property law, where the will attempts to dispose of the entire estate, and she may exercise this right of election at any time before the distribution of the estate.^{1 2}

See Number 14 as to right to dispose absolutely of separate property.

¹ *Estate of Dunphy* (1905), 147 Cal. 95, 104; 81 Pac. 315.

² *Estate of McCarthy* (1932), 127 Cal. App. 80, 89; 15 Pac. (2d) 223.

II.—MARRIAGE AND DIVORCE

18. Age of Consent to Marriage—Men and Women.

Persons, not otherwise disqualified, who are capable of consenting to and consummating marriage are: (1) Unmarried males 21 years of age or over, and unmarried females 18 years of age or over; (2) males over 18 but under 21 years of age, and females over 16 but under 18 years of age, if written consent of parents, parent, or guardian of the person under age is filed as required by statute; and (3) males under the age of 18 years, and females under the age of 16 years, with written consent of parents, parent, or guardian, and the formal permission of the superior court for such marriage (C. C., sec. 56).

19. Validity of Common-Law Marriage.

Consent alone does not constitute marriage; it must be followed by a solemnization as provided by statute (C. C., sec. 55). Marriage must be licensed, solemnized, authenticated, and recorded according to statutory provisions (C. C., sec. 68).

20. Health Certificate Requisites Prior to Issuance of Marriage License—Men and Women.

There is no statutory requirement for a health certificate from applicants for marriage license.

The statute does provide that no license can be granted when either party is an imbecile or insane, or under the influence of any intoxicating liquor or narcotic drug.

Application for marriage license must be made at least 3 days and not more than 30 days prior to the time the license is issued (C. C., sec. 69).

[As to penalty fixed by law, applicable to "any person" who marries while having a venereal disease in an infectious stage, see General Laws (1937), Act 6264, section 13.]

21. Interstate Cooperation in Marriage Law Enforcement.

The State has not adopted the provisions of the Uniform Marriage Act. The statute recognizes as valid all marriages contracted outside the State which are valid in the country where they were contracted (C. C., sec. 63).

22. Grounds for Marriage Annulment—Respective Availability to Man or Woman.

Unless, after the disability is removed, the parties freely cohabit as husband and wife, a marriage may be annulled upon petition of the party empowered by law, on any of the following grounds: Non-age; unsound mind; fraud; force; physical impotency, apparently incurable (C. C., secs. 82, 83). There is no discrimination because of sex.

A marriage is absolutely void if it is incestuous (C. C., sec. 59), or between persons of forbidden races (C. C., sec. 60), or bigamous (C. C., sec. 61). A decree of annulment may be granted on petition of either party to a void or incestuous marriage (sec. 80).

23. Grounds for Divorce—Respective Availability to Spouses.

Divorce may be granted for any of the following causes: Adultery, extreme cruelty, willful desertion, willful neglect, habitual intemperance, conviction of felony (C. C., sec. 92). Willful desertion, willful neglect, or habitual intemperance must continue for 1 year before it becomes a ground for divorce (C. C., sec. 107).

A final decree is not entered in a divorce proceeding until 1 year after the granting of the first decree in which the court declares the right of the injured party to a divorce. After the final decree both parties are free to marry (C. C., secs. 131, 132).

There is no distinction between the sexes in the provisions of the divorce law.

III.—PARENTS AND CHILDREN

24. Services and Earnings of Minor Children—Parents' Respective Rights.

The father and mother of a legitimate unmarried minor child are equally entitled to its custody, services, and earnings. If either parent is dead or unable or refuses to take the custody or has abandoned

his or her family, the other is entitled to the child's custody, services, and earnings (C. C., sec. 197).

The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings (C. C., sec. 200). See also Numbers 6 and 10.

25. Guardianship of Minor Children—Parents' Respective Rights.

The superior court may appoint a general guardian of the person and estate, or person or estate, of minors, whenever necessary or convenient, and when no guardian has been appointed for the purpose by will or by deed (Prob. C., sec. 1405). Of persons equally entitled in other respects to the guardianship of a minor, parents are given preference (Prob. C., sec. 1407). In appointing a general guardian of a minor, the court is to be guided by what appears to be for the best interest of the child in respect to its temporal, mental, and moral welfare; and if the child is of sufficient age to form an intelligent preference, the court may consider that preference in determining the question. A resident minor, over 14 years of age, may nominate his own guardian, subject to approval by the court (Prob. C., sec. 1406).

As between parents claiming the guardianship adversely to each other, neither is entitled to priority; but other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor and business, then to the father (Prob. C., sec. 1408).

A parent may forfeit the right of guardianship by abandonment of the child, as provided by statute (Prob. C., sec. 1409).

If a minor has no guardian of his estate, money belonging to the minor not exceeding the sum of \$250 may be paid to a parent of the minor entitled to the custody of the minor, upon written assurance of such parent that the total estate of the minor does not exceed \$1,000 in value (Prob. C., sec. 1430).

When a minor has a disputed claim for money against a third person, his father, or if his father is dead or has deserted or abandoned him, then his mother, has the right to compromise such claim, but before the compromise is valid it must be approved by the superior court of the county where the minor resides, upon the filing of a verified petition in writing (Prob. C., sec. 1431).

The parent receiving any money for a minor when guardianship has been waived under the statute must account for the money when the child attains majority (Prob. C., sec. 1432).

See Number 24.

26. Appointment of Testamentary Guardian for Minor Children—Parents' Respective Rights.

Either parent of a legitimate child may appoint by will or by deed a guardian of the person and estate, or person or estate, of the child, such appointment to take effect upon the death of the parent appointing, with the written consent of the other parent, or if the other parent is dead or incapable of consent. If the child is illegitimate, such appointment may be made by the mother (Prob. C., sec. 1403).

A parent may appoint a testamentary guardian for the property which any child of such parent may take from him or her by will or succession (Prob. C., sec. 1402).

27. Inheritance from an Intestate Child—Parents' Respective Rights.

If a deceased person leaves a surviving spouse but no issue, his or her separate estate goes one-half to the surviving spouse and one-half to the decedent's parents in equal shares. If either parent is dead the survivor takes the portion of both (Prob. C., sec. 223).

If the decedent leaves neither issue nor spouse, the estate goes to his parents in equal shares, or if either is dead, to the survivor (Prob. C., sec. 225).

Decedent a widow or widower.

If any of the estate was community property of the decedent and a previously deceased spouse, and no children or descendants of children of the spouse dying first are living, one-half of such property goes to the parents of the decedent in equal shares, and the other half to the parents of the spouse dying first, in equal shares. In either case a surviving parent takes the portion of both parents, if one has died (Prob. C., sec. 228).

If any of the estate was separate property of a previously deceased spouse, and came to the decedent from such spouse by gift, will, or inheritance, and the decedent leaves no issue, such property goes in equal shares to the parents of the previously deceased spouse, or if either parent is dead, to the survivor (Prob. C., sec. 229).

28. Support of Children Born Out of Wedlock—Parents' Respective Responsibility.

An action may be brought for the purpose of having declared the existence or nonexistence between the parties of the relation of parent and child, by birth or adoption (C. C., sec. 231).

The father as well as the mother of an illegitimate child must give him support and education suitable to his circumstances. A civil suit to enforce such obligations may be maintained in behalf of a minor illegitimate child, by his mother or guardian, and in such action the court has power to order and enforce performance of the order, as in divorce proceedings (C. C., sec. 196).¹

A father of an illegitimate minor child who willfully omits without lawful excuse to furnish necessary food, clothing, shelter, or medical attendance or other remedial care for his child is guilty of a misdemeanor and punishable by imprisonment in the county jail not exceeding 2 years or by a fine not exceeding \$1,000, or by both.

In the event that the father of an illegitimate minor child is dead or unable by reason of physical or mental infirmity to furnish the necessary food, clothing, shelter, or medical attendance or other remedial care for his minor child, the mother of such child becomes subject to the provisions of this section and is criminally liable for its support during the period of the father's inability, to the same extent and in the same manner as the father would have been except for his physical or mental infirmity (Pen. C., sec. 270).

¹ *Myers v. Harrington* (1925), 70 Cal. App. 680; 234 Pac. 412.

29. Inheritance from Child Born Out of Wedlock—Mother's Right.

The mother of an illegitimate child succeeds to his estate as if he had been born in lawful wedlock and had survived his father and

all persons related to him only through his father, if the child dies intestate and has title to any property not otherwise limited by marriage contract (Prob. C., sec. 256). See Number 27.

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform to his choice (C. C., sec. 156). If she fails so to conform, her act constitutes desertion (C. C., sec. 103). But if the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform to the husband's choice, it is desertion on the part of the husband from the time her reasonable objections are made known to him (C. C., sec. 104).

In actions for divorce, neither the domicile nor the residence of the husband is considered the domicile or residence of the wife, but each may have a separate domicile or residence to be established upon proof of the fact (C. C., sec. 129).

For voting purposes, the residence of the husband is the residence of the wife, unless the husband has taken up his separate abode with the intention of remaining away from his family (Pol. C., sec. 1239, subsecs. 8 and 9).

31. Public Office—Eligibility of Women.

There is no provision of constitution or statute which excludes women from eligibility to public office. Apparently they may serve in all elective and appointive positions for which they can qualify. See Political Code, sections 58 and 1083.

32. Jury Service—Eligibility of Women.

Women are eligible for jury service on the same terms as men.¹ They are subject to the same exemptions and considerations governing their release from service upon reasonable excuse (Code Civ. Proc., secs. 198-202, 204).

¹ *People v. Manuel* (1919), 41 Cal. App. 153, 155; 182 Pac. 306.

PAMPHLET