

TITLE 9

Domestic Relations Law

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Chapter 1. GENERAL PROVISIONS

Sub. § 1.1. Scope of title.

Sub. § 1.2. Domestic relations defined.

Sub. § 1.1. Scope of Title.

The Provisions of this title shall apply to the Parties to every domestic relation except to Parties whose domestic relations are subject to and governed by customary laws and traditions.¹

Sub. § 1.2. Domestic relations defined.

Domestic relations are those of husband and wife; parent and child; and guardian and ward.²

Chapter 2. MARRIAGE

Sub. § 2.1 Marriage a civil status contract, essentials: consent, license and solemnization.

Sub. § 2.2. Marriageable age.

Sub. § 2.3. Who may not marry.

Sub. § 2.4. Marriage license: by whom issued; residence requirements.

Sub. § 2.5. Ante nuptial medical examination.

Sub. § 2.6. Application for marriage license: form; documentary support of statement; duties and authority of registrars

¹ *Prior legislation* : 1956 Code 10:2.

² *Prior legislation* : 1956 Code 10:1; Rev. Stat. Sub. § 277, 4th par., J.P. Code Sub. § 12(5); OBB 22, Legal principles and Rules, t. 1, Sub. § 6, 41, 2 Hub. 1515.

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- Sub. § 2.7 Application for marriage license; waiting period; publishing of notice thereof for public inspection.
 - Sub. § 2.8 Waiver of waiting period for emergencies.
 - Sub. § 2.9 Objections to marriage; how determined.
 - Sub. § 2.10 License, when issuance authorized; corrections; contents.
 - Sub. § 2.11 Marriage license; form.
 - Sub. § 2.12 Marriage certificate; form.
 - Sub. § 2.13. Delivery and filing of certificates.
 - Sub. § 2.14. Solemnization, essential elements; authorized officiating persons.
 - Sub. § 2.15. Foreign marriage, validity.
 - Sub. § 2.16. Penalties.
- Sub. § 2.1. Marriage a civil status contract; essentials; consent, license and solemnization.**

Marriage is a civil status, a personal relationship arising out of a civil contract between a male and female to mutually assume marital rights, duties and obligations, to which the consent of parties capable of making such a contract is essential; provided further that such marriage is not prohibited by the provisions of sections 2.2(3) and 2.3. Consent alone will not constitute marriage; consent must be followed by the issuance of a license and solemnization as authorized by this chapter.³

Sub. § 2.2. Marriageable age.

1. Age of legal consent: Males; females. Every male person who has attained the full age of 21 years and every female who has attained the full age of 18 shall per se be capable of contracting marriage and

³ *Prior legislation:* 1956 Code 10:10; L. 1935-36, Ch. XVII, Sub. § 4.2.

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a marriage license may be issued to such persons if otherwise competent.

2. *Under age of legal consent and above 16 years.* If a male applicant for a marriage license is between the age of 16 years and under 21 years of age, or if a female applicant is between the age of 16 years and under 18 years of age, although otherwise competent, no license shall be issued without the consent of his or her parents or guardian, or of the parent or person standing in loco parentis having the actual care, custody and control of said applicant, given in writing before the registrar of marriages under oath, or certified under the hand of such parents, guardian, or persons in loco parentis and properly verified by affidavit or affirmation before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of said registrar at the time of application for said license. If there is no parent, guardian or person in loco parentis having the actual care, custody and control of such applicant, then the judge of the court having probate jurisdiction in the county, territory or chartered district where the application is pending may, after hearing and upon proper cause shown, make an order allowing the marriage of such applicant, a certified copy of which shall be filed of record in the office of the registrar before whom the application is pending prior to the issuance of the marriage license applied for.

3. *Marriage of persons under 16 years.* A marriage in which either, of the parties is under 16 years of age is hereby prohibited. No license therefor may be issued regardless of circumstances.⁴

Sub. § 2.3. Who may not marry.

No marriage shall be contracted between persons one or both of whom has a spouse still living; not between an ancestor and a

⁴ *Prior legislation:* 1956 Code 10:12 (3rd par.), 30; L. 1935-36, ch. XVII, Sub. § 5.13.

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descendant, a brother and sister of either the whole or the half blood, an uncle and niece or an aunt and nephew, or first cousins and this prohibition shall apply whether the prescribed relatives are legitimate or illegitimate.⁵

Sub. § 2.4. Marriage license by whom issued; residence requirements.

No person shall be joined in marriage until a license has been obtained for that purpose from the registrar of marriages of the county, territory or chartered district in which one of the parties has resided for at least 30 days immediately prior to making application therefor. When one of such persons is a non-resident of the county, territory or chartered district where such license is to issue, his part of the application may be completed and sworn to or affirmed before the registrar of marriages of the county, territory or chartered district in which he resides. If both parties be non-residents of the Republic, however, such license may be obtained from the registrar of marriages of the county, territory or chartered district where the marriage ceremony is to be performed.

Sub. § 2.5. Ante nuptial medical examinations.

Every person making application for a license to marry shall file with the registrar of marriages, at the time such application is made, a medical certificate signed by a qualified physician licensed to practice in the Republic certifying that such applicant has been given a health examination, such as may be necessary for the discovery of any contagious or communicable disease, including an examination for the presence or absence of any venereal disease, made on a day specified in the certificate, which shall not be more than the fifteenth day prior to that on which the license is applied for, and that in the

⁵ *Prior legislation:* 1956 Code 10:20, L. 1935-36, ch. XVII, Sub. § 11.

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opinion of the physician the person therein named is free from any contagious or communicable disease. It shall be unlawful for a registrar of marriage to issue a license to marry if such certificates setting forth such negative findings as to both parties are not so filed.⁶

Sub. § 2.6. Application for marriage license: Form: documentary support of statements: duties and authority of registrars.

It shall be the duty of a registrar of marriages when an application for a marriage license is made to him to require each of the contracting parties to sign and verify or affirm before him a statement containing the following information from the prospective bride and groom separately: Full names, their consanguineous relationship, if any, place of residence, age, occupation, place of birth, name of father and maiden name of mother and country of their birth, names and addresses of guardians, if any, prior marriages of either party, if any, stating the names of former spouses and the date when and place where such prior marriages took place and manner of the dissolution thereof. There shall also be embodied therein a statement that no legal impediment exists as to the right of the applicants to enter into the marriage state.

Each applicant shall present satisfactory documentary proof of identification and residence and if under 30 years of age shall exhibit a birth certificate. A registrar of marriages is hereby given full power and authority to administer oaths required for the purposes of this section and may require the applicants to produce witnesses to identify them or either of them and may examine under oath or otherwise witnesses as to any material inquiry pertaining to the issuing of the license. Where requisite an applicant shall submit a certified copy of all judgments and death certificates affecting the

⁶ *Prior legislation:* 1956 Code 10:12 (3rd par.); L. 1947-48, ch. VIII, Sub. § 9.

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marital status. If any certificate or judgment required hereunder is unobtainable, other satisfactory documentary proof of the requisite facts therein may be presented in lieu thereof. Whenever a registrar is not satisfied with the documentary proof presented, he shall submit the same for an opinion as to the sufficiency thereof to the probate court judge in the county, territory or chartered district where the application is being made.⁷

Sub. § 2.7. Applications for marriage license: waiting period & posting of notice thereof for public inspection.

Application for a marriage license shall be made at least five days before a license shall be issued except as otherwise, provided in section 2.8. Immediately upon entering an application for a license, the registrar shall post a notice in a conspicuous place in his office and at such places in the building in which his office is located and at the places in the community and residences of the parties applying therefor, the date of entry and the file number of the application. The contents of the application shall be made available for public inspection.⁸

Sub. § 2.8. Waiver of waiting period for emergencies.

Upon application of either of the parties to a proposed marriage, or of a parent or guardian of either of the parties and upon satisfactory documentary evidence being presented to the registrar of marriages of the county, territory or chartered district in which an application for a marriage license may be appropriately applied for, that such circumstances exist which warrant special dispensation, provided all

⁷ *Prior legislation:* 1956 Code 10:12 (1st par.), 14; L. 1935-36, ch. XVII, Sub. § 12 (1st par.), 14.

⁸ *Prior legislation:* 1956 Code 10:12 (2nd par.); L. 1935-36, ch. XVII, Sub. § 12 (2nd par.).

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other applicable provisions of this chapter are observed, such registrar may issue a marriage license to the parties at any time before the expiration of the five-day waiting period prescribed in section 2.7, upon the filing of a proper application there or and the receipt of the Minister of Finance attesting to the payment of the required fee. The documentary evidence shall be retained by the registrar issuing the license as prima facie evidence of his authority to so issue the marriage license.⁹

Sub. § 2.9. Objections to marriage, how determined.

1. Filing and service of objecting petition. Any person interested, believing that the statements contained in an application for the issuance of a marriage license are false or insufficient, or that the applicants or either of them are incompetent to marry, may file with the court having jurisdiction in the county, territory or chartered district in which the license is applied for, a petition under oath, setting forth the grounds of objection to the marriage and asking for an order requiring the parties making such application to show cause why the license should not be refused. Whereupon the court, if satisfied that the grounds of objection are prima facie valid, shall issue an order to show cause as aforesaid, returnable as the court directs, but not more than ten days after the date of the order, which together with a copy of the parties petition shall be served forthwith upon the registrar before whom the application has been made and upon the applicants for the license residing in the county, territory or chartered district in which such application has been made, and if only one applicant so resides then upon such applicant; and such service shall operate as a stay upon issuance of the license until further ordered.

⁹ *Prior legislation:* 1956 Code 10:13; Law approved Dec. 16, 1940, par. 3, Sub. § 1; L. 1935-36, ch. XVII, Sub. § 18.

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2. Hearings and orders thereon. If, upon hearing, the court finds that the statements in the application are willfully false or insufficient or that either or both of the applicants are not competent to marry, the Court shall make an order refusing the license and shall immediately report such matter to the Minister of Justice. If said falseness or insufficiency is due merely to inadvertence and the parties are otherwise competent to marry, then the court shall permit the applicants to amend the application so as to make the statements therein true and sufficient and upon the application being so amended, the court shall order that the license shall be issued. If any applicant is unable to supply any of the information required in the application, the court may, if satisfied that such inability is not due to willfulness or negligence, order the license to be issued notwithstanding such insufficiency, if the parties are otherwise competent to marry. The costs and disbursements of the proceedings under this section shall rest in the discretion of the court.

Sub. § 2.10. License, when issuance authorized, corrections, contents.

1. Issuance and corrections of application or license. If the provisions of sections 2.2., 2.4, 2.5, 2.6, 2.7 and 2.8, where applicable, are complied with and if there is no prohibition against or legal objection to the marriage, the registrars of marriages shall issue a marriage license. Further, if after the application is made or the license has been issued and prior to the marriage thereunder, any erroneous, false or insufficient statement in such license or in the application therefor shall come to the attention of the said registrar upon a sworn declaration submitted by either of the applicants, he shall correct such statement and show the corrected statement as soon as reasonably possible to the other applicant, unless the correction proposed would invalidate the license, in which case he shall take appropriate action.

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2. *Contents.* The license, which shall be identified by the same file number as the application therefor, shall authorize the marriage ceremony to be performed in any county of the Republic, except that where both parties are non-residents of the Republic, the ceremony shall be performed only in the county, territory or chartered district in which the license is issued. The license shall be directed "to any person authorized by the law of the Republic to solemnize marriage" and shall authorize him to solemnize marriage between the parties therein named at any time not more than 30 days after the date thereof. The license shall be signed before the registrar at the time of its issuance by each of the applicants at the space provided thereon. The person officiating shall satisfy himself that the parties presenting themselves to be married are the parties named in the license and prior to performing the ceremony shall require both parties to sign their names at the space provided on the marriage certificate form for comparison with their signatures on the marriage license; and if he knows of any legal impediment to such marriage, he shall refuse not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the parties illegal and the license shall contain a statement to that effect.

Sub. § 2.11. Marriage license; form.

The form of a marriage license shall be substantially as follows:

Republic of Liberia
County of _____

Territory or District of _____

MARRIAGE LICENSE

To any person authorized by the laws of the Republic to solemnize marriage:

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You are hereby authorized at any time not more than 30 days from and after the date hereof, within this Republic, not knowing any legal impediment thereto, to solemnize a marriage in accordance with the laws of the Republic between _____ and _____ whose signatures are subscribed hereto, and to make original copy of the marriage certificate appended hereto, legibly and completely filled out; to the registrar of marriages who issued this license within three days succeeding the date of the solemnizing of the marriage herein authorized.

The issuance of this license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the parties hereto illegal.

Given under my hand at _____ County, Territory, District of _____, Republic of Liberia, this _____ day of _____ of _____ A.D. 19 _____.

Signatures of applicants:
(To be subscribed before
registrar at time of
issuance of this license.)

Registrar of Marriages for the County, Territory, District of

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Sub. § 2.12 Marriage certificate: form.

The marriage license shall have appended to it three certificates, numbered to correspond with that assigned to the license, one marked

10 *Prior legislation:* 1956 Code 10:15; L. 1935-36, ch. XVII, Sub. § 15.

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"original", one marked "duplicate" and one marked "triplicate", and with carbon paper or other duplicating process between them, which shall be in form substantially as follows:

MARRIAGE CERTIFICATE

I, _____ hereby certify that on the _____ day of _____ A.D. 19__ at _____ in the County, Territory, District of _____ Republic of Liberia, and _____ whose signatures are subscribed hereto, were to be united in marriage as authorized by a marriage license issued for that purpose by the Registrar of Marriages of _____ County, Territory or District of _____, _____ numbered _____ and dated the _____ day of _____ A.D., 19__.

Signatures of parties:

(to be subscribed before (Signed) _____ person officiating prior to (Designation of person performance of ceremony) officiating)

We, the undersigned adult witnesses, were present at the marriage of _____ and _____ as set forth in the foregoing certificate, at their request and heard their declarations that they took each other for husband and wife.

11 *Prior legislation:* 1956 Code 10:16: L. 1935-36, ch. XVII, Sub. § 17.

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Sub. § 2.13. Delivery and filing of certificates.

Upon the conclusion of the ceremony of marriage, the marriage certificates marked "duplicate" and "triplicate", legibly and completely filled out and duly signed, shall be given by the person officiating to the persons married by him. Within three days from the date of such marriage the certificate marked "original", legibly and completely filled out in indelible ink or typewritten and duly signed shall be returned by such officiating person to the registrar of marriages who issued the license. The marriage license shall be retained by the person who solemnizes the marriage to be prima facie evidence of authority to perform the marriage ceremony.¹²

Sub. § 2.14. Solemnization, essential elements: authorized officiating persons.

1. Form. No particular form for the ceremony of marriage is required, but the parties must declare, in the Presence of the duly authorized officiating person solemnizing the marriage and in the presence of at least two competent adult witnesses other than such officiating person, that they take each other as husband and wife.

2. Persons authorized to officiate. The following are authorized to solemnize marriages and be the officiating persons at such ceremonies:

- (a) Any ordained clergyman of any religious denomination who continues to be such ordained clergyman.
- (b) Any Justice of the Supreme Court of the Republic or a judge of a court of record, or stipendiary magistrate or justice of the

¹² *Prior legislation:* 1956 Code 10:11; L. 1935-36, ch. XVII, Sub. § 14, 17.

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peace.¹³

Sub. § 2.15. Foreign marriages: validity.

Except for marriages entered into in another country with the intent of circumventing the laws of this country prohibiting or declaring such marriages void as set forth in section 6.2, all marriages contracted without the Republic, which would be valid by the laws of the jurisdiction in which the same were contracted, are valid in the Republic.¹⁴

Sub. § 2.16. Penalties.

Penal sanctions for violations of provisions of this chapter shall be as set forth below:

(a) The following shall be fined not less than \$200.00 nor more than \$1,000.00:

- (i) *For issuance of license without medical certificate.* Any registrar of marriages who unlawfully issues a license to marry to any person who fails to present and file any certificate required by section 2.5.
- (ii) *For disclosing medical examination.* Any person having knowledge of any matter relating to the medical examination of any applicant for license to marry required by section 2.5 who discloses the same, or any portion thereof, except as may

13 *Prior legislation:* 1956 Code 10:15 (1st par.); L. 1935-36, ch. XVII, Sub. § 15 (1st par.).

14 *Prior legislation:* 1956 Code 10:19; 088 157, Act legalizing marriage and legitimating illegitimate children, Sub. Sec. 3, 1841 Digest, pt. 1. Act legalizing marriages and legitimating illegitimate children, Sub. § 3, 4. 2, Hub. 1492. Acts. 1839, Act legalizing marriages and legitimating children, Sub. § 1,4,2, Hub. 1937.

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be required by law.

- (iii) *For false statement in physician's certificate.* Any physician who knowingly makes any false statement in any certificate required by section 2.5.
- (iv) *For marriage outside of the Republic to circumvent the laws.* Any person residing or intending to continue to reside in the Republic who goes outside this country, and with the intent to do so, there contracts a marriage prohibited or declared void under the laws of the Republic.

(b) The following shall be fined not less than \$100 nor more than \$500:

- (i) *For false statement.* Any person who in any affidavit or statement made under sections 2.2(2), 2.6 or 2.9, wilfully and falsely swears, or who procures another to swear falsely in regard to any material fact relating to the competency of either or both of the parties applying for a marriage license, or as to the ages of such party, if they are of age requiring consent of a parent, guardian or person in loco parentis, to marry, or person in loco parentis having authority to give such consent to the marriage.
- (ii) *For unlawful issuance of license.* Any registrar of marriages who knowingly issues a marriage license contrary to or in violation of any section of this chapter.
- (iii) *For unauthorized solemnization of marriage.* Any person, not being authorized by the laws of the Republic, who intentionally undertakes to solemnize a marriage in the Republic; or any person who intentionally participates in or in any way aids or abets any false or fictitious marriage.

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(c) The following shall be fined not less than \$50 nor more than \$250:

(i) For unlawful solemnization of marriage. Any officiating person who solemnizes a marriage between contracting parties who have not first obtained a proper marriage license as provided in this chapter; or solemnizes a marriage without the presence of two competent adult witnesses; or solemnizes a marriage knowing of any legal impediment thereto, or solemnizes a marriage more than 30 days after the date of the license.

(ii) For solemnization in unauthorized jurisdiction. Any officiating person who solemnizes a marriage between non-residents of the Republic at a place other than the county, territory or chartered districts in which the license is issued.

(d) The following shall be fined not less than \$10 or more than \$100:

(i) For failure to file certificate. Every officiating person who neglects or refuses to transmit the original marriage certificate of any marriage solemnized by him to the registrar of marriages of the count, territory or chartered district issuing the license within three days after the date of such solemnization.

(ii) For violations relating to records. Any registrar of marriages who refuses or neglects to enter upon the marriage license docket a complete record of each application and of each marriage license issued from his office immediately after the same has been made or issued, as the case may be, or fails to post marriage license applications as required or to keep such marriage license docket open for inspection or examination by the public during regular office hours, or prohibits or prevents any person from making a copy of abstract of the entries in the marriage license docket.

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(e) The following shall be fined not less than \$5 nor more than \$25:

(i) *For other violations.* Any person violating any provision of this chapter for which no other penalty is provided.¹⁵

**Chapter 3. RIGHTS, DUTIES AND LIABILITIES
OF MARRIED PERSONS**

- Sub. § 3.1. Ante nuptial contracts enforceable after marriage.
- Sub. § 3.2. Non-liability for ante nuptial debts, contractual obligations and tort liabilities; exception.
- Sub. § 3.3. Spouses may convey to each other or partition their jointly held property.
- Sub. § 3.4. Property and rights therein of married women.
- Sub. § 3.5. Right of action by or against married women; and by wife or husband against the other, for torts.
- Sub. § 3.6. Agreements between husband and wife in derogation of marital obligations void.

Sub. § 3.1. Ante nuptial contracts enforceable after marriage.

A contract made between persons in contemplation of marriage remains in full force after the marriage takes place.

Sub. § 3.2. Non-liability for ante nuptial debts, contractual obligations and tort liabilities; exception.

Marriage does not render a spouse liable for the payment of ante nuptial debts or the contractual obligations or tort liabilities incurred by the other spouse before marriage, except that a spouse who acquires property of the other spouse, by ante nuptial contractor

¹⁵ *Prior legislation:* 1956 Code 10:22, L. 1935-36, ch. XVII, Sub. § 14. 16. 17.

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otherwise, is liable, for the ante nuptial debts and the contractual obligations and tort liabilities incurred before marriage by the other spouse, but not to the extent of the property so acquired. Each spouse shall be liable to all remedies for the recovery of ante nuptial debts and the contractual obligations and tort liabilities incurred by them before marriage, which may be enforced against them and their separate property as if they were married.¹⁶

Sub. § 3.3. Spouses may convey to each other or partition their jointly held property.

Spouses may convey or transfer real or personal property directly, the one to the other, without the intervention of a third person; and may make partition or division of any real property held by them as tenants in common, joint tenants or tenants by the entireties provided that in the case of tenants by the entireties partition may only be maintained when both parties consent thereto.

Sub. § 3.4. Property and rights therein of married women.

1. Not subject to control by husband. Property, real and personal, now owned by a married woman, or hereafter owned by a woman at the time of her marriage, or acquired by her as prescribed in this Chapter, and the rents, issues, proceeds and profits thereof, shall continue to be her sole and separate property as if she were married and shall not be subject to her husband's control or disposal nor liable for his debts.

2. Powers as though unmarried. A married woman has all the rights in respect to property, real or personal, and the acquisition, use, enjoyment and disposition thereof, and to make contracts in respect thereto with any person, including her husband, and to carry on any

¹⁶ *Prior legislation:* 1956 Code 10:46; Rev. Stat. Sub. § 245; OBB 22, Legal Principles and Rules, t.1, Sub. Secs. 4,5,46, 2 Hub. 1515.

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business, trade or occupation, and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she were unmarried.

3. *Contracts not binding on husband or his property.* A contract made by a married woman does not bind her husband or his property.¹⁷

Sub. § 3.5. Right of action by or against married women; and by wife or husband against the other, for torts.

1. *In general.* Subject to the provisions of section 5.14 of the Civil Procedure Law, a married woman has a right of action for an injury to her person, property, or character, or for an injury arising out of the marital relation, as if unmarried. She is liable for her wrongful or tortious acts her husband is not liable for such acts unless they were done by his actual coercion or instigation and such coercion or instigation shall not be presumed, but must be proved.

2. *Torts committed by and against spouse.* A married woman has a right of action against her husband for his wrongful or tortious acts resulting to her in any personal injury or resulting in injury to her property, as if they were unmarried, and she is liable to her husband for her wrongful or tortious acts resulting in any such personal injury to her husband or to his property, as if they were unmarried.¹⁸

Sub. § 3.6. Agreements between husband and wife in derogation of marital obligations void.

A husband and wife cannot contract to alter or, dissolve the marriage

¹⁷ *Prior legislation:* 1956 Code 10:45; L. 1942-43, ch. XIV, Sub. §§ 2,3,4.

¹⁸ *Prior legislation:* 1956 Code 10:44, 46; Rev. Stat. Sub. § 245, 268, 269; OBB 22, Legal Principles and Rules, T. 1, Sub. § 4, 5, 46, 2 Hub. 1515.

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or to relieve the husband from his liability to support his wife, or to relieve the wife of liability to support her husband as provided in section 5.3(e).

Chapter 4. CHILDREN

Subchapter A. Custody

- Sub. § 4.1. Husband and wife joint natural guardians; father paramount upon separation.
- Sub. § 4.2. Habeas corpus to obtain visitation rights in respect to infant grandchild whose parents are deceased.

Subchapter B. Guardians

- Sub. § 4.11. Guardians in socage.
- Sub. § 4.12. Power of probate court over person and property of minors; exception upon marriage.
- Sub. § 4.13. Probate court's territorial jurisdiction over guardian appointments.
- Sub. § 4.14. Petition for appointment; by whom made.
- Sub. § 4.15. Contents of petition for appointment.
- Sub. § 4.16. Persons to be served with process.
- Sub. § 4.17. Proceedings.
- Sub. § 4.18. Decree; term of office of guardian; initial inventory.
- Sub. § 4.19. Bond to secure minor's property.
- Sub. § 4.20. Duties and liabilities of guardians of the person.
- Sub. § 4.21. Duties and liabilities of guardians of the property and in socage.
- Sub. § 4.22. Application of minor's property for expenses.
- Sub. § 4.23. Appointment of guardian ad litem to protect against adverse interest of guardian.
- Sub. § 4.24. Authority of guardian of property to sell, lease, exchange, or mortgage real property.
- Sub. § 4.25. Annual account by guardian of the property.
- Sub. § 4.26. Annual examination of guardian's account.

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- Sub. § 4.27. Proceedings where guardian's account defective.
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Subchapter C. Adoption - Part I - Adoptions Generally

- Sub. § 4.51. Definition.

Part II - Adoptions of Minors.

- Sub. § 4.61. Who may be adopted.
- Sub. § 4.62. Who may adopt.
- Sub. § 4.63. Venue of proceedings.
- Sub. § 4.64. Persons required to consent to adoption; formal requirements.
- Sub. § 4.65. Withdrawal of consent to adoption.
- Sub. § 4.66. Petition for adoption.
- Sub. § 4.67. Issuance of citations; service and filing of objections to adoption.
- Sub. § 4.68. Investigation.
- Sub. § 4.69. Notice of hearing: Persons exempted from appearing.
- Sub. § 4.70. Hearings; confidential form.
- Sub. § 4.71. Order of adoption.
- Sub. § 4.72. Effect of adoption.
- Sub. § 4.73. Abrogation by or on behalf of an adopted child.
- Sub. § 4.74. Registration of new birth certificate.
- Sub. § 4.75. Confidential nature of records.

Part III - Adoption of Adults

- Sub. § 4.81. Adoption of adults.

Subchapter D. Legitimation of Children Born Out of Wedlock.

- Sub. § 4.91. When natural parents subsequently intermarry.
- Sub. § 4.92. Limited legitimation upon application of natural father.

Subchapter A. CUSTODY

Sub. § 4.1. Husband and wife joint natural guardians; father paramount upon separation.

A married woman is a joint natural guardian with her husband of the minor children of their marriage while they are living together and maintain one household. Each such parent shall be equally charged with their care, nurture, welfare and education. When such parents are living in a state of separation, the father shall be the custodian of the minor children of the marriage as against the claim of any person whomsoever; but if he is unable or morally unfit to perform his parental, legal, moral and natural duties toward his children or for any other reasons he fails or neglects to perform such duties, upon petition to a circuit court for a writ of habeas corpus or other appropriate relief and a showing in the proceedings thereon of such inability, moral unfitness or failure on the part of the father, the minor children of the marriage shall be entrusted to the mother or some other person who is capable of performing such duties. If the father is dead or absent, the mother shall have custody of the minor children of their marriage unless it is established that she is unable or unfit or failing to perform her duties toward them.¹⁹

Sub. § 4.2. Habeas corpus to obtain visitation rights in respect to infant grandchild whose parents are deceased.

When a minor child of a marriage in which either or both of the parents is or are deceased, is residing in this Republic, a grandparents of such child, who is or are the parents of such deceased parent or parents, may apply to the circuit court for a writ of habeas corpus to have such child brought before the court; and on the return thereof, the court, by order, after due notice to the surviving parent, if any, or

¹⁹ *Prior legislation:* 1956 Code 10:60; L. 1935-36, ch. XVII, Sub. § 25.

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any other person or party having the care, custody and control of such child, to be given in such manner as the court shall prescribe, may make such directions as the best interest of the child may require, for visitation right (s) for such grandparent or grandparents in respect to such child.

***Subchapter B.* GUARDIANS**

Sub. § 4.11. Guardians in socage.

Where a minor, for whom a legal guardian of the property has not been appointed, acquires real property, the guardianship of his property with the rights, powers and duties of a guardian in socage belong;

(a) to the father, or if the minor's parents are separated or divorced and a habeas corpus or other proceeding has been instituted with respect thereto, to the person who has been given the legal custody of the minor by the judgment in such proceeding;

(b) if one of the parents be dead, to the sole surviving parent;

(c) if both parents be dead, to the nearest and eldest relative of full age not under any legal incapacity. The rights and authority of every such guardian shall be suspended by a guardian of the property appointed in pursuance of this subchapter.

Sub. § 4.12. Power of probate court over person and property of minors: exception upon marriage.

1. In general. The probate court has power over the property of a minor and is authorized and empowered to appoint a guardian of the person or of the property, or of both, of a minor whether or not the parent or parents of the minor are living.

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2. *Emancipation of married minors.* Upon marriage, a minor shall no longer be a proper subject for guardianship of the person and a guardianship of the person is revoked by the marriage of a minor ward. Upon application, the probate court may release to a minor ward upon marriage, in whole or in part, the estate of such minor ward held under guardianship.²⁰

Sub. § 4.13. Probate court's territorial jurisdiction over guardian appointments.

Where a minor has no legal guardian, a probate court has jurisdiction to appoint a guardian of his person or property or of both, in the following cases:

- (a) Where a minor is domiciled in the area over which the court has territorial jurisdiction or has sojourned therein for at least one year immediately preceding the application;
- (b) Where the minor is a non-domiciliary of the Republic but has property situated in the area over which the court has territorial jurisdiction.

Sub. § 4.14. Petition for appointment by whom made.

A petition for the appointment of a guardian of the person or property, or both, of a minor may be made by any person in behalf of the minor or if the minor be over the age of 16 years, it may be made by the minor.²¹

20 *Prior legislation:* 1956 Code 10:90; Rev. Stat. Sub. § 1005, 1006.

21 *Prior legislation:* 1956 Code 10:90 (1st par.); Rev. Stat. Sub. § 1005.

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Sub. § 4.15. Contents of petition for appointment.

A petition for the appointment of a guardian of a minor must show:

- (a) The full name, domicile and date of birth of the minor.
- (b) The names of the father and the mother and whether or not they are living, and if living, their domiciles, the name and address of the person with whom the minor resides and the names and addresses of the nearest distributees of full age who are domiciliaries, if both father and mother are dead;
- (c) Whether the minor has had at any time a guardian appointed by will or deed or an acting guardian in socage;
- (d) The estimated value of the minor's real and personal property and an estimate of the annual income therefrom to which the minor is entitled;
- (e) If the minor is a non-domiciliary married woman and the petition relates to personal property only, that the property is not subject to the control or disposition of her husband by the law of her domicile, and the name and domicile of her husband;
- (f) The petition may state the reason when a person nominated would be a suitable guardian and if either parent be living why either of them should not be appointed guardian.

Sub. § 4.16. Persons to be served with process.

1. General rule. Upon the presentation of the petition for the appointment of a guardian of a minor process shall issue as follows:

- (a) To the parent or parents who are within the Republic of Li-

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beria and whose residences therein are known, or if there be none, to the grandparents who are within the county in which the court having jurisdiction is located.

(b) To the person having the care and custody of the minor or with whom he resides.

(c) If the application is made in behalf of a minor 16 years of age or over by any person, to the minor.

2. *Exceptions.* No process shall be necessary to a parent who has abandoned the minor or is deprived of civil rights or divorced from the parent having legal custody of the minor, or is otherwise judicially deprived of the custody of the minor, or who is an incompetent or habitual drunkard, or in case the minor, is a married woman, to a husband who has abandoned her or is deprived of civil rights, or is divorced from her, or is an incompetent or habitual drunkard.

3. *Relatives as proper party respondents.* The court shall ascertain so far as practicable what relatives of the minor are domiciled in the county in which it is located or elsewhere and with whom the minor resides and it may issue process to any relative or class of relatives to show cause why the appointment should not be made.

Sub. § 4.17. Proceedings.

Where process is not issued or upon the return of process, the court, for the purpose of sections 4.18 and 4.19, shall ascertain the age of the minor, the amount of his personal property, the gross amount of the rents and profits of his real estate during his minority and the sufficiency of the security offered by the proposed guardian. If the minor is over the age of 16 years the court shall ascertain his preference for a suitable guardian.

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Sub. § 4.18. Decree; term of office of guardian; initial inventory.

1. *Extent of provisions in decree.* If the court is satisfied that the interests of the minor will be promoted by the appointment of a guardian of his person or of his property, or of both, it must make a decree accordingly. The same person may be appointed guardian than of both the person and the property of the minor or the guardianship of the person and of the property may be committed to different persons. The court may appoint a person other than a parent of the minor of the person nominated by the petitioner.

2. *Term of office.* The term of office of a guardian so appointed expires when the minor attains his majority, except that the term of office of a guardian of the person shall expire upon marriage of the minor.

3. *Filing of initial inventory.* Within 30 days after his appointment, a guardian of the property of a minor shall file in the probate court in which he was appointed an inventory of the property belonging to the minor coming into his hands.

Sub. § 4.19. Bond to secure minor's property.

Property of a minor coming into the hands of a guardian of the property of a minor shall be secured by bond as provided in the Probate Court Procedure Code.²²

Sub. § 4.20. Duties and liabilities of guardians of the person.

A guardian of the person of a minor has the legal custody of his minor ward and the right to control and discipline him and to direct his care and education and to make major decisions affecting his interest

²² *Prior legislation:* 1956 Code 10:91; Rev. Stat. Sub. § 1007, 1008.

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including the right to consent to marriage, to major surgery and to adoption.²³

Sub. § 4.21. Duties and liabilities of guardians of the property and in socage.

A guardian of the property of a minor or guardian in socage shall safely keep the property of his ward that shall come into the custody and shall not convert, nor make or suffer any waste, sale or destruction of such property, but shall keep in repair and maintain the houses, gardens and other appurtenances to the lands of his ward, by and with the issues and profits thereof or with such other moneys belonging to his ward as shall be in his possession, and shall deliver the said property to his ward, when he comes to full age, in at least as good condition as such guardian received it, inevitable decay and injury only excepted; and shall answer to his ward for the issues and profits of the real property received by him by a lawful account, to be settled before the probate court having jurisdiction thereof. If any guardian shall convert, or make or suffer any waste, sale or destruction of the property of his ward, he shall lose the custody of the property of the ward and of such ward, if also the guardian of his person, and shall be liable to the ward for any damages caused thereby.²⁴

Sub. § 4.22. Application of minor's property for expenses.

Upon the petition of the guardian of the person of a minor, or of the person having his custody, or of the minor or of any person in his behalf, the probate court having jurisdiction over the minor's property, upon notice to such persons, if any, it deems proper, may by

²³ *Prior legislation:* 1956 Code 10:20 (2nd par.); Rev. Stat. Sub. § 1006.

²⁴ *Prior legislation:* 1956 Code 10:93; Rev. Stat. Sub. § 1009, 1010.

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order direct the application of the minor's property by the guardian of the property of the minor to the following:

- (a) The support and education of the minor,
- (b) The cost of the funeral of a parent of the minor;
- (c) The cost of the funeral of any other person who had named the minor as beneficiary of a policy of insurance upon his life to the extent of the proceeds thereof and provided that the guardian shall have collected such proceeds.

In all cases the court may determine the amount of expenditure of the minor's funds that is reasonable, proper and just under the circumstances, taking into consideration the liability, if any, of any other person to pay such expenses, his financial ability to pay and all other relevant facts. The payment may be from income or principal. No payment for the funeral expense of any person shall be authorized unless the court finds that the estate of such person is insufficient to pay it.

Sub. § 4.23. Appointment of guardian ad litem to protect against adverse interest of guardian.

Any minor 16 years of age or over, or any person in behalf of any minor may petition the court having jurisdiction over the minor's estate for the appointment of a guardian ad litem to initiate in behalf of the minor a proceeding for the protection of the minor's financial or other interest and in such proceeding authorize the guardian ad litem to take such action as the court deems proper.

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Sub. § 4.24. Authority of guardian of property to sell, lease, exchange or mortgage real property

The probate court from which letters were issued to the guardian of the property of a minor may authorize such guardian in the name of the minor to sell, lease, exchange or mortgage any interest of the minor in real property in accordance with the following provisions:

(a) A proceeding therefor may be commenced by the guardian by filing a petition in which the minor, if 16 years of age or over may join. It must show the facts as to the real property, the interest of the minor therein, the other property of the minor, his financial circumstances and such other facts showing that it is for the best interest of the minor to sell, lease, exchange or mortgage all or a portion of the minor's interest in the real property.

(b) If the petition be entertained process shall issue to the minor if he has not joined therein, to the parent or parents, or if there be none, to an adult person with whom the minor resides, the person having his care and custody, and if the minor be married, to the minor's spouse. If the guardian shows to the satisfaction of the court either by the petition or affidavit in support thereof that he lacks knowledge of the existence, identity, name, residence or location of any person to be served or shows that with due diligence any such person cannot be personally served with process within the Republic, the court may dispense with such service or make such direction as it deems appropriate for the protection of the minor.

(c) On the return of the process the court shall take such proof as it deems necessary and make such order as justice and the best interests of the minor require.

(d) Any instrument executed by the guardian in the name of the

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minor in conformity with the provisions of this section shall have the same effect as if the minor being of full age had executed it.

(e) The court shall have jurisdiction on like application to ratify and confirm any lease or leases made by the guardian in behalf of the minor and not therefore authorized, ratified or confirmed by a court of competent jurisdiction;

(f) Nothing in this section shall be deemed to authorize a guardian appointed by will or deed to sell, exchange or mortgage the minor's real property contrary to the express provisions of the will or deed.

Sub. § 4.25. Annual account by guardians of the property.

1. Form and contents of account. A guardian of the property of minor must in the month of January of each year, as long as any of the minor's property or the proceeds thereof remains under his control, file in the probate court from which letters were issued to him, the following papers:

(a) An account containing a true statement and description of each item of personal property of the minor received by him since his appointment or since the filing of his last annual account, as the case requires, the value of each item so received, a list of the items remaining in his hands, a statement of the manner in which he has disposed of each item not remaining in his hands and a description of the amount and nature of each investment of money made by him.

(b) A true account in form of debtor and creditor of all his receipts and disbursements of money during the preceding year, charging himself with any balance remaining in his hands when the last account was rendered and stating the balance remaining in his

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hands at the conclusion of the year to be charged to him in the next year's account.

(c) The names and addresses of the sureties on his bond if natural persons whether they are living or whether the security of the bond has become impaired.

(d) To each account must be appended the affidavit of the guardian to the effect that the account is a true statement according to the best of his knowledge and belief.

2. Examination of evidences of assets. The guardian of the property of a minor may be required by the court to produce or examination by it all securities or evidences of deposit or investment which he has made relating to the estate of the minor.

Sub. § 4.26. Annual examination of guardian's account.

In the month of February of each year and thereafter until completed or at such other time as the court deems proper, the probate court must for the purposes specified in section 4.27, examine or cause to be examined under its direction all accounts filed within the preceding year. The examination may be made by the clerk of the court or by a special examiner appointed by the court, who must before he enters upon the examination subscribe and take before the court and file with the clerk an oath faithfully to execute his duties and to make a true report to the court.

Sub. § 4.27. Proceedings where guardian's account defective.

If it appears to the court upon an examination made as prescribed in section 4.26 or by the report of the special examiner that a guardian of a minor's property has omitted to file his annual account or the affidavit relating thereto as prescribed in this chapter, or if the court

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deems that the interest of the minor requires that the guardian render a more full or satisfactory account or where the court has reason to believe that sufficient cause exists for the guardian's removal, it may appoint a guardian ad litem for the minor for the purpose of filing a petition in his behalf for the removal of the guardian and prosecuting the preceding for that purpose. In such event the following shall be applicable:

(a) In a case where a special examiner has been appointed, the court may appoint such examiner guardian ad litem for the minor and authorize him to procure the filing of an amended or proper account and to prosecute a proceeding for the removal of the guardian when necessary;

(b) In all cases of examination or prosecution as provided in this section the court shall fix a reasonable compensation for the special examiner and guardian ad litem and may make an order charging it in whole or in part upon the guardian personally or on the minor's funds in his hands.

Sub. § 4.28. Income commissions allowed to guardians of the property; filing annual accounts.

If a guardian of the property is required to receive income and pay it over and files an annual account of his receipts and disbursements as required by section 4.25, he shall be allowed and may retain the same commission on the amount of income so accounted for as he would be allowed upon principal on a judicial settlement of his accounts as such guardian.

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Subchapter C. ADOPTION²⁵

Part I
Adoptions Generally

Sub. § 4.51. Definition.

Adoption is the legal proceeding whereby a person takes another person into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect of such other person. A proceeding conducted in pursuance of this chapter shall constitute a judicial proceeding over which the probate court has jurisdiction. An order of adoption abrogation made therein by a judge of the probate court shall have the force and effect of and shall be entitled to all the presumptions attaching to a judgement rendered by a court of general jurisdiction in a common law action.

Part II
Adoption of Minors

Sub. § 4.61. Who may be adopted.

Any minor person present within the Republic at the time of the petition for adoption is filed, irrespective of place of birth or place of residence, may be adopted.

Sub. § 4.62. Who may adopt.

The following persons are eligible to adopt a minor:

- (a) A husband and wife jointly or either the husband or wife if the

²⁵ *Prior legislation:* 1956 Code 10:63; Rev. Stat. Sub. § 997, 998; L. 1898-99, 3 (st.).

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other spouse is a parent of the minor;

(b) An adult unmarried person; and

(c) An illegitimate minor's unmarried father.

Sub. § 4.63. Venue of proceedings.

Proceedings for adoption shall be brought in the probate court in the county, territory or chartered district where the petitioners reside.

Sub. § 4.64. Persons required to consent to adoption; formal requirements.

1. Whose consent required. Subject to the limitations hereinafter set forth consent to adoption of a minor shall be required as follows:

(a) Of both parents of the minor, if living, or of the surviving parent, of a child born in wedlock;

(b) Of the mother alone, of a child born out of wedlock;

(c) Of the legal guardian of the person of the minor or of any person having legal custody of the minor by court order, if both parents are dead or if the rights of the parents have been terminated by judicial proceedings;

(d) Of the minor, if sixteen years of age or over, unless the probate judge in his discretion dispenses with such consent.

2. Whose consent not required. Consent to adoption of a minor shall not be necessary from one whose parental rights have been judicially terminated, or of a parent who has abandoned the minor to be adopted, or of a parent for whose child a guardian of the person has

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been appointed or whose legal custody has been awarded to another by court, or of a parent who has been deprived of civil rights or who has been judicially declared incompetent, except that notice to any such parent of the proposed adoption may be required if the probate judge so orders, to be given in such manner as such judge may direct.

3. Formal requirement. Consents to adoption shall be in writing and shall be acknowledged before an officer authorized to take acknowledgments. They may be attached to the petition for adoption or may be filed after the filing of the petition, with the consent of the court.

Sub. § 4.65. Withdrawal of consent to adoption.

Withdrawal of any consent filed in connection with a petition for adoption hereunder shall not be permitted except that the court, after notice and opportunity to be heard is given to the petitioners, and to the person seeking to withdraw consent, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of the final order of adoption, however, renders any consent irrevocable.

Sub. § 4.66. Petition for adoption.

A petition for adoption of a minor child must be verified by the petitioners and shall specify the following particulars:

- (a) The full names, ages and place of residence of the petitioners, and if married, the place and date of marriage.
- (b) The name, date and place of birth of the child to be adopted as nearly as can be ascertained.
- (c) The date when and the manner in which petitioners acquired

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custody of the child.

(d) A full description and statement of the value of all property owned or possessed by the child.

(e) The facts, if any, which render unnecessary the consent to the adoption of either or both of the parents of the child.

(f) That it is the desire of the petitioners that the relationship of parent and child be established between them and the child, and the new name, if any, by which the child to be adopted is to be known.

Sub. § 4.67. Issuance of citation; service and filing of objections to adoption.

Upon the filing of a petition for adoption, a citation shall issue to all persons, if any there be, whose consent to an adoption is required and with reference to whom facts are set forth alleging that such consent is unnecessary. Such persons may serve and file objections to the proposed adoption.

Sub. § 4.68. Investigation.

Upon filing of a petition for adoption, the court shall order an investigation to be made by a disinterested person who in the opinion of the court is qualified by training and experience to examine into the allegations set forth in the petition and the other matters relevant to the proposed adoption. The court shall further order that a written report of such investigation shall be filed by the designated investigator within the time fixed by the court and in no event more than 30 days from the issuance of the order for investigation unless, for good cause shown, time therefor is extended for a reasonable period by the court. Such investigation, in addition to examining into the truth and

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accuracy of the allegations of the petition, shall include the conditions and antecedents of the child to be adopted for the purpose of determining whether such child is a proper subject for adoption, appropriate inquiry to determine whether the proposed home is a suitable one for such child and other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge. The report shall become a part of the files in the proceeding. Compensation for the investigators services shall not exceed five dollars per diem and shall be borne by the petitioner.

Sub. § 4.69. Notice of hearing; persons exempted for appearing

Upon the filing of the report of the investigator, the court shall thereupon set a time and place for a hearing upon the allegations set forth in the petition for adoption and in any answer in opposition to the petition and upon such other acts relating to the minor child to be adopted and the adoptive parents as will give the court adequate basis for determining the propriety of approving the adoption. Notice thereof shall be given to all interested persons. The petitioners and the child to be adopted shall be required to appear unless the presence of the child is waived by the court and for good cause shown, which reason shall be recited in the order for adoption, where a necessary consent to the adoption is duly acknowledged approved, the court may order the hearing to be held without the personal appearance of such person.

Sub. § 4.70. Hearings: confidential form.

Upon the return date of the notice of hearing, the court shall take proof of the facts shown in the petition and the investigation report filed in the proceeding and of any objections interposed. All hearings shall be confidential and shall be held in closed court without admittance of any person other than interested parties, necessary witnesses and their counsel.

Sub. § 4.71. Order of Adoption.

After the hearing, if satisfied that the moral and temporal interests of the child to be adopted will be promoted thereby, the court shall make an order approving the adoption and directing that such child shall thenceforth be regarded and treated in all respects _____ as the child of the adoptive parents or parent. If the court is also satisfied that there is no reasonable objection to the change of name proposed, the order shall direct that the name of the child be changed to the name stated in the petition for adoption and that henceforth the child shall be known by that name.

Sub. § 4.72. Effect of Adoption.

1. Upon relationship of natural parents and adopted child. After the making and entry of an order of adoption, the natural parents of the adopted child, unless they are the adoptive parents or spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and shall have no custodial rights over such adopted child, nor any right to inherit property from such child in accordance with the statutes of descent and distribution. The right of the adopted child to inherit property from and through his natural parent, unless they are the adoptive parents or the spouse of an adoptive parent, shall terminate upon the making and entry of an order of adoption.

2. Upon relationship of adoptive parents and adopted child. After the making and entry of an order of adoption, the relation of parent and child and all rights, duties and other legal consequences of the natural relation of child and parent shall hereafter exist between such adopted child and the adoptive parents adopting such child. From the date of the order of adoption, the adopted child shall be entitled to inherit real and personal property from and through the adoptive parents in accordance with the statutes of descent and distribution and the adoptive parents shall be entitled to inherit real and personal

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property from and through the adopted child in accordance with said statutes.

Sub. § 4.73. Abrogation by or on behalf of an adopted child.

1. Grounds. Any adopted child who has been adopted in pursuance of this subchapter or of any act repealed hereby or any person on behalf of such child may make an application to the court in which the original adoption took place for the abrogation of such adoption on the ground of:

- (a) cruelty,
- (b) misuse,
- (c) inability or refusal to support, maintain or educate such child, or
- (d) any other violation of duty on the part of the adoptive parents or parent toward such child.

2. Procedure. The application shall be made by a petition verified by the person making the application which must set forth the grounds thereof. A citation or order to show cause shall thereupon be issued requiring the adoptive parents or parent to show cause why the application should not be granted. Such citation or order to show cause shall be served on the adoptive parents or parent and also on the adopted child, if of the age of sixteen years or over, unless such adopted child is a party to the application. The court shall have power to order or compel the production before it of the person of such adopted child.

3. Order of abrogation. If on the proofs made before it on the hearing of such application, the court shall determine that any of the grounds for such application exists and that the best interests of such adopted child will be promoted by granting the application and that such adoptive parents or parent have justly forfeited their right to the

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custody of such adopted child, an order abrogating the adoption shall be made. Thereupon the status of such adopted child shall be the same as if no proceeding had been had for the adoption thereof.

Sub. § 4.74. Registration of new birth certificate.

1. Duty of clerk of probate court. For each adoption or abrogation of an adoption, the clerk of the probate court granting it shall prepare, within 30 days after the order thereon has been made and entered, a certificate of such order on a form furnished by the Principal Registrar of Births, Deaths and Burials as prescribed by the Minister of Health and Welfare. On or before the fifteenth day of each calendar month the said clerk of court shall forward to the Principal Registrar the certificates prepared by him during the preceding calendar month.

2. Duty of Principal Registrar. The Principal Registrar of Births, Deaths and Burials upon receipt of the certificated copy of an order of adaption from a clerk of a probate court shall prepare and substitute a supplementary birth certificate in the new name of the adopted person and seal and file separately the original certificate or duplicate thereof initially filed in his office with said certified copy attached thereto. He shall further send a copy of the supplementary birth certificate to the registrar in whose office the original certificate was filed, who shall substitute such copy in place of the original certificate or duplicate thereof in his files which shall then be sealed and filed separately. Such sealed documents may be opened by a registrar only upon demand of the adopted person if of legal age or by an order of court upon receipt of a certified copy of an order abrogating an adoption, the Principal Registrar and the registrar in whose office the original was filed shall restore the original certificate or duplicate thereof, as the case may be, to its original place in the files.

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Sub. § 4.75. Confidential nature of records.

All papers and records pertaining to an adoption in a preceeding under this subchapter shall be kept as a permanent record of the probate court and withheld from inspection. No person shall have access to such records except an order of the court in which the order of adoption was entered, for good cause shown.

Part III *Action of Adults*

Sub. § 4.81. Adoption of adults.

An adult person may be adopted by any other adult person with the consent of the person to be adopted, or if he is an adjudicated incompetent, of his guardian, and with the consent of the spouse, if any, of a sole adoptive parent, filed in writing with the court. A petition therefor shall be filed in the probate court of the county, territory or chartered district where the adoptive parents reside. The provision of sections 4.61 to 4.70, inclusive, shall not apply to the adoption of an adult person. After a hearing on the petition and after such investigation as the court deems advisable, if the court finds that it is to the best interests of the persons involved, a decree of adoption may be made and entered which shall have the legal consequences stated in section 4.72, except that any liability of the adopted child to his natural parents under section 5.3 (f) shall not be abrogated.

Subchapter D. LEGITIMATION OF CHILDREN BORN OUT OF WEDLOCK

Sub. § 4.91. When natural parents subsequently intermarry.

In any case where the natural parents of a child born out of wedlock

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shall lawfully intermarry, except where the parental rights of the mother were terminated prior thereto, such child shall thereby become legitimated and shall become for all purposes the legitimate child of both parents and entitled to all the rights and privileges of legitimacy as if born during the wedlock of the parents; and this section shall be taken to apply to all cases prior to its effective date as well as these subsequent thereto, but an estate or interest vested or trust created before the marriage of the parents of such child shall not be divested or affected by reason of such child being legitimated.²⁶

Sub. § 4.92. Limited legitimation upon application of natural father.

Upon an application made to the probate court by the natural father of a child born out of wedlock, such child may be legitimated with respect to such applicant and shall become for all purposes the legitimate child of such applicant and entitled to all the rights of legitimacy as if born during the lawful wedlock of the applicant. Upon receipt of such an application, the court shall issue a citation to the natural mother of the child who shall be served therewith together with a copy of the petition. She may serve and file an objection to the proposed legitimation, limited to the sole ground that the applicant is not the natural father of the child. After the hearing, if an objection has been filed and overruled, or if no objection has been filed, upon the return day of the citation, the court shall order the clerk of court to record the application, its date, the name of the applicant and the name and date of birth of the child, which record shall be admissible as full and sufficient evidence of the legitimacy of the child with respect to the applicant. The clerk shall also prepare, sign and issue

²⁶ *Prior legislation:* 1956 Code 10:65 (a); L. 1935-36, ch. XXII, Sub. § 1.

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to the applicant a certified copy of such record.²⁷

Chapter 5. SUPPORT OF DEPENDENTS

- Sub. § 5.1. Scope of chapter.
- Sub. § 5.2. Definitions.
- Sub. § 5.3. Persons legally liable for support of dependents.
- Sub. § 5.4. Jurisdiction and powers of designated courts over support proceedings.
- Sub. § 5.5. Venue of support proceedings.
- Sub. § 5.6. Persons who may originate proceedings; public agencies.
- Sub. § 5.7. Petition; contents.
- Sub. § 5.8. Issuance and service of citation.
- Sub. § 5.9. Issuance of warrant of arrest.
- Sub. § 5.10. Preliminary procedure on warrant.

- Sub. § 5.11. Sequestration of respondent's property where personal service cannot be affected.
- Sub. § 5.12. Hearings.
- Sub. § 5.13. Orders of support.
- Sub. § 5.14. Bonds as security for support orders.
- Sub. § 5.15. Settlement agreements for support; approval by court.
- Sub. § 5.16. Orders of protection.
- Sub. § 5.17. Warrants of arrest on failure to obey orders.
- Sub. § 5.18. Court's powers on failure to obey order.
- Sub. § 5.19. Entry and enforcement by execution of money

²⁷ *Prior legislation:* 1956 Code 10:65 (b); Rev. Stat., Sub. § 999; 1841 Digest, pt. 1, Act legalizing marriages and legitimating illegitimate children, Sub. § 6, 2 Hub. 1492; Acts 1839, Act legalizing marriages and legitimating illegitimate children, § 5, 2 Hub. 1398.

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judgment for arrears.

Sub. § 5.20. Additional procedures when paternity is an issue to be established.

Sub. § 5.21. Appeals; finality of payments prior to appellate court's decision.

Sub. § 5.22. Court's continuing jurisdiction over proceedings.

Sub. § 5.1. Scope of chapter.

The purpose of this chapter is to secure support in civil proceedings for dependent wives, mothers, children and poor relatives from persons legally responsible for their support.

Sub. § 5.2. Definitions.

As used in this chapter, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

(a) "Court" shall mean an appropriate circuit court having civil jurisdiction, an appropriate magistrate's court and appropriate justice of the peace court.

(b) "Child" includes a stepchild, foster child, child born out of wedlock, or likely to be born out of wedlock or legally son and daughter twenty-one years of age or older who is unable to maintain himself and is or is likely to become a public charge.

(c) "Child" born out of wedlock refers to a child who is begotten and born out of lawful matrimony.

(d) "Dependent" shall mean and include any person who is entitled to support pursuant to this chapter.

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(e) "Petitioner" shall mean and include each dependent person for whom support is sought in a proceeding instituted pursuant to this chapter.

(f) "Respondent" shall mean and include each person against whom a proceeding is instituted pursuant to this chapter.

Sub. § 5.3. Persons legally liable for support of dependents.

The following persons are hereby declared to be liable for the support of dependents bearing the relationships herein set forth in each category and, if possessed of sufficient means or able to earn such means, may be required to pay for such support a fair and reasonable sum according to their means, as the court may determine:

(a) Husband liable for the support of his wife; a wife who leaves her husband for just cause is entitled to such support; the grounds for an action for divorce shall constitute just cause as well as the habitual and continuous drunkenness of the husband;

(b) Father liable for support of his child or children, under twenty-one years of age but if any such child has been born out of wedlock and if the natural parents have not inter-married thereafter, the liability of the natural father shall not be enforceable unless he has adopted him, or has acknowledged or shall acknowledge paternity of such child in open court or by a writing acknowledged before a justice of the peace or notary public and filed with the Registrar of Deeds or he has been legitimated under the provisions of section 4.92, or the father has been adjudicated to be the father of such child by a court of appropriate jurisdiction including the court making the determination for support;

(c) Mother liable for support of her child under twenty-one years of age whenever the father of such child is dead, or cannot be

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found, or is incapable of supporting such child; and in the event that the father of such child can be found but does not possess sufficient means to fuel contribute a fair and reasonable sum for his support, the court may apportion the costs of such support between the parents according to their respective means and responsibilities.

(d) Parents severally liable for support for each son or daughter, twenty-one years of age or older, whenever such son or daughter is unable to maintain himself or herself and is or is likely to become a public charge; the court, in making its determination, may apportion the costs of such support between the parents according to their respective means and responsibilities.

(e) Wife liable for support of her husband if he is incapable of supporting himself and is or is likely to become a public charge.

(f) Adult person liable for support of each of his or her parents who is unable to maintain himself or herself and is or is likely to become a public charge and if there is more than one adult person so liable the court, in making its determination, may apportion the costs of such support among such adult persons according to their respective means and responsibilities.²⁸

Sub. § 5.4. Jurisdiction and powers of designated courts over support proceedings.

1. Circuit Court. The circuit court shall have jurisdiction of proceedings to compel support of dependents and in connection therewith shall have power to make determinations as to paternity when such relationship is in issue and to order respondents to pay sums sufficient

²⁸ *Prior legislation:* 1956 Code 10:40 (1st par.); 41,47,61, 67 (1st par.); L. 1935-36, ch. XVII, Sub. § 20,21; L. 1928, ch. XIV, Sub. § 1.3; Rev. Stat. Sub. § 668 (1st par.).

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to provide necessary food, shelter, clothing, care, medical and hospital expenses, expenses of confinement and recovery and other reasonable expenses in connection with pregnancy, expenses of education of a child, funeral expenses and such other reasonable and proper expenses of the petitioner as justice requires, having due regard to the circumstances of the respective parties. Where the petitioner's needs are so urgent as to require it, the court may make a temporary order for support pending a final determination.

2. Justice of the Peace and Magistrate's Courts. The Justices of the Peace courts and the Magistrate's court of proceedings to compel support of dependents except when an issue of paternity is raised or some other fact issue triable by a jury is presented, in which events the proceedings shall forthwith be transferred to the appropriate circuit court for trial. With the aforesaid exception precluding jurisdiction when a trial of jury issues is presented, the justice of the peace court and the magistrates' courts shall have all the powers granted herein to the circuit court including the power to order sequestration and the right to issue warrants of arrest in addition to all procedural powers provided in the Civil procedure Law. If a petitioner is indigent and cannot afford legal counsel, the matter shall be referred to the county attorney who shall expeditiously prosecute the proceeding on behalf of the petitioner.²⁹

Sub. § 5.5. Venue of support proceedings.

Proceedings to compel support of dependents under this chapter, with reference to their venue, shall be originated in accordance with the provision of section 4.1 of the Civil Procedure Law.

²⁹ *Prior legislation:* 1956 Code 66, 40 (2nd par.); L. 1935-36, ch. XVII, Sub. § 20 (2nd par.); Rev. Stat. Sub. § 667 668; J.P. Code, Sub. § 58, 59, OBB 159, Act concerning bastardy: Com. L. (July 7, 1838), 2 Hub. 1344, 1358.

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Sub. § 5.6. Persons who may originate proceedings; public agencies.

A wife, mother of a child, a child, or other relative entitled to support under the provisions of section 5.3 may originate proceedings under this chapter to compel a person liable for the support declared to be due to support the petitioner as required by law. A parent or guardian of a child or other person in loco parentis, or a representative of a charitable or philanthropic society having a bona fide interest in the petitioner or, when the petitioner is unable because of his physical or mental condition to file a petition, a guardian, guardian ad litem, next friend or other person appointed by the court, may file a petition in behalf of a dependent. Whenever an official agency or instrumentality of the Government is furnishing support or likely to furnish support to a dependent, it shall have the same right to invoke the provisions of this chapter as the dependent to whom the duty of support is owed.³⁰

Sub. § 5.7. Petition; contents.

Proceedings under this chapter are commenced by the filing of a verified petition, which may be made on information and belief, showing the name, age, residence and circumstances of the petitioner, alleging that he or she, as the case may be, is in need of and is entitled to support from the respondent, giving name and relationship to petitioner, age residence and circumstances, and praying that the respondent be compelled to furnish such support. The petitioner shall make a demand upon the respondent for support as a condition precedent to the filing of a petition for a support.³¹

³⁰ *Prior legislation:* 1956 Code 10:42 (1); L. 1935-36, XVII, Sub. § 22.

³¹ *Prior legislation:* 1956 Code 10:42 (1); L. 1935-36, ch. XVII, Sub. § 22.

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Sub. § 5.8. Issuance and service of citation.

On the filing of a petition sufficient in law under this chapter, the court, except as provided in section 5.9 shall cause a citation to be issued, requiring the respondent to show cause why the order of support and such other and further relief prayed for by the petition should not be made. The citation shall be served in the same manner as is provided in the Civil Procedure Law for the service of a summon in a civil action at least three days before the time stated therein for appearance. A copy of the petition and of supporting papers, if any, shall be served therewith.

Sub. § 5.9. Issuance of warrant of arrest.

The court may issue a warrant, directing that the respondent be arrested and brought before the court, when a petition is presented to the court under this chapter and it appears that any of the following conditions is present:

- (a) The citation cannot be served because the respondent cannot be found although diligent efforts to serve him have been made, or it is shown that he is concealing himself so that process cannot be personally served upon him; or
- (b) The respondent has failed to obey the citation; or
- (c) The respondent is likely to leave the jurisdiction; or
- (d) A citation, in the court's opinion, would be in effectual; or
- (e) The safety of the petitioner is endangered; or
- (f) A respondent out on bond or on parole has failed to appear.

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Sub. § 5.10. Preliminary procedure on warrant.

When a respondent is apprehended pursuant to a warrant of arrest, he shall be brought before the court issuing the warrant in accordance with the provisions of section 10:11 (1) of the Criminal Procedure Law. When such respondent is brought before the court issuing the warrant, he shall be ordered to be held in custody for the hearing on the petition unless he furnishes a sufficient bond to appear thereat.

Sub. § 5.11. Sequestration of respondent's property where personal service cannot be effected.

Where in a proceeding under this chapter it appears to the court that the respondent is not within the Republic, or cannot be found therein, or is concealing himself therein so that process cannot be personally served upon him, the court may at any time after proof of personal service of process outside of the Republic, as provided in section 3.39 of the Civil Procedure Law, or after the entry of an order of publication of process pursuant to section 3.40 of the Civil Procedure Law, and from time to time thereafter, make any order or orders without notice directing the sequestration of so much of his property as necessary, both real and personal and whether tangible or intangible, within the Republic and may appoint a receiver thereof, or by injunction or otherwise take such property into its possession and control. The property thus sequestered and the income therefrom may be applied in whole or in part and from time to time, under the direction of the court and as justice may require, to the payment of such sum or sums as the court may deem it proper to award, by order or judgement, as the case may be, and during the pendency of the proceeding or at the termination thereof, for the support of the petitioner in the proceeding and for his expenses incidental to or connected with the bringing and carrying on of the proceeding and if the rents and profits of the real estate together with the other property so sequestered insufficient to pay the sums of money required, the

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court, upon such terms and conditions as it may prescribe, may direct the mortgaging or leasing of sufficient of said real estate to pay such sums. The court may appoint the petitioner in the proceeding as receiver or sequestrator in such cases. If a wife is the petitioner, the court may authorize her to use and occupy, free of any rent or use and occupation or otherwise, any if use or other suitable property of her respondent husband and a dwelling for herself or herself and her children, and may likewise turn to her for the use of herself or herself and her children and chattel or chattels of her husband. The relief herein provided for is in addition to any and every other remedy to which a petitioner may be entitled under the law.

Sub. § 5.12. Hearings.

Hearings are conducted by the court except that there is a right to a trial by jury by way of special verdict, among matters of the issues of facts raised in a case where a wife who has left her husband is the petitioner and the respondent husband claims he is not liable for her support because she left him without just cause. Upon the return of the citation or when a respondent is brought before the court pursuant to a warrant of arrest the court shall proceed to hear and determine the case. The respondent shall be informed of the contents of the petition, advised of his right to counsel and shall be given opportunity to be heard and to present witnesses. The court, on application of either party, for good cause shown, may grant such adjournments as may be necessary and may also adjourn the hearing to enable it to make inquiry into the surroundings, conditions and capacities of the Petitioner, include the financial abilities and responsibilities of the respondent and other persons liable for the support of the petitioner and for other proper cause. If the court so adjourns the hearing, it may require the respondent to give a bond to appear or in default thereof may commit him until the hearing resumes. The court, in a

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proper case, may exclude the general public from the courtroom.³²

Sub. § 5.13. Orders of support.

If the court finds after hearing that a respondent is liable for the support of the petitioner under this chapter and is possessed of sufficient means or able to earn such means, the court shall make an order requiring the respondent to pay weekly or at other fixed periods a fair and reasonable sum for or towards the support of the petitioner. The court shall require respondents to make their residences known at all times should they move from the addresses last known to the court, by reporting such change to the clerk of the court. Failure to report such change shall subject a respondent to the provisions of section 5.18.³³

Sub. § 5.14. Bond as security for support orders.

The court may require a respondent to give a bond with sufficient surety to be approved by the court in accordance with the applicable provisions of the Civil Procedure Law, that the respondent will abide by an order for support made under this chapter. Such bond shall be for a definite period of three years, and the required amount of the principal of the bond shall be one and one half times the amount of the total payment for support required for three years and shall be stated in the order for support. After hearing and for good cause shown, the court at the termination of the period provided in the bond may require further security such as may be required at the time of the original bond.

³² *Prior legislation:* 1956 Code 10:42 (2); L. 1935-36, ch. XVII, Sub. § 23.

³³ *Prior legislation:* 1956 Code 10:40; L. 1935-36, ch. XVII, Sub. § 20.

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Sub. § 5.15. Settlement agreements for support; approval of court.

At any time prior to the entry of a final order under this chapter, either before or after the issuance of process, or at any time while such final order is still in effect, an agreement for the support of the petitioner may be entered into with the respondent. By the terms of the agreement the respondent must submit personally to the jurisdiction of the court and consent to the entry of a final order in accordance with its terms. The agreement must be reduced in writing and submitted to the court for approval. If the court determines that adequate provision has been made and is fully secured, the court without further hearing may thereupon enter an order for the support of the petitioner by the respondent in accordance with the terms of the agreement, which shall be binding upon the respondent and shall in all respects be a valid order.

Sub. § 5.16. Orders of protection.

Where the interests of a child are involved, the court may make an order of protection in assistance or as a condition of any other order made under this chapter, including the issuance of a temporary order of protection upon the filing of a petition, for good cause shown therein. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by the petitioner or respondent of both. Such an order may require either party to do the following:

- (a) To stay away from the child's home the other parent or the child;
- (b) To permit a parent to visit the child at stated periods;
- (c) To abstain from offensive conduct against the child or against

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the other parent or against any person to whom custody of the child is awarded;

(d) To give proper attention to the care of the child's home;

(e) To refrain from acts of commission or omission that tend to make the child's home not a proper place for the child. The court may also award custody of the child, during the term of the order of protection to either parent or to an appropriate relative. Nothing in this section gives the court the power to place or board out any child or to commit a child to an institution or agency. In making orders of protection, the court shall so act as to insure that in the care, protection, discipline and guardianship of the child, his religious faith shall be preserved and protected.

Sub. § 5.17. Warrants of arrest on failure to obey orders.

If the court is satisfied by competent proof that a respondent has failed to obey any lawful order issued under this chapter, it may, without notice, issue a warrant directing that the respondent be arrested and brought before the court for a hearing thereon. Upon the issuance of such warrant the provision of section 5.10 apply.

Sub. § 5.18. Court's powers on failure to obey order.

If a respondent is brought before the court for failure to obey any lawful order issued under this chapter and if, after hearing, the court is satisfied by competent proof that the respondent has willfully failed to obey any such order, the court may direct the following corrective measures:

(a) Punish him for a civil contempt in accordance with the provision of section 44.73 of the Civil Procedure Law; or

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- (b) Place the respondent on probation under such conditions as the court may determine and in accordance with the probation provision of the Criminal Procedure Law; or
- (c) Proceed under section 5.14 concerning bonds; or
- (d) Issue an order of sequestration under section 5.41.

The court in its discretion may use any or all of the powers conferred by this section.

Sub. § 5.19. Entry and enforcement by execution of money judgment for arrears.

Where a respondent makes default in paying any sum of money due as required by the order directing the payment thereof, the court in its discretion and without regard to the amount due, may make an order directing the entry of a money judgment for the amount of such arrears, or for such part thereof as justice requires having a regard to the circumstances of the respective parties. The application for such order shall be upon such notice to the respondent as the court may direct. Such judgment may be enforced by execution, or in any other manner provided for [and] is in addition to any and every other remedy provided that when a judgment for such arrears or any part thereof shall have been entered pursuant to this section, such judgment shall thereafter not be subject to modification under the discretionary power granted by this section and after the entry of such judgment the judgment creditor shall not hereafter be entitled to collect by any form of remedy and greater portion of such arrears than that represented by the judgment so entered.³⁴

³⁴ *Prior legislation:* 1956 Code 10:40 (2nd par.); L. 1935-36, ch. XVII, Sub. § 20 (2nd par.).

Sub. § 5.20. Additional procedures when paternity is an issue to be established.

The following additional procedures shall govern when paternity is an issue to be established in a support proceeding:

(a) *Petition.* When support is sought for a child born out of wedlock from a person alleged to be the father, the petition shall contain a prayer that the court include in the citation to be issued a further requirement that the respondent show cause why the court should not enter a determination of paternity. The mother of a child born out of wedlock may include in the petition a claim for expenses of confinement and recovery and any other reasonable expenses in connection with the pregnancy of such child. A woman who is pregnant with a child likely to be born out of wedlock may also petition for such expenses.

(b) *Citation.* Upon the filing of a position sufficient in law under this chapter which raises the issue of paternity, the court, except as provided in section 5.9, shall order the citation to be issued thereon in accordance with the provisions of section 5.8 to further require the respondent to show cause why the determination of paternity prayed for in the petition should not be made.

(c) *Hearing, jury trial and order of proof; competency of evidence of parties.* The trial of the issue of paternity shall be first determined before proceeding to the hearing of any other issue. There is a right to trial by jury by way of special verdict of such issue. The mother of a child born out of wedlock or the woman who is pregnant with a child likely to be born out of wedlock and the respondent shall be competent to testify, but the respondent shall not be compelled to testify. If the mother or prospective mother is married, both she and her husband may testify to nonaccess. If the respondent shall offer testimony of access by ushers at or

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about the time charged in the petition, such testimony shall not be competent or admissible in evidence except when corroborated by other facts and circumstances tending to prove such access.

(d) Blood grouping test. The court, on motion of the respondent, shall order the mother of the child born out of wedlock, her child and the respondent to submit to and or where grouping tests by a duly qualified physician or technician to determine whether or not the respondent can be excluded as being the father of the child, and the results of such tests may be received in evidence, but only in cases where definite exclusion is established. If the respondent is financially unable to pay for the cost of a test, the court shall direct any qualified public health officer to conduct such test.

(e) Order of support. In a support proceeding in which the court has made a determination of filiation and has directed a father possessed of sufficient means or able to earn such means to pay weekly or at other fixed periods a fair and reasonable sum for the support and education of the child involved, the order thereon may also direct such a father to pay for the support of the child prior to the making of the order determining filiation and shall direct him to pay for:

- (i) The funeral expenses, if the child has died,
- (ii) The necessary expenses incurred by or for the mother of the child in connection with her confinement and recovery, and
- (iii) Such expenses in connection with the pregnancy of the mother as the court may deem proper.

(f) Settlement agreements for support. An agreement for support pursuant to the provisions of section 5.15 may be approved and an order entered thereon even though the paternity of the child born

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out of wedlock or likely to be born out of wedlock, is not admitted by the respondent. No such agreement, however, shall be entered into before the birth of a child likely to be born out of wedlock unless the court finds that there are special circumstances making it advisable to do so.

(g) Continuation of proceeding upon failure to prosecute. If a mother of a child born out of wedlock or likely to be born out of wedlock commences a proceeding under this chapter and fails to prosecute, or dies or becomes insane, or cannot be found within the Republic, the proceeding does not abate but may be continued by any of the persons authorized by this chapter to commence a paternity proceeding.

(h) Transmission of order declaring filiation. When an order of support contains a determination of filiation, the clerk of the court shall forthwith upon its entry transmit to the Principal Registrar of Births, Deaths and Burials on a form prescribed by the Minister of Health and Welfare a written notification as to such order, together with such other facts as may assist in identifying the birth record of the person whose paternity was in issue.

(i) Transmission of abrogation affiliation declaration. If a determination of filiation is abrogated by a later adjudication or order of the court that originally made the order or by the Supreme Court on appeal, that fact shall be immediately communicated in writing by the clerk of the court that originally made the determination of filiation to the Principal Registrar of Births, Deaths and Burials on a form prescribed by the Minister of Health and Welfare.³⁵

³⁵ *Prior legislation:* 1956 Code 10:66, 67 (2nd par.); Rev. Stat. Sub. § 667, 668; J.P. Code, Sub. § 58, 59; OBB 159, Act concerning bastardy; Com. L. (July 7, 1838), 2 Hub. 1344, 1358.

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Sub. § 5.21. Appeals; finality of payments prior to appellate court's decision.

An appeal shall lie from every final order of a court in any proceeding brought under this chapter, but the appealed order shall be enforced immediately and shall continue in force pending the decision of the appellate court. A decision of the appellate court reversing the final order of the court of original jurisdiction, or any part thereof, shall be limited to preventing enforcement of such final order.³⁶

Sub. § 5.22. Court's continuing jurisdiction over proceedings.

The court has continuing jurisdiction over any support proceeding brought under this chapter until its judgment is completely satisfied and for good cause shown may modify, set aside or vacate any order issued in the course of the proceeding.

Chapter 6. ACTIONS TO DECLARE NULLITY OF VOID MARRIAGES

Sub. § 6.1. Void marriages.

Sub. § 6.2. Prohibited marriages contracted abroad to circumvent laws of this Republic are void.

Sub. § 6.3. Who may maintain action to declare nullity of a void marriage.

Sub. § 6.4 Legitimacy of children.

Sub. § 6.1. Void marriages.

The following marriages are void and even without a judicial declaration thereof are of absolutely no effect, notwithstanding that an

³⁶ *Prior legislation:* 1956 Code 10:42(3); L. 1935-36, ch. XVII, Sub. § 24.

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action to declare their nullity may be maintained:

(a) *Bigamous*. A marriage between persons one or both of whom has a spouse still living at the time of marriage.

(b) *Incestuous*. A marriage between persons within the following degrees of consanguinity, whether the relatives are legitimate or illegitimate:

- (i) An ancestor and a descendant;
- (ii) A brother and sister of either the whole or the half blood;
- (iii) An uncle and niece or an aunt and nephew;
- (iv) First cousins.

(c) *Minors below 16 years of age*. A marriage in which either of the parties is under the age of 16 years.³⁷

Sub. § 6.2. Prohibited marriages contracted abroad to circumvent laws of this Republic are void.

If any person residing and intending to continue to reside in this Republic who is disabled or prohibited from contracting marriage under the laws of the Republic goes to another country and there contracts a marriage prohibited or declared void under the laws of this Republic, such marriage shall be void for all purposes in this Republic with the same effect as though the marriage had been entered into in this Republic.

³⁷ *Prior legislation*: 1956 Code 10:20; L. 1935-36, ch. XVII, Sub. § 11.

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Sub. § 6.3. Who may maintain action to declare nullity of a void marriage.

An action to declare the nullity of a void marriage may be maintained by either of the parties during the lifetime of the other, or by the survivor of them, and after the death of either or both of the parties, by any relative or representative of their estates who has an interest in obtaining a declaration of the nullity of such marriage, and in the event a party to the marriage is a minor, during minority, and in addition to the minor, such action may be maintained by either parent of the minor, or by the guardian of the minor's person, or the court may allow the action to be maintained by any person as the next friend of the minor.

Sub. § 6.4. Legitimacy of children.

The following provisions govern the effect of declaring a marriage void upon the legitimacy of children of the parties:

- (a) If a marriage is declared a nullity upon the ground that the former husband or wife of one of the parties was living, the former marriage being in force, if it appears and the judgment determines, that the subsequent marriage was contracted by at least one of the parties thereto in good faith and with the full belief that the former husband or wife was dead or that the former marriage had been annulled or dissolved, or was contracted without any knowledge on the part of the innocent party of such former marriage, a child of such subsequent marriage is the legitimate child of both parties.
- (b) If a marriage is declared a nullity as incestuous, a child of the parties is the legitimate child of both parties.
- (c) If a marriage is declared a nullity on the ground that either of the parties was under the age of 16 years at the time of the

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marriage, the court by its judgment may decide that a child of the parties is the legitimate child of either or both of its parents.

Chapter 7. ANNULMENT OF VOIDABLE MARRIAGES

- Sub. § 7.1. Voidable marriages.
- Sub. § 7.2. Who may bring an action for annulment and limitations thereon.
- Sub. § 7.3. Jury trial.
- Sub. § 7.4. Proof required.
- Sub. § 7.5. Legitimacy of children.

Sub. § 7.1. Voidable marriages.

Subject to the provisions of section 7.2 a marriage is voidable and shall be declared void ab initio from the time its nullity is declared by a court of competent jurisdiction, if it is established that at the time of the marriage either party thereto had any of the following disabilities:

- (a) Was under the age of legal consent, which is 21 years for males and 18 years for females, and the consent required by section 2.2 (2) was not obtained, provided that such nonage shall not of itself constitute an absolute right to the annulment of such marriage, but such annulment shall be in the discretion of the court which shall take into consideration all the facts and circumstances surrounding such marriage;
- (b) Was incapable of consenting to a marriage for want of understanding;
- (c) Was incapable of entering into the marriage state from

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physical cause

(d) Consented to such marriage by reason of force, duress or fraud.³⁸

Sub. § 7.2. Who may bring an action for annulment and limitations thereon.

1. Party under age of legal consent. An action to annul a marriage on the ground that one or both of the parties, though of the age of 16 years or over at the time of the marriage, had not obtained the consent required by section 2.2(2), may be maintained by the party involved, or by either parent of such party, or by the guardian of the such party's person, or the court may allow the action to be maintained by any person as the next friend of such party. But a marriage shall not be annulled under this paragraph at the suit of a party who was of the age of legal consent when it was contracted or by a party who for any time after he or she attained that age freely cohabited with the other party as husband and wife.

2. Party an idiot, or insane or an adjudged incompetent. An action to annul a marriage on the ground that one of the parties thereto was an idiot may be maintained at any time during the lifetime of either party by any relative of the idiot who has interest to void the marriage or by his guardian. An action to annul a marriage on the ground that one of the parties thereto was insane at the time of the marriage or was an adjudged incompetent at that time may be maintained at any time during the continuance of the insanity or incompetency, or after the death of the party in that condition, and during the life of the other party to the marriage, by any relative of the insane party or the adjudged incompetent who has an interest to avoid the marriage or by his guardian. Such an action may also be maintained by the insane

38 *Prior legislation:* 1956 Code 10:21, 30; L. 11935-36, ch. XVII, Sub. § 5.

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party or the adjudged incompetent at any time after restoration to a sound mind; but in that case, the marriage should not be annulled if it appears that the parties freely cohabited as husband and wife after the insane party or the adjudged incompetent was restored to a sound mind. Where one of the parties was insane or an adjudged incompetent at the time of the marriage, an action may also be maintained by the other party during the continuance of the insanity or incompetency, at the time of the marriage. Where no relative or guardian of the idiot or of the insane or adjudged incompetent person brings an action to annul the marriage and in the latter two cases, where the insane or incompetent person is not restored to sound mind, the court may allow an action for that purpose to be maintained at any time during the lifetime of both the parties to the marriage, by any person as the next friend of the idiot or the insane or adjudged incompetent person.

3. *Other cases of lack of understanding.* In all other cases where the legal disability in an action for an annulment is based on the ground that either party was incapable of consenting to the marriage for want of understanding, the party suffering the disability may maintain such an action upon the removal of the disability if it is commenced within six months after such party obtained full knowledge of the facts concerning his incapability of consenting to the marriage, but the marriage should not be annulled if it appears that such party freely cohabited with the other party as husband and wife after having obtained such knowledge.

4. *Physical incapacity.* An action to annul a marriage on the ground that one of the parties was physically incapable of entering into the marriage state may be maintained by the injured party against the party whose incapacity is alleged; or such action may be maintained by the party who was incapable against the other party provided the incapable party was unaware of the incapacity at the time of the marriage, or if aware of such incapacity, did not know it was

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incurable. Such an action can be maintained only where an incapacity continues and is incurable and must be commenced before five years have expired since the marriage.

5. *Consent by force, duress or fraud.* An action to annul a marriage on the ground that the consent of one of the parties thereto was obtained by force or duress may be maintained at any time by the party whose consent was so obtained. An action to annul a marriage on the ground that the consent of one of the parties thereto was obtained by fraud may be maintained by the party whose consent was so obtained within the limitations of time set forth in the Civil Procedure Law for endorsing a civil remedy therefor. Any such action may also be maintained during the lifetime of the other party by the parent, or the guardian of the person of the party whose consent was so obtained, or by any relative of the party who has an interest to avoid the marriage, provided that in an action to annul a marriage, on the ground of fraud the limitation prescribed in the Civil Procedure Law has not run. But a marriage shall not be annulled on the ground of force or duress if it appears that, at any time before the commencement of the action, the parties thereto voluntarily cohabited as husband and wife; or on the ground of fraud, if it appears that, at any time before commencement thereof, the parties voluntarily cohabited as husband and wife, with full knowledge of the facts constituting the fraud.³⁹

Sub. § 7.3. Jury trial.

In an action to annul a marriage, except where it is founded upon an allegation of the physical incapacity of one of the parties thereto, there is a right to trial by a jury by way of special verdict, of all the issues of fact.

³⁹ *Prior legislation:* 1956 Code 10:31; L. 1935-36, ch. XVII, Sub. § 6-10, 13.

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Sub. § 7.4. Proof required.

In an action to annul a voidable marriage, a final judgment annulling the marriage shall not be rendered by default for want of appearance or pleading or by consent or upon trial of an issue without satisfactory proof of the facts upon, which allegation of nullity is founded. In all cases, the party seeking the annulment shall prove that there has been no such cohabitation between the Parties as would bar a judgment, except that in an action based on ground that one of the parties was an idiot or an insane or adjudged incompetent person, the party seeking the annulment may prove instead that the insanity or incompetency still continues. In any action brought to annul a voidable marriage, whether or not contested, the declaration or confession of either party to the marriage is not alone sufficient as proof, but other satisfactory evidence of the facts must be produced.

Sub. § 7.5. Legitimacy of children.

The following provisions govern the effect of annulling a voidable marriage upon the legitimacy of the children of the parties.

- (a) If a marriage be annulled on the ground that one or both of the parties had not obtained the consent required by section 2.2 (2), or if a marriage be annulled on the ground of the idiocy or the insanity or adjudged incompetency of one or both of the persons entering into the marriage, a child of the parties is the legitimate child of both parties.
- (b) If a marriage be annulled on the ground of force, duress or fraud, a child of the parties is the legitimate child of both parents unless the court by the judgment decides otherwise as to either or both parents.
- (c) If a marriage be annulled for any cause or under any conditions

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other than these specified in subparagraphs (a) and (b), the court by the judgment may decide that a child of the parties is the legitimate child of either or both of its parents.⁴⁰

Chapter 8. DIVORCE

- Sub. § 8.1. Grounds for divorce.
- Sub. § 8.2. Time limitations for commencement of action.
- Sub. § 8.3. Bars to granting of divorce.
- Sub. § 8.4. Joinder of co-respondent as necessary party, if known, in action for divorce on ground of adultery; award of damages and costs.
- Sub. § 8.5. Jury trial.
- Sub. § 8.6. Proof required.
- Sub. § 8.7. Property rights awarded to successful wife.
- Sub. § 8.8. Divorce tax on entry of final judgment.
- Sub. § 8.9. Remarriage of unsuccessful defendant in action for divorce on ground of adultery.

Sub. § 8.1. Grounds for divorce.

An action for divorce may be maintained by a husband or wife to procure a judgment divorcing the parties and dissolving the marriage on any of the following grounds:

- (a) The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant makes the continued cohabitation as husband and wife dangerous to the physical or mental well being of the plaintiff.
- (b) The desertion of the plaintiff by the defendant for a period of

⁴⁰ *Prior legislation: 1956 Code 10:32.*

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one or more years, provided that it is alleged and proved that the plaintiff has without avail endeavored to induce the defendant to return to marital duties. Desertion means the willful and unjustified abandonment of a spouse by the other.

(c) The commission of an act of adultery by the defendant after the marriage of the plaintiff and defendant.

(d) Where as a result of incompatibility of temper the defendant is so extremely quarrelsome and intolerably pugnacious to the plaintiff that life together between plaintiff and defendant becomes dangerous to the plaintiff.⁴¹

Sub. § 8.2. Time limitations for commencement of action.

No action for divorce may be maintained on a ground which arose more than five years before the date of the commencement of the action except where the ground of desertion and the defendant has not resumed living with the plaintiff. An action based on the ground of adultery comes into existence upon the discovery by the plaintiff of the offense charged.

Sub. § 8.3. Bars to granting of divorce.

1. *Defenses barring divorce.* The following defenses, as hereinafter defined and limited, when pleaded in an answer and established at the trial shall bar the granting of a divorce.

(a) Connivance; or

(b) Condonation; or

⁴¹ *Prior legislation:* 1956 Code 10:70(a), (b), (c), 80(1), (2); L. 1939-40, ch. X, Sub. § 1, 2; L. 1935-36, ch. XVII, Sub. § 26, 33, 34, 35, 36.

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(c) Recrimination.

2. *Connivance defined.* Connivance is the corrupt consent of one party to the commission of the acts of the other constituting the ground for the divorce, manifested by passive permission, with the intent to aid and abet in the commission of the acts complained of, or actively, by inducing, persuading or recurring and facilitating the commission of such acts.

3. *Condonation defined and limited.* Condonation is the conditional forgiveness of a matrimonial offense constituting a ground for divorce and implies an unrevoked condition subsequent---that the forgiven party must thereafter be treated with conjugal kindness. The forgiveness may be proved either affirmatively or by showing the voluntary cohabitation of the parties as husband and wife with full knowledge of the facts of the offense charged except in the following instances:

(a) Where the gravamen of the ground for divorce consists of a course of offensive conduct, or arises, in cases of cruel and inhuman treatment, from excessive acts of ill-treatment which may aggregately, constitute the offense, cohabitation or passive endurance, or conjugal kindness shall not be evidence of condonation of any of the acts constituting such ground unless accompanied by an express agreement to condone.

4. *Condonation; how revoked.* Condonation is revoked and the original ground for divorce revived under the following conditions:

(a) When the offending party commits acts constituting a like of other ground for divorce; or

(b) When the offending party is guilty of conjugal unkindness, not amounting to a ground for divorce, but sufficiently habitual and

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gross to show that the conditions of condonation has not been accepted in good faith or had not been fulfilled.

5. *Recrimination defined.* Recrimination is a showing by the defendant of any actionable ground for a divorce against the plaintiff. Condonation is a bar to such defense unless the condonation and before the accruing or completion of the ground for divorce against which the recrimination is pleaded.⁴²

Sub. § 8.4. Joinder of co-respondent as necessary party, if known, in action for divorce on ground of adultery, award of damages and costs.

1. *Joinder of known co-respondent and right to defend.* In an action brought to obtain a divorce on the ground of adultery. the co-respondent, if known shall be named in the complaint and made a party to the action as co-respondent. A copy of the complaint shall be served on him or her, as the case may be. The co-respondent may file a special appearance or may appear to defend such action insofar as the issues affect such co-respondent and may serve an answer with respect thereto.

2. *Damages to be assessed against guilty co-respondent.* When a husband or a wife prevails as plaintiff in an action to obtain a divorce on the ground of adultery in a case in which a known co-respondent is named in the complaint thereon, the jury by way of special verdict shall determine the amount of damages to be assessed against the named co-respondent in accordance with the provisions of section 13.2 and their determination shall be included in the judgment of divorce as a money judgment against the co-respondent.

3. *Bill of costs awarded innocent co-respondent.* In an action for a

⁴² *Prior legislation:* 1956 Code 10:75; L. 1935-36, ch. XVII, Sub. § 29.

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divorce on the ground of adultery where a co-respondent has appeared and defended, in case none of the allegations of adultery charged against such co-respondent shall be proven, such co-respondent shall be entitled to a bill of costs against the person naming him as such co-respondent, which bill of costs shall consist only of the sum now allowed by law as a trial fee and disbursements.⁴³

Sub. § 8.5. Jury trial.

In an action for divorce there is a right to trial by jury by way of special verdict of the issues raised by the pleadings in connection with the grounds for granting the divorce.

Sub. § 8.6. Proof required.

In an action for divorce, a final judgment shall not be entered by default for want of appearance or pleading, or by consent, or upon trial of an issue, without satisfactory proof of the facts constituting the grounds for divorce in all cases, the party seeking the divorce shall prove that there has been no such cohabitation between them nor such other conduct as would bar a judgment. In any action, for divorce, whether or not contested, the declaration or confession of either party to the marriage is not alone sufficient as proof, but other satisfactory evidence of the facts must be produced.

Sub. § 8.7. Property rights awarded to successful wife.

When a wife as plaintiff prevails in an action to obtain a divorce, the court in the final judgment shall award her not less than one-fifth nor more than one-third of the defendant husband's personal property outright and not less than one-fifth nor more than one-third of his real

⁴³ *Prior legislation:* 1956 Code 10:76 (a), (c), 77; L. 1-936-36, ch. XVII, Sub. § 27, 28, 32.

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property for life. Upon the wife's death, so much of the real property so awarded her shall descend to her children begotten by the defendant husband. If the wife dies leaving no such children surviving her, such property shall revert to the defendant husband, or in the event of his prior death, it shall descend in accordance with the provisions with, regard thereto, if any, contained in his last will or in default thereof to his distributee in accordance with the statute of descent and distribution.⁴⁴

Sub. § 8.8. Divorce tax on entry of final judgment.

The successful party in a divorce action shall pay a divorce tax of \$50 upon the entry of the final judgment granting the divorce. Alternatively, the final judgment may be entered and payment of the divorce tax deferred for a period of 30 days upon filing of a bond conditioned thereon with good, and sufficient sureties and if such payment is not made within 30, days after the entry of final judgment, the bond shall be forfeited and execution levied against the principal and sureties.⁴⁵

Sub. § 8.9. Remarriage of unsuccessful defendant in action for divorce on the ground of adultery.

The defendant against whom a judgment has been entered in a divorce action obtained on the ground of adultery may not contract another marriage until after the expiration of three years from the date of entry of the judgment.⁴⁶

44 *Prior legislation:* 1956 Code 10:77 (b), 78; L. 1935-36 ch. XVII, Sub. § 32.

45 *Prior legislation:* 1956 Code 10:73; L. 1939-40, ch. XVII, Sub. § 1. 21; L. 1953-6, ch. XVII, Sub. § 41.

46 *Prior legislation:* 1956 Code 10:79; L.1938, ch. 11; L.1935-36, ch. XVII, Sub. §

Chapter 9. PROVISIONS APPLICABLE TO MORE THAN ONE TYPE OF MATRIMONIAL ACTION

- Sub. § 9.1. Residential jurisdiction requirements.
- Sub. § 9.2. Sequestration of defendant's property in matrimonial actions where defendant cannot be personally served.
- Sub. § 9.3. Alimony pendents lite.
- Sub. § 9.4. Counsel fees and expenses.
- Sub. § 9.5. Custody and maintenance of children of marriage.
- Sub. § 9.6. Security for payments by husbands; sequestration.
- Sub. § 9.7. Court may determine title to or occupancy and possession of property of parties.
- Sub. § 9.8. Insurance benefits revoked upon final judgment.
- Sub. § 9.9. Enforcement by execution of unpaid alimony and counsel fees.
- Sub. § 9.10. Enforcement by contempt proceedings of unpaid alimony and counsel fees; defense of financial inability to comply.
- Sub. § 9.11. Support payments suspended during husband's confinement in prison.
- Sub. § 9.12. Non-disclosure of information as to details of matrimonial actions; non-public trials.

Sub. § 9.1. Residential jurisdiction requirements.

An action to declare the nullity of a void marriage, or to annul a voidable marriage, or for a divorce, may be maintained in the circuit court of the judicial circuit in which either the plaintiff or defendant resides at the time of the commencement of the action, provided that if such an action is brought in Montserrado County the Circuit Court, Sixth Judicial Circuit shall have jurisdiction rather than the Circuit Court, First Judicial Circuit.⁴⁷

⁴⁷ *Prior legislation:* 1956 Code 10:71; L. 1935-36, ch. XVII, Sub. § 38.

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Sub. § 9.2. Sequestration of defendant's property in matrimonial actions where defendant cannot be personally served.

Where in an action to declare the nullity of a void marriage, or to annul a voidable marriage, or for a divorce, it appears to the court that the defendant is not within this Republic or cannot be found therein, or is concealing himself therein, so that process cannot be personally served upon him, the court may at any time after proof of personal service outside of the Republic as provided in section 3.39 of the Civil Procedure Law, or after the entry of an order of publication of process pursuant to section 3.40 of the Civil Procedure Law, and from time to time thereafter, make any order or orders without notice directing the sequestration of so much of his property as necessary, but real and personal and whether tangible or intangible, within the Republic, and may appoint a receiver thereof, or by injunction or otherwise take the same into its possession and control. The property thus sequestered and the income therefrom may be applied in whole or in part and from time to time, under the direction of the court and as justice may require, to the payment of such sum or sums as the court may deem it proper to award by order during the pendency of the action, for the education and maintenance of any of the minor children of a marriage who are twenty-one years of age or older and unable to maintain themselves or are likely to become public charges, or for the support of the wife or for her expenses in bringing and carrying on said action and the proceedings incidental thereto or connected therewith; and if the rents and profits of the real estate, together with the other property so sequestered, be insufficient to pay the sums of money required, the court, upon such terms and conditions as it may prescribe, may direct the mortgaging or leasing of sufficient of said real estate to pay such sums. The court may authorize the wife to use bond and occupy, free of any liability for rent or use and occupation or otherwise, any house or other suitable property of her husband as a dwelling for herself and her children,

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and may likewise turn over to her for the use of herself or herself and her children any chattel or chattels of her husband. The relief herein provided for is in addition to any and every other remedy to which the wife may be entitled under the law.

Sub. § 9.3. Alimony pendente lite.

In any action brought during the lifetime of both parties to the marriage to declare the nullity of a void marriage, or to annul a voidable marriage, or for a divorce, the court may direct the husband pendente lite to provide suitably for the support of the wife as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. Such direction may require the payment of a sum or sums of money either directly to the wife or to third persons for real and personal property and services furnished to the wife, or for the rental of, or mortgage amortization or interest payments, insurance, taxes, repairs or other charges on premises occupied by the wife, or for both payments to the wife and to such third persons. Such direction may be made by one or more orders from time to time before final judgment and may be made notwithstanding that the parties continue to reside in the same abode. Any order made as in this section provided may combine in one lump sum any amount payable to the wife under this section with any amount payable to the wife under section 9.4. Upon the application of either the husband or the wife, upon such notice to the other party and given in such manner as the court shall direct, the court may annul or modify any such direction as justice requires.⁴⁸

Sub. § 9.4. Counsel fees and expenses.

In an action to declare the nullity of a void marriage, or to annul a voidable marriage, or for a divorce, the court may direct the husband,

⁴⁸ *Prior legislation:* 1956 Code 10:77(b); L. 1935-36, ch. XVII, Sub. § 32 (2nd par.).

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or where action to declare the nullity of a void marriage or for annulment is maintained after the death of the husband, may direct the person or persons maintaining the action, to pay such sum or sums of money to enable the wife to carry on or defend the action as, in the court's discretion, justice and [equity] requires, having regard to the circumstances of the case and of the respective parties. Such direction must be made in the final judgment in such action, or by one or more orders from time to time before final judgment, or by both such order or orders and the final judgment. Upon application of the husband or the wife, or the person or persons maintaining an action to declare the nullity of a void marriage or for annulment after the death of the husband, upon such notice to the other party and given in such manner as the court shall direct, the court may for good cause shown, in or before final judgment, annul or modify any such direction.

Sub. § 9.5. Custody and maintenance of children of marriage.

In any action brought to declare the nullity of a void marriage, or to annul a voidable marriage, or for a divorce and in a writ of habeas corpus proceeding or in a proceeding instituted by petition and order to show cause therefor, if an issue is presented therein concerning the custody of or right to visitation of any minor child of the marriage or concerning the care, education and maintenance of any such minor child or of any child of the marriage twenty-one years of age or older who is unable to maintain himself and is or is likely to become a public charge, the court must give such direction, between the parties, for the custody, care, education and maintenance of any such child or the parties, as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child. Such direction may make provision for the education and maintenance of such child out of the property of either of both of its parents. Such direction may require the payment of a sum or sums of money either directly to the wife or to third persons for goods or services furnished for such child, or for both

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payments to the wife and to such third persons. Such direction may be made in the final judgment in such action, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. Such direction may be made notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction refuses to grant the relief requested in the action. Any order made pendente lite as in this section provided, may combine in one lump sum any amount payable to the wife under this section with any amount payable to the wife under section 9.3. Upon the application of either the husband or the wife, or of any other persons or party having the care, custody and control of such child pursuant to any judgment or order made hereunder, after such notice to the other party or parties or persons having such care, custody and control and given in such manner as the court shall direct, the court may annul or modify any such direction, whether made by order or final judgment.

Sub. § 9.6. Security for payments by husbands; sequestration.

Where a judgment rendered or an order made in an action to declare the nullity of a void marriage or for an annulment of a voidable marriage or for a divorce, and in a writ of habeas corpus proceeding or in a proceeding instituted by petition and order to show cause, requires a husband to provide for the care, education or maintenance of any of the children of a marriage, or for the support of his wife, the court, in its discretion, also may direct him to give reasonable security, in such manner and within such time as it thinks proper, for the payment, from time to time, of sums of money required for that purpose. If he fails to give the security, or to make any payment required by the terms of such a judgment or order, whether he has or has not given security therefor, or to pay the sum of money for his support and maintenance of the wife during the pendency of the action, or for her counsel fees and expenses which he is required to pay by a judgment or order, the court may cause so much as is

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necessary of his personal property and the rents and profits of his real property to be sequestered, and may appoint a receiver thereof. The rents and profits and other property so sequestered may be applied, from time to time, under the direction of the court, to the payment of any of the sums of money specified in this section, as justice requires; and if the same shall be insufficient to pay the sums of money required, the court, on application of the receiver, may direct the mortgaging or leasing by the receiver, under such terms and conditions as it may prescribe, of sufficient of his real estate to pay such sums. A wife who pursuant to the provisions of section 9.5, becomes liable in whole or in part for the care, education or maintenance of a child of the marriage shall similarly be subject to the provisions of this section.

Sub. § 9.7. Court may determine title to or occupancy and possession of property of parties.

In any action to declare the nullity of a void marriage, or of annulment of a voidable marriage, or for a divorce, the court may determine any question as to title to property arising between the parties, and may make such direction, between the parties, concerning the occupancy and possession of property, as in the court's discretion justice requires, having regard to the circumstances of the case and of the respective parties. Such direction may be in the final judgment, or by one or more order from time to time before or subsequent to final judgment or by both such order or orders and final judgment. Where title to real property is affected, a copy of such judgment or order, duly certified by the clerk of court wherein said judgment or order was rendered shall be recorded in the office of the registrar of the county in which such property is situated.

Sub. § 9.8. Insurance benefits revoked upon final judgment.

Whenever the relation of husband and wife ceases by the entry of a

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final judgment dissolving the marriage in an action to declare the nullity of a void marriage, or to annul a voidable marriage, or for a divorce, if either party is named as a beneficiary in any policy of insurance on the life of the other or under any retirement pension system, except when expressly otherwise agreed in writing, such beneficiary is not entitled to any interest in such insurance policy or retirement pension. Application may be made to the court rendering the final judgment, on such notice as the court may direct to be given to the named beneficiary or to the attorney who appeared for him in the action and to the insurance company issuing the policy or policies or to those in charge of the retirement pension system to substitute such beneficiary as the applicant may nominate. In a case where it is shown that the former beneficiary has contributed from his or her separate estate toward the payment of the premiums on such a policy, the said court or in the event of the death of the insured, the probate court having jurisdiction over such insured's estate, shall grant an order in connection therewith for the refund of such premiums, on such terms as in the discretion of the court so deciding shall be equitable.

Sub. § 9.9. Enforcement by execution of unpaid alimony and counsel fees.

Where the husband in an action for divorce, or to annul a voidable marriage, or to declare the nullity of a void marriage, or a person other than the husband when an action to declare the nullity of a void marriage or for annulment is maintained after the death of the husband, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, the court in its discretion may make an order directing the entry of judgment for the amount of such arrears, or for such part thereof as justice requires having a regard to the circumstances of the respective parties, together with ten dollars costs and disbursements. The application for such order shall be upon such notice to the husband or other person

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as the court may direct. Such judgment may be enforced by execution or in any other manner provided by law for the collection of money judgments. The relief herein provided for is in addition to any and every other remedy to which the wife may be entitled under the law; provided that when a judgment for such arrears or any part thereof shall have been entered pursuant to this section, such judgment shall thereafter not be subject to modification under the discretionary power granted by this section; and after the entry of such judgment the judgment creditor shall not thereafter be entitled to collect by any form of remedy and greater portion of such arrears than that represented by the judgment as entered.

Sub. § 9.10. Enforcement by contempt proceedings of unpaid alimony and counsel fees; defense of financial inability to comply.

1. Contempt procedure. Where the husband in an action for divorce, to annul a voidable marriage, or to declare the nullity of a void marriage, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, and it appears presumptively, to the satisfaction of the court, that payment cannot be enforced by means of the sequestration of his property, or by resorting to the security, if any, given as prescribed by statute, the court, in its discretion, may make an order requiring the husband to show cause before it at a time and place therein specified why he should not be punished for his failure to make the payment; and thereupon proceedings must be taken to determine whether he shall be punished for a contempt of court other than a criminal contempt, under and subject to the provision of the Civil Procedure Law with reference thereto and where the judgment or order directs the payment to be made in installments, or at stated intervals, failure to make such single payments or instalment may be punished as therein provided, and such punishment, either by fine or commitment, shall not be a bar to a subsequent proceeding to punish him as for a contempt for his

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failure to pay subsequent installments, but for such purpose he may be proceeded against under the said order in the same manner and with the same effect as though such installment payment was directed to be paid by a separate and distinct order. Such order to show cause may also be made without any previous sequestration or direction to give security where the court is satisfied that they would be ineffectual. No demand of any kind upon the husband shall be necessary in order that he be proceeded against and punished for failure to make any such payment or to pay any such installment; personal service upon the husband of an uncertified copy of the judgment or order under which the default has occurred shall be sufficient.

2. *Defense of financial inability.* Any person may assert his financial inability to comply with the directions to make payment of any such sum or sums of money contained in an order of judgment made or entered in an action for divorce, annulment of a voidable marriage or declaration of the nullity of a void marriage, as a defense in a contempt proceeding instituted against him hereunder and, if the court, upon the hearing of such proceeding, is satisfied from the proofs and evidence offered and submitted that such person is financially unable to comply with such order or judgment, it may, in its discretion, until further order of the court, make an order modifying such order or judgment and denying the application to punish such person for contempt.

Sub. § 9.11. Support payments suspended during husband's confinement in prison.

Notwithstanding any provision of this chapter, the provision of any judgment or order rendered or made in an action for divorce, annulment of a voidable marriage, or declaration of nullity of a void marriage, requiring the payment of moneys by the husband for the support of the wife or for the children of their marriage shall be suspended and inoperative so far as punishment for contempt is

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concerned during the period in which the husband shall be imprisoned pursuant to any order adjudging him in contempt for his failure to comply with any provision in such order or judgment.

Sub. § 9.12. Non-disclosure of information as to details of matrimonial actions; non-public trials.

1. Court officers restricted. An officer of the court with whom the proceedings in an action to declare nullity of a void marriage, or to annul a voidable marriage or for divorce are filed or before whom the testimony is taken, or his clerk, either before or after the termination of the suit, shall not permit a copy of any of the pleadings or testimony, or any examination or perusal thereof to be taken by any other person than a party, or the attorney or counsel of a party who had appeared in the cause, except by order of the court.

2. Public may be excluded from trial. If the evidence on the trial of such an action be such that public interest requires that the examination of the witnesses should not be public, the court, or referee, on its own motion or that of a party, may exclude all persons from the room except the parties to the action and their counsel and the witnesses, and in such case may order the evidence, when filed with the clerk, sealed up, to be exhibited only to the parties to the action or someone interested, on order of the court.

Chapter 10. DISSOLUTION OF MARRIAGE ON GROUND OF INCURABLE INSANITY

Sub. § 10.1. Incurable insanity for five years occurring after marriage.

Sub. § 10.2. Procedure; support.

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Sub. § 10.1. Incurable insanity for five years occurring after marriage.

A proceeding to dissolve a marriage upon the ground that one of the parties has been incurably insane for a period of five years or more subsequent to the marriage may be maintained by or on behalf of either of the parties to such marriage who meet the residential jurisdictional requirements set forth for matrimonial actions in section 9.1.⁴⁹

Sub. § 10.2. Procedure; support.

1. Proof of insanity by qualified physician. A final order dissolving a marriage on the ground that one of the parties has been incurably insane for a period of five years or more subsequent to the marriage shall not [be] rendered until, in addition to any other proofs in the case, a thorough examination of the alleged insane party shall have been made by a physician who is a recognized authority on mental disease, to be appointed by the court. who shall confirm or attest that such party is incurably insane and shall have reported to the court. The personal appearance of the physician at the trial of the proceeding and his examination as a witness thereat may be ordered, if the court on its own motion shall deem it necessary that his testimony be taken or if the alleged insane party, or his legal guardian, if any, or the guardian ad litem appointed to protect the interest of such party, so requests.

2. Jury trial. In a proceeding to dissolve a marriage upon the ground of incurable insanity there is a right to trial by jury of all the issues of facts by way of special verdict.

3. Support of wife pendente lite and counsel fees. Prior to the final order therein, the provisions of sections, 9.3, 9.4, 9.9 and 9.10 insofar

⁴⁹ *Prior legislation:* 1956 Code 10:70 (c); L. 1935-36, ch. XVII, Sub. § 26(d).

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as applicable, may be availed of by a wife in a proceeding brought to dissolve her marriage upon the ground of her alleged incurable insanity.

4. Permanent support of insane former wife. If the marriage be dissolved on the ground of the incurable insanity of the wife, the court shall include in the final order a provision directing the husband to provide for her suitable support, care and maintenance during life specifying the amount thereof and, before rendering the final order, must exact security for her suitable support, care and maintenance during life. The provisions of the final order relating to support, care and maintenance of a wife during her life and to security therefor may be modified or amended at any time by the court upon due notice to the other party and other interested parties as the court may direct. The security exacted of the husband hereunder shall be available to the former wife or any person on her behalf or any person or agency providing support, care and maintenance for the former wife in the event that the husband shall fail to make any required payments for such support, care and maintenance and upon application to the court the husband shall be ordered and directed to provide additional or further security.

5. Permanent support of insane former husband. If the marriage be dissolved on the ground of the incurable insanity of the husband, the court shall include in the final order a provision directing the wife to provide for his suitable support, care and maintenance during life, specifying the amount thereof and, before rendering the final order, must exact security for his suitable support, care and maintenance during life. The provisions of the final order relating to support, care and maintenance of a husband during his life and to security therefor may be modified or amended at any time by the court upon due notice to the other party and other interested parties as the court may direct. The security exacted of the wife hereunder shall be available to the former husband or any person on his behalf or any person or agency

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providing support, care and maintenance for the former husband in the event that the wife fail to make any required payments for such support, care and maintenance and upon application to the court the wife shall be ordered and directed to provide additional or further security.

Chapter 11. DISSOLUTION OF MARRIAGE ON THE GROUND OF ABSENCE

Sub. § 11.1. 1. Special proceeding; who may petition.

Sub. § 11.2. Procedure.

Sub. § 11.1. Special proceeding; who may petition.

A special proceeding to dissolve a marriage on the ground of absence may be maintained by a spouse who meets either of the following jurisdictional requirements;

(a) Where the petitioner is a resident of this Republic and has been a resident thereof for one year immediately preceding the commencement of the special proceeding.

(b) Where the matrimonial domicile at the time of the disappearance of the absent spouse was within the Republic.

Sub. § 11.2. Procedure.

1. Petition and notice. The petition in the special proceeding authorized by this chapter shall allege that the husband or wife of the petitioning party has absented himself or herself for seven successive years then last past without being known to such party to be living during that time; that such party believes such husband or wife to be dead; and that a diligent search has been made to discover evidence

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showing that such husband or wife is living and no such evidence has been found. The court shall thereupon by order require notice of the presentation and object of such petition be published in a newspaper in the English language designated in the order as most likely to give notice to such absent husband or wife once each week for three successive weeks; such notice shall be directed to the husband or wife who has so absented himself or herself and shall state the time and place of the hearing upon such petition, which time shall not be less than forty days after the completion of the publication of such notice; said notice must be subscribed with the name of the petitioner and with the name of the petitioner's attorney and with his office address, specifying a place within the Republic where there's is a post office. In addition to the foregoing requirements said notice must be in substantially the following form, the blanks being properly filled:

"Circuit Court of the-_____Judicial District, _____
County. In the matter of the application of _____
_____ for dissolution of his (or her) marriage with

To :Take notice that a petition has been presented to this court by your husband (or wife), for the dissolution of your marriage on the ground that you have absented yourself for seven successive years last past without being known to him (or her) to be living and that he (or her) believes you to be dead, and that pursuant to an order of said court, entered the ___ day of _____ 19___, a hearing will be had upon said petition at the courthouse of said Circuit Court, _____ Liberia on the ___ day of 19___ at _____ o'clock in the noon, dated _
_____, 19___."

2. *Final order.* If the court, after the filing of proof of the proper publication of the required notice and after a hearing and proof taken, is satisfied of the truth of all the allegations contained in the petition, it may make an order disssolving such marriage.

**Chapter 12. DISSOLUTION OF MARRIAGE ON
GROUND OF IMPOSITION OF PRISON
SENTENCE OF FIVE OR MORE YEARS,
INCLUDING LIFE IMPRISONMENT**

Sub. § 12.1. Grounds for dissolution and limitations thereon.

Sub. § 12.2. Procedure.

Sub. § 12.1. Grounds for dissolution and limitations thereon.

A proceeding to dissolve a marriage upon the ground that one of the parties has been convicted of a crime for which a sentence of not less than five years imprisonment has been imposed, including imprisonment for life, may be maintained by a spouse who meets the residential jurisdictional requirements set forth for matrimonial actions in section 9.1 provided that the time for appeal from such conviction has expired without an appeal having been taken or if an appeal has been timely taken, the sentence is not reduced to less than five years imprisonment and provided further, that prior to the entry of a final order in the proceedings, the convicted person is not pardoned, nor his sentence suspended or commuted to less than five years.⁵⁰

Sub. § 12.2. Procedure.

1. Petition, contents. A petition for the dissolution of a marriage on the ground that one of the parties has been sentenced to not less than five years imprisonment upon conviction of a crime including imprisonment for life, shall set forth the particulars of the marriage of the parties, the required residential jurisdictional facts, and in addition to the particulars of the crime of which the respondent has been convicted, there shall be attached thereto a certified copy of the

⁵⁰ *Prior legislation:* 1956 Code 10:70 (e); L. 1935-36, ch. XVII, Sub. § 26(f).

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judgment and sentence and either a certificate certifying that no appeal has been taken from the judgment of conviction within the permitted period for an appeal or, if an appeal has been taken, a certified copy of the judgment on appeal.

2. *Process; hearing; final order.* Upon the filing of a proper petition, an order requiring the respondent to show cause on a day certain why the marriage should not be dissolved shall be issued. After the filing of proof of service of the order to show cause and after a hearing and proof taken, if the court is satisfied of the allegations contained in the petition and if it is not shown that the respondent has been pardoned, or that his sentence has been suspended or commuted to less than five years, it may make an order dissolving such marriage.⁵¹

Chapter 13. INJURIES TO DOMESTIC RELATIONS

Sub. § 13.1. What constitutes injuries to domestic relations.

Sub. § 13.2. Damages.

Sub. § 13.3. Injury to domestic relations a separate injury.

Sub. § 13.1. What constitutes injuries to domestic relations.

Injuries to the domestic relations are committed by any of the following acts to wit: adultery; seduction of wife or daughter; breach of promise, contract or engagement to marry; enticing, taking away, confining or detaining the wife, child or ward of any person, or an incompetent, from his or her legally appointed guardian or trustee; harboring or assisting a wife, child or ward who has unlawfully left the protection or services of his or her husband, parent or guardian; beating or otherwise injuring the wife of any parent or guardian;

⁵¹ *Prior legislation:* 1956 Code 10:70(a), 80 (4); L.1935-36, ch. XVII, Sub. § 26(f), 37.

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beating or otherwise injuring any person sustaining any of the domestic relations in such a manner as to incapacitate him or her from performing the duties of such relation.⁵²

Sub. § 13.2. Damages.

The provisions of the Civil Procedure Law shall govern actions brought under the provisions of this chapter except that in the assessment of damages the jury may take into consideration the willful misconduct of the defendant and may in its discretion award punitive damages in addition to compensatory damages.⁵³

Sub. § 13.3. Injury to domestic relations a separate injury.

If a single act or course of conduct of the defendant injures the domestic relations of the plaintiff and, in addition, injures the plaintiff or some other person otherwise than with respect to the domestic relations, the defendant shall be liable for each injury resulting from his wrongful act or conduct.⁵⁴

§ 2. This Act shall take effect immediately upon publication.

ANY LAW TO THE CONTRARY NOTWITHSTANDING

Approved April 10, 1973.

⁵² *Prior legislation:* 1956 Code 10:130; Rev. Stat. Sub. § 227, 248; J. F. Code, Sub. § 12(5); OBB 22, Legal Principles and Rules, t. 1, Sub. § 7, 41, 52, 2 Hub. 1515.

⁵³ *Prior legislation:* 1956 Code 10:131; OBB 22, Legal Principles and Rules, t. 1, §§ 51, 52, 2 Hub. 1515.

⁵⁴ *Prior legislation:* 1956 Code 10:132.