

term for years became her husband's property, and he could convey it. A married woman could not make contracts, either with her husband or with others. She could sue or be sued only if her husband were joined as defendant.

At common law, the husband was responsible for his wife's debts incurred before marriage. He was also responsible for any of her torts committed before or during the marriage.

Because the common law limited or expanded a married individual's rights on the basis of sex, the common law violates the Maryland Equal Rights Amendment ("ERA"). If the ERA abrogated the common law to the extent that the common law discriminated against one or the other sex, the remedial Married Women's Property Acts might be unnecessary. If, however, it is not certain that the common law disabilities and the common law obligations are inoperative, then the repeal of these statutes in their entirety could revive the common law disabilities and obligations, or could at least force individuals to seek court interpretation and enforcement of the ERA in order to protect or reinstate the rights.

An alternative to repealing these statutes might be to revise them using gender-neutral language. That approach might create redundancies by statutorily granting rights or protections that already exist at common law -- e.g., for married men, the right to hold and use property, to make contracts, and to sue and be sued individually; and for married women, protection from personal liability for a husband's premarital debts and for his torts committed before or during the marriage. In addition, an across-the-board extension of the rights could produce the unwanted result of granting substantive rights that otherwise do not exist. For example, at common law, after a woman married, her legal or equitable claims could be enforced by her husband, and became his absolutely when he took possession of them; if he did not take possession of them, they remained the woman's and passed to her personal representative. The husband, if he survived his wife, was her personal representative. A wife, however, could not be her husband's personal representative. Before it was amended by Ch. 594, Acts of 1974, former Article 45, § 19 read: "A husband bringing a personal action to recover in right of his wife after her death may declare specifically setting forth in the usual manner how the debt or right accrued to his wife, and stating further that by marriage the debt or right devolved on him." Thus, both the statute and the underlying common law violated the ERA by granting a right to married men only. Chapter 594, Acts of 1974, gender-neutralized the statute. In doing that, however, the legislature perpetuated and expanded an archaic rule that conflicts with modern estate law. But for this statute, a claim of 1 spouse would not accrue to the other by marriage. If a surviving spouse has the right to pursue the claims of the deceased spouse, it is as a result of being the personal representative, but neither spouse is automatically the personal representative of the other.