60-428.   Marital privilege, confidential communications. (a) *General rule.* Subject to K.S.A. 60-437 and except as otherwise provided in subsections (b) and (c) of this section, a spouse who transmitted to the other the information which constitutes the communication, has a privilege during the marital relationship which he or she may claim whether or not a party to the action, to refuse to disclose and to prevent the other from disclosing communications found by the judge to have been had or made in confidence between them while husband and wife. The other spouse or either his or her guardian or conservator may claim the privilege on behalf of the spouse having the privilege.

(b)   *Exceptions.* Neither spouse may claim such privilege (1) in an action by one spouse against the other spouse, or (2) in an action for damages for the alienation of the affections of the other, or for criminal conversation with the other, or (3) in a criminal action in which one of them is charged with a crime against the person or property of the other or of a child of either, or a crime against the person or property of a third person committed in the course of committing a crime against the other, or bigamy or adultery, or desertion of the other or of a child of either, or (4) in a criminal action in which the accused offers evidence of a communication between him or her and his or her spouse, or (5) if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the communication was made, in whole or in part, to enable or aid anyone to commit or to plan to commit a crime or a tort.

(c)   *Termination.* A spouse who would otherwise have a privilege under this section has no such privilege if the judge finds that such spouse while the holder of the privilege testified or caused another to testify in any action to any communication between the spouses upon the same subject matter.

History: L. 1963, ch. 303, 60-428; L. 1965, ch. 354, § 9; Jan. 1, 1966.