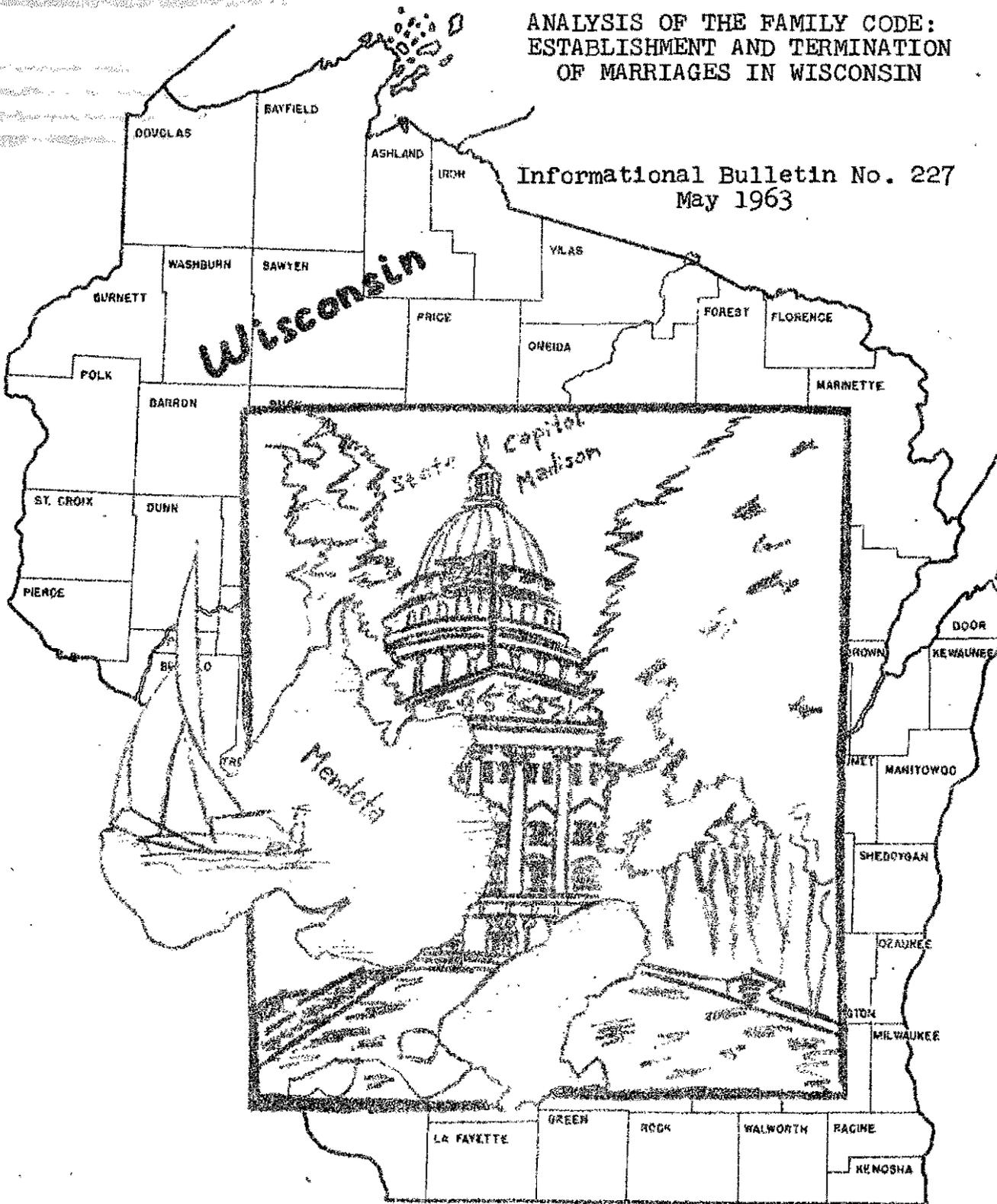


ANALYSIS OF THE FAMILY CODE:
ESTABLISHMENT AND TERMINATION
OF MARRIAGES IN WISCONSIN

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ANALYSIS OF THE FAMILY CODE: ESTABLISHMENT AND TERMINATION OF MARRIAGES IN WISCONSIN*

HIGHLIGHTS -- Wisconsin's Marriage and Divorce Laws were Drastically Revised in 1959. These are the Salient Features Today:

1. AGE. Men over 21 and women over 18 may marry without consent. Those over 18 and 16, respectively, may marry with consent.
2. PROHIBITED GROUPS. Married persons, persons divorced within one year, persons within prohibited degrees of consanguinity, and certain mentally defective persons may not marry.
3. LICENSES. \$3 plus notary fees from the county clerk of the county in which either party resides, or if neither resides in Wisconsin, in the county in which the marriage is to take place.
4. WAITING PERIOD. Five days must elapse between the application and the issuance of the license; license is good for 30 days. The waiting period may be waived by a judge of a court of record under certain circumstances if one of the parties has resided in this state for at least 30 days.
5. PHYSICAL EXAMINATION. Both parties must submit to a physical examination for venereal disease and submit to a Wassermann test within 20 days of the date of application. No person in an infective or communicable stage of such disease may be granted a license to marry.
6. WHO MAY SOLEMNIZE. Any judge of a court of record; any ordained clergyman; a licentiate of any denominational body or an appointee of any bishop; the 2 parties themselves, in accordance with the rules of their religious denomination.
7. WITNESSES. Two are required.
8. ANNULMENT. An annulment destroys the existence of a void or voidable marriage, and may be granted by a family court branch of circuit or county court for such things as impotence, consanguinity, existing marriage, fraud, force, insanity or under age.
9. DIVORCE AND SEPARATION PERMITTED. Both divorce and legal separation are permitted.
10. GROUNDS FOR DIVORCE OR SEPARATION. One year wilful desertion, cruel and inhuman treatment, one year as an habitual drunkard, adultery, 3 years' imprisonment and 5 years' voluntary separation are grounds for divorce or legal separation.
11. RESIDENCE. No requirements for marriage; rather rigid ones for divorce.
12. CUSTODY AND ALIMONY. Care and custody of children and granting of alimony are within the discretion of the court. The custody of children may be granted to either or neither party. Only the wife is granted alimony.
13. BREACH OF PROMISE. No suit may be brought for breach of promise.

*This is a revised edition of a publication issued in 1956 (IB-153).
Revised by Michael Vaughan, Bill Draftsman.

ANALYSIS OF THE FAMILY CODE: ESTABLISHMENT AND TERMINATION
OF MARRIAGES IN WISCONSIN

MARRIAGE

So you want to get married. When you have found the right mate and want to get married, the state becomes a third party to your marriage because there are laws which set forth the requirements for a marriage license and which govern the marriage ceremony. The following is a chronological outline of the procedure and the laws based primarily on the law as revised in 1959 by Chapter 595 which was the product of an interim study by the Interim Committee on Family Law.

I. What is Marriage?

Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential. (Sec. 245.01, 1961 Wis. Statutes) A marriage contract differs from ordinary contracts, in that it cannot be modified or abrogated by the parties themselves and once entered into, a valid marriage contract continues until changed by legal proceedings or by the death of one of the parties. (Estate of Campbell, 260 Wis. 625) There must be an agreement between the parties that they will hold toward each other the relation of husband and wife, otherwise there can be no lawful marriage. (Williams v. Williams, 46 Wis. 464) The State Constitution prohibits the Legislature from dissolving a specific marriage by divorce (Article IV, Section 24).

II. Who may Marry?

If otherwise competent, every man over the age of 18 and every woman over the age of 16 may marry. (Sec. 245.02) Men between the ages of 18 and 21 and women between the ages of 16 and 18 need their parents' or guardians' consent. The common law ages for marriages was 14 for men and 12 for women. Section 245.02 abrogates the common law rule as to ages of consent. (Eliot v. Eliot, 77 Wis. 634)

III. Who may not Marry?

A. Persons having a living husband or wife. (Sec. 245.03)

B. Divorced persons within one year after judgment of divorce is granted. (Sec. 245.03)

C. Persons who are nearer of kin than second cousins, except that first cousins may marry when the woman is 55 years of age or older. Sec. 245.03) A man who marries the daughter of his first cousin violates this section, and both may be prosecuted for incest if they live together in this state. (5 OAG 227; 12 OAG 12)

Note: The pertinent statutes, opinions and court decisions are cited in the text in parentheses.
"Sec." refers to a particular section of the Wisconsin Statutes (1961).
"OAG" means opinions of the Attorney General.
"Wis." means the Wisconsin Reports, official compilation of Wisconsin Supreme Court decisions.

D. Any person having such want of understanding as renders him incapable of assenting to marriage whether by reason of insanity, idiocy or other causes. (Sec. 245.03)

IV. Marriage Licenses

A. Application

The license may be obtained from the county clerk of the county in which one of the parties has resided for 30 days. If neither party is a resident of Wisconsin, the license must be obtained in the county in which the ceremony will be performed. (Sec. 245.05) An application for a marriage license must be made at least 5 days before a license may be issued. This 5-day waiting period between application and issuance of the license may be waived. Any judge of a court of record may grant special dispensation by ordering the issuance of a license before the expiration of the 5 days if any of the following facts exists.

1. If either of the parties to the proposed marriage is dangerously ill and such illness is likely to result in death.
2. If the female is pregnant.
3. If either party is in military service.
4. Other circumstances which the judge deems warrant special dispensation.

The person applying for dispensation must be a resident of the state for at least 30 days prior to making such application. (Sec. 245.08)

B. Identification of parties and qualifications

Each party applying for a marriage license must be identified. The application must be sworn to under oath and contain the names of the parties; their relationship; place and date of birth; nationality; race; residence and occupation; the names of their parents and guardians; any prior marriage of either party and the date on which and manner in which such prior marriage was dissolved; the names, ages and residence of any minor children of such previous marriage; the names of former spouses; the date the marriage is intended to take place and a statement that the contemplated marriage will be lawful. Persons under 30 shall submit birth certificates and all persons shall submit copies of all documents affecting the marital status. (Sec. 245.09)

Licenses shall be issued to previously married persons only with the judge's consent (Sec. 245.09) and, where an applicant is under obligation to support children of a previous marriage not in his custody, the judge shall permit issuance of a license only if he determines that such children are not likely to become public charges. (Sec. 245.10)

C. Physical examinations (Sec. 245.06)

Any person applying for a marriage license must bring with him and present to the county clerk when making application a report of a licensed physician stating that the applicant is free from venereal diseases as nearly as can be determined by a thorough examination.

In addition both parties must, within 20 days before making their application, submit to and be given the Wassermann or other standard blood test for syphilis. These certificates must be filed with the county clerk when making the application for the marriage license.

No person who is in the infective or communicable state of a venereal disease shall be granted a marriage license. (Sec. 245.07)

D. Objections to the marriage license

After the parties have applied for their marriage license the county clerk must post in his office a notice giving the names and residences of the parties applying for the license and the date of the application. Any parent, guardian, grandparent, child or guardian thereof, brother or sister of either applicant or the District Attorney who believes that the statements on the application are false or insufficient or that the applicants are incompetent to marry may file a petition with the court under oath, setting forth the grounds of their objection. If upon a hearing the judge finds that the statements in the application are wilfully false or insufficient or that either party is not competent in law to marry, the court shall make an order refusing the issuance of a license. Inadvertent mistakes may be rectified. (Sec. 245.11) If there are no defects or objections to the application, the county clerk must issue a license. (Sec. 245.12)

E. Penalties for false statements

Any person who wilfully swears to false statements in obtaining a marriage license, or in objecting to a marriage, is subject to a fine of not less than \$100 nor more than \$1,000 or imprisonment for not more than 1 year or both. (Sec. 245.30 (2) (a))

F. Unlawful issuance of license

Any county clerk who knowingly issues a marriage license contrary to the family code is subject to fine and imprisonment or both. (Sec. 245.30 (2) (b))

V. Marriage Ceremony

A. Contents of the license

The license authorizes the performance of the marriage ceremony in any county of the state, except when both parties are nonresidents of the state, the ceremony shall be performed only in the county in which the license is issued. The license shall be directed to any person authorized by the law of this state to solemnize marriage and must be solemnized within 30 days of the issuance of the license. (Sec. 245.12)

B. Who may solemnize a marriage?

1. Any judge of a court of record; and any ordained clergyman of any religious society who continues to be an ordained clergyman. (Sec. 245.16) Any ordained minister may perform a marriage ceremony even though he is not in the active charge of a parish of a church.

(4 OAG 978) One who assumes the position of minister of the Gospel, but who has not been ordained or appointed by denominational or non-denominational group is not authorized to solemnize marriages. (27 OAG 460)

2. Any licentiate of a denominational body or an appointee of any bishop, while serving as the regular clergyman of any church of the denomination to which he belongs provided he is not restrained from doing so by the discipline of his denomination. (Sec. 245.16)

3. The 2 parties themselves, in accordance with the practices of any religious society to which either of them belongs. (Sec. 245.16)

C. Authority to solemnize marriages

1. Clergymen, licentiates and appointees, before they can solemnize a marriage, must file a copy of their credentials of ordination, license or appointment or other proof of such official character with the clerk of circuit court of the county in which the church of their ministry is located and the clerk shall record the credentials and give him a certificate. (Sec. 245.17) Certificate of authority to solemnize marriages may not be issued by the clerk of the circuit court under this section to a member of a nondenominational religious society who purportedly was designated by elders thereof as bishop for the purpose of performing marriages. (37 OAG 449)

D. Penalties for unlawful solemnization

If any person who is authorized to solemnize a marriage does so when the parties have not obtained a license, or the parties do not declare that they take each other as husband and wife, or there are not 2 competent witnesses, or no parental consent was given for the parties under age, or the marriage is solemnized more than 30 days after the issuance of the license, he is subject to fine and imprisonment or both. (Sec. 245.30 (3) (a))

E. Witnesses

No marriage is valid unless performed by a person authorized to solemnize marriages and must be witnessed before 2 competent witnesses with both parties declaring before the witnesses that they take each other as husband and wife. (Sec. 245.16)

F. Filing of the marriage certificate

The original marriage certificate must be completed by the person authorized to perform the marriage and filed with the register of deeds of the county or the city health officer in which the marriage was performed within 3 days after the date of the marriage. (Sec. 245.19) Failure to file the certificate within 3 days constitutes grounds for fine. (Sec. 245.30)

VI. Other Provisions

A. Marriage of Wisconsin residents in other states

If any person, who resides in this state and intends to continue to reside in this state, marries in another state when he is prohibited from marrying in Wisconsin, such marriage shall be void. (Sec.

245.04) The general rule is that a marriage which is valid where it is solemnized is valid everywhere. This is modified by this section which declares as the public policy of this state, that marriages contracted within this state or outside of this state in violation of the laws of the state where the parties reside shall be void. (Hall v. Industrial Comm., 165 Wis. 364) If any person residing and intending to continue to reside in another state contracts to marry in this state in violation of his home state's laws, the marriage is void. (Sec. 245.04)

B. Immaterial irregularities

If the marriage is in other respects lawful and is consummated with the full belief on the part of the persons married that they have been lawfully joined in marriage, immaterial irregularities will be waived. (Secs. 245.22 and 245.23)

C. Fee

The fee for each marriage license is \$3 plus notary fees. (Sec. 245.14)

VII. Legal Rights Accruing through Marriage

A. Dower and curtesy

Upon marriage the wife acquires a right to a dower which is defined as a one-third part of all the lands which her husband owned at any time during the marriage unless she is lawfully barred from claiming such dower. Although this right is acquired upon marriage, it does not become effective until the death of the husband. This does not apply to any homestead which her husband owned at the time of his death. (Sec. 233.01)

The husband has no automatic dower rights such as the wife but he is entitled to curtesy, which is defined as a one-third part of all the lands which his wife owned at the time of her death which were not disposed of by her last will and testament. This does not apply to a homestead which his wife owned at the time of her death. (Sec. 233.23)

B. Married women's property rights

The real and personal property of any woman owned prior to her marriage is not subject to disposal by her husband nor is it liable for his debts but shall continue as her sole and separate property. (Sec. 246.02)

C. Legal actions

Every married woman may sue in her own name and shall have all the remedies of an unmarried woman in regard to her separate property or business. Any married woman may bring and maintain an action in her own name for any injury to her person. (Sec. 246.07)

ANNULMENT

I. What is the Difference between Divorce and Annulment?

A divorce recognizes the validity of a marriage and a divorce action is predicated on a valid marriage. When a decree is rendered in a divorce action, it terminates the relationship between the parties from that date on. Annulment on the other hand, challenges the very existence of a marriage. An annulment action destroys the existence of a void or voidable marriage and everything pertaining to such marriage from the beginning.

II. Grounds for Annulment (Sec. 247.02)

A marriage may be annulled for any of the following causes which existed at the time of the marriage. No annulment shall be granted if the court finds the suit was brought by collusion. (Sec. 247.10)

A. Incurable physical impotency or incapacity of copulation, provided that the party making the application was ignorant of such fact at the time of the marriage.

B. Marriage between persons who are nearer of kin than second cousins.

C. One party having a living husband or wife.

D. Fraud, force or coercion unless the marriage has been confirmed by the acts of the injured party.

E. Insanity, idiocy or lack of understanding sufficient to consent to a marriage.

F. Under age.

G. The marriage is prohibited for any other reason.

Actions for annulment of marriage are of purely statutory jurisdiction, which cannot be enlarged or extended by resort to the general equity powers of the circuit court; and such statutory action may be had to set aside either a void or a voidable marriage. (Lyannes v. Lyannes, 171 Wis. 381)

III. Residence Requirements

To commence a suit for an annulment of a marriage one party must be a bona fide resident of this state at the time of the commencement of the action. However, if both parties are nonresidents of this state their marriage may be annulled if they were married in this state, and the action to annul such marriage is brought within one year after the marriage. (Sec. 247.05)

IV. Care and Custody of Minor Children

See VIII under Divorce and Legal Separation

V. Alimony

In certain cases, a judge may award alimony to the woman in an annulment judgement. (Sec. 247.245)

DIVORCE AND LEGAL SEPARATION

I. Divorce and Legal Separation

Wisconsin has both divorce and legal separation. Divorce is absolute. Legal separation is a "qualified divorce" by which the parties are separated and forbidden to live or cohabit together, without affecting the marriage itself. Such persons cannot remarry.

II. Grounds for Divorce or Legal Separation (Sec. 247.07)

- A. Adultery
- B. Habitual drunkard for one year
- C. Imprisonment for 3 years of either party
- D. Wilful desertion for one year
- E. Cruel and inhuman treatment
- F. 5 years voluntary separation
- G. 5 years legal separation (grounds for divorce)
- H. Refusal or neglect by husband to support wife

Adultery may be proven by a clear and satisfactory preponderance of evidence. (Poertner v. Poertner, 66 Wis. 644)

To make refusal to live with husband constitute wilful desertion, the husband must show that it was safe for his wife to live with him, and that she unreasonably refused, and that she had no intention of returning. (McCormick v. McCormick, 19 Wis. 172) The husband has the right to select the place where the family shall reside, and if the wife unreasonably refuses to move with him to the place he selects, her conduct constitutes wilful desertion. A wife who wilfully deserts her husband forfeits her right to support, and cannot, during the period of such desertion, maintain an action for divorce on the ground of failure to support. (Gray v. Gray, 232 Wis. 400)

Violence, profanity and grossly indecent language and conduct toward a wife, with threats to kill her and pushing her about in anger and handling her roughly, constitute cruel and inhuman treatment. (Crichton v. Crichton, 73 Wis. 59) Any wilful misconduct which endangers the wife's health or life, exposes her to bodily hazards and intolerable hardship and renders cohabitation unsafe is cruel and inhuman treatment. (Beyer v. Beyer, 50 Wis. 254)

The refusal or neglect must be substantial and designed, since it must be coupled with sufficient ability. The mere fact that a husband has provided his wife with temporary support for a definite time, pursuant to an order of court, does not relieve him from supporting her thereafter. Nor does the pendency of an appeal from a

Judgment in an action for divorce make it obligatory upon her to obtain further temporary support by an application for and through an additional order. Nor does her failure to prove want of support prior to the first action prevent her from maintaining a second action for divorce on the ground of his subsequent failure to support. (Varney v. Varney, 58 Wis. 19)

III. Residence Requirements

A. Divorce (Sec. 247.05)

No action for a divorce may be commenced unless one of the parties has been a bona fide resident of this state for 2 years just before the commencement of the divorce action.

B. Legal separation (Sec. 247.05)

No action for a legal separation may be commenced unless one of the parties has been a bona fide resident of this state for 30 days before the commencement of the action.

The court is without jurisdiction to grant a divorce where neither of the parties has been a bona fide resident of this state for the 2 years next preceding the commencement of the action (Sang v. Sang, 240 Wis. 288)

IV. What will Prevent a Divorce or Legal Separation?

A. Collusion

No decree for divorce or legal separation will be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, or that the plaintiff has procured or connived at the offense charged. (Sec. 247.10) Collusion is an agreement between the parties that one party will obtain a divorce and the other will not attempt to dispute it, when there are no actual grounds for the divorce. This does not prevent an agreement between the parties that one will not dispute the divorce action of the other when there are legitimate grounds for the divorce. A collusive agreement between husband and wife to procure a divorce when no breach of duty has been committed would be a fraud upon the court. (Hopkins v. Hopkins, 39 Wis. 167)

B. Condonation

No divorce shall be granted if the offense charged has been condoned. (Sec. 247.10) Condonation is the forgiveness or pardon of the offense charged and may be either expressed or implied. Condonation is subject to the implied condition that the injury shall not be repeated and that the other party shall thereafter be treated with conjugal kindness. After condonation former injuries will be revived by subsequent similar misconduct, although of slighter nature. (Crichton v. Crichton, 73 Wis. 59)

C. Recrimination

The doctrine of recrimination bars a divorce where it is shown

that each party has been guilty of an offense which the statute has made a ground for divorce in favor of the other. (Roberts v. Roberts, 204 Wis. 401) This doctrine is generally applicable in Wisconsin, but (except in cases of uncondoned adultery by the plaintiff) the court may grant a judgment of legal separation to the party whose equities are superior. (Sec. 247.101)

V. Divorce Procedure and Machinery

A. Jurisdiction - power of the courts

All actions to annul a marriage or for a divorce or legal separation are brought in the family court branch of a county (except Milwaukee County) or circuit court. (Sec. 247.01) Courts possess no power in actions for divorce except such as are given by the statutes. Courts may grant divorces even though the guilty party has never resided in this state and the acts alleged as causes for the divorce were committed elsewhere. (Shafer v. Bushnell, 24 Wis. 372) An action for divorce is a statutory action, and the trial court can grant only such relief as the statutes prescribe. (Hirchert v. Hirchert, 243 Wis. 519) In an action for divorce or legal separation, when the court grants judgment it may grant either a divorce or legal separation as it deems in the best interests of the parties or children to the marriage, notwithstanding the type of judgment sought. (Sec. 247.09)

B. Family court commissioner

Copies of the papers in an action for a divorce must be served on the family court commissioner of the county. The family court commissioner conducts pretrial investigations and works to reconcile the parties. The family court commissioner will appear in a default action. No decree granting a divorce will be rendered in a default action until the family court commissioner has made a fair and impartial investigation of the case in behalf of the public and fully advises the court as to the merits of the case and the rights and interest of the parties and the public. The family court commissioner is empowered to have witnesses subpoenaed on behalf of the state when in his judgment their testimony is necessary to fully advise the court as to the merits of the case. (Secs. 247.14 and 247.15)

C. Trials

All hearings and trials to determine whether or not a decree shall be granted, must be held before the court, except the issue of adultery which shall be tried before a jury. (Sec. 247.12) The trial of a divorce action is conducted under the same rules that apply in other civil actions, except so far as modified by statute. (Bloomer v. Bloomer, 197 Wis. 140)

D. Proof

No divorce, legal separation or annulment will be granted in a default action unless the cause therefor is shown by affirmative proof. No such judgment will be granted on the testimony of the complainant, unless the required residence and grounds for the divorce is corroborated. When the ground for the divorce is cruel and inhuman treatment and no corroborating evidence is available such ground need not be corroborated. (Sec. 247.18)

E. Suit money

In every action for a divorce the court may, during the pendency of the action, require the husband to pay such sums to enable his wife to carry on or defend the action, and sums necessary for her support and maintenance. (Sec. 247.23)

VI. Effect of the Judgment of Divorce

A. When a judgment of divorce is granted it shall not be effective until the expiration of one year from the date of the granting of such judgment, except that it immediately bars the parties from cohabitation. (Sec. 247.37)

A divorce terminates only the relationship of husband and wife and does not affect the parental relation or the duty of the husband to support a minor child of the couple. (Romanowski v. Romanowski, 245 Wis. 199) There is no absolute severance of the marriage relation until the expiration of one year from the entry of the divorce judgment. If either party marries again during that year the remarriage is void, even though effected in another state. During such year the court has absolute control over the question whether the divorce sought shall be granted; and adultery committed during the year is ground for vacating or modifying the judgment. (White v. White, 167 Wis. 615) An attempted marriage in Iowa within one year is void in Iowa as well as Wisconsin and constitutes no defense to a charge of adultery. (State v. Grengs, 253 Wis. 248)

B. When a marriage is dissolved by the granting of a divorce or when the court, in granting a legal separation, makes a final division of the estate, neither party shall be entitled to dower or curtesy in any lands of the other. (Sec. 247.36)

VII. Effect of Divorce Decrees Granted by Other States

A. Full faith and credit will be given in this state to an annulment, legal separation or divorce rendered by a court of competent jurisdiction in another state of the U.S. when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in the Wisconsin Statutes. However, if any habitant of this state goes into another state, for the purpose of obtaining a divorce for a cause which occurred while the parties resided in this state, or for a cause which is not a ground for a divorce under the laws of the state of Wisconsin, a decree so obtained in the out-of-state court shall be of no force or effect in this state. (Sec. 247.21)

This section does not render a judgment of divorce obtained in another state ineffective merely because the divorce was granted for a cause not a ground for divorce in Wisconsin, but there must also be established the additional fact that an inhabitant went into the other state for the purpose of obtaining a decree for such a cause. (Ische v. Ische, 252 Wis. 250)

The statutes of Illinois forbidding remarriage within one year after a divorce and their interpretation by the courts of that state,

being substantially the same as the statutes and decisions of Wisconsin relating to the same subject, the courts of this state will take cognizance of the Illinois law and decisions and declare void in Wisconsin a marriage contracted in Indiana in violation of the laws of Illinois by residents of Illinois. (Hall v. Industrial Commission, 165 Wis. 364)

B. A divorce obtained in another state shall be of no force or effect in this state, if both parties to the marriage were domiciled in this state at the time the divorce proceeding was commenced. Proof that a person obtaining a divorce in another state was (1) domiciled in this state within 12 months prior to the commencement of the divorce proceeding and that the person resumed his residence in this state within 18 months after the date of his departure, or (2) if the person obtaining the divorce at all times after his departure from this state and until his return maintained a place of residence in this state, is prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced. (Sec. 247.22)

In an action to annul a divorce granted by a Wyoming court, the Wisconsin court is not barred by the full faith and credit clause from determining that both parties at all times were residents of Wisconsin, even though the wife entered a formal special appearance by counsel in the Wyoming divorce action objecting to the husband's residence. (Davis v. Davis, 259 Wis. 1)

VIII. Care and Custody of Minor Children; and Alimony

A. Care and custody

The court when rendering an annulment or whether granting or denying a divorce or legal separation may make provisions for the proper care, custody, maintenance, and education of the minor children. The court may give the care and custody of the children to one of the parties to the action, or may, if the interests of the child demand it, and if the court finds that neither of the parents is a fit and proper person to have the care and custody of such child, give the care and custody of such child to any relative or welfare agency. (Secs. 247.24 and 247.28)

If a wife has obtained a divorce because of the husband's cruelty, she is prima facie best entitled to custody of young children. (Pauly v. Pauly, 69 Wis. 419) Custody of children of tender years, especially girls, will ordinarily be given to the mother, other things being equal and she not being unfit. (Acheson v. Acheson, 235 Wis. 610) In determining the custody of minor children of divorced parents, the welfare of the children is the controlling consideration and the action of the trial court resolving that question should not be disturbed unless clearly wrong. (Hansen v. Hansen, 251 Wis. 574)

B. Alimony

In every divorce or legal separation granted for any cause except that of adultery committed by the wife, the court may allow to the wife such alimony out of the estate of the husband, for her support and maintenance and such allowance for the support, maintenance

and education of the minor children committed to her custody as the court deems just and reasonable. The court may divide and distribute the estate of the husband always having due regard to the legal and equitable rights of each party, the ability of the husband, the special estate of the wife, and the character and situation of the parties and all the circumstances of the case. (Sec. 247.26) If the wife has an adequate estate of her own she has no claim for alimony. (Campbell v. Campbell, 37 Wis. 206) The court has no authority to require the wife to pay alimony to the husband. (Brenger v. Brenger, 142 Wis. 26) A wife on leaving her husband without reasonable cause is not entitled to be supported by him. (Nowack v. Nowack, 235 Wis. 620)

In determining the allowance to be made to the wife on the division of estate in a divorce case, it is necessary to consider the state of health and the earning power of the parties; the property owned by each; the property held in common; the age of the parties; the nature of the property and the manner of its acquisition; together with all of the circumstances bearing on the question. (Tupitza v. Tupitza, 251 Wis. 257)

C. When wife to support children

When a divorce or legal separation is granted for a cause or fault committed by the wife and the care, custody and maintenance of minor children is given to the husband, the court may grant to the husband sums out of the separate estate of the wife, for the support and education of such minor children as the court deems just and reasonable, considering the ability of the parties to pay and all other circumstances of the case. (Sec. 247.27) When a divorce or legal separation is denied the court may make an order for the support of any child out of the wife's estate (Sec. 247.28)

ACTIONS ABOLISHED (CH. 248)

I. Breach of Promise

Since July 1, 1960, no action may be brought in Wisconsin for breach of promise (Secs. 248.01 and 248.04) It is illegal to file or threaten such an action (Sec. 248.03), and contracts executed in regard to such claims are barred. (Sec. 248.05) The chapter does not bar actions for fraud in connection with promises of marriage. (Sec. 248.06)

MARRIAGE AND DIVORCE STATISTICS, 1940-1960

WISCONSIN

UNITED STATES

Year	Marriages	Marriage rate per 1,000 pop.	Divorces	Divorce rate per 1,000 pop.	Marriages	Marriage rate per 1,000 pop.	Divorces (Estimated)	Divorce rate per 1,000 pop.
1940	23,379	7.5	3,599	1.1	1,595,879	12.1	264,000	2.0
1941	28,816	9.2	4,050	1.3
1942	24,869	8.1	3,905	1.3	1,772,132	13.2	321,000	2.4
1943	22,393	7.4	4,469	1.5	1,577,050	11.7	359,000	2.6
1944	21,190	7.1	5,326	1.8	1,452,394	10.9	400,000	2.9
1945	25,269	8.5	6,393	2.2	1,612,992	12.2	485,000	3.5
1946	38,964	12.3	8,197	2.6	2,291,045	16.4	610,000	4.3
1947	35,555	10.9	5,877	1.8	1,991,878	13.9	483,000	3.4
1948	32,579	9.8	5,075	1.5	1,811,155	12.4	408,000	2.8
1949	27,782	8.2	4,815	1.4	1,579,798	10.6	397,000	2.7
1950	29,081	8.4	4,845	1.4	1,667,231	11.1	385,144	2.6
1951	27,133	7.9	4,473	1.3	1,594,694	10.4	381,000	2.5
1952	24,737	7.1	4,847	1.4	1,539,318	9.9	392,000	2.5
1953	25,469	7.3	5,011	1.4	1,546,000	9.8	390,000	2.5
1954	24,921	6.9	4,887	1.4	1,476,000	9.2	379,000	2.4
1955	25,543	7.0	4,720	1.3	1,524,000	9.3	377,000	2.3
1956	26,833	7.2	4,488	1.2	1,585,000	9.5	382,000	2.3
1957	25,723	6.8	4,336	1.1	1,518,000	8.9	381,000	2.2
1958	24,985	6.5	4,499	1.2	1,445,000	8.4	368,000	2.1
1959	25,637	6.5	4,657	1.2	1,494,000	8.5	385,114	2.2
1960	24,573	6.2	3,672	.9	1,527,000	8.5	395,000	Not available

Sources: Wisconsin Blue Book, 1962, p. 688.
Statistical Abstract of the United States, Vols. 1955 to 1962.

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MARRIAGE AND DIVORCE RATES PER 1,000 POPULATION, BY COUNTIES¹

County	1960		1950		1940	
	Marriage	Divorce ²	Marriage	Divorce ²	Marriage	Divorce ²
Adams	6.3	.9	5.2	1.4	3.4	.4
Ashland	7.6	.6	9.7	1.2	8.0	1.1
Barron	6.2	.8	6.6	1.2	6.9	1.2
Bayfield	5.7	.5	4.9	.9	5.4	.6
Brown	6.3	.6	9.0	1.0	9.4	1.1
Buffalo	5.4	.3	7.0	.6	5.5	.4
Burnett	4.0	.4	4.7	.1	3.6	.4
Calumet	6.3	.2	7.4	.5	7.4	.3
Chippewa	5.7	.5	7.0	1.3	7.1	1.5
Clark	7.1	.5	7.7	.6	6.4	.6
Columbia	7.6	1.0	8.1	1.6	6.9	1.2
Crawford	8.0	.7	6.5	.7	4.6	.3
Dane	6.3	1.3	8.4	1.8	7.5	1.6
Dodge	5.7	.6	7.2	1.0	6.8	1.9
Door	7.1	.4	8.0	.8	8.0	.7
Douglas	5.0	.8	7.8	2.0	5.7	1.6
Dunn	5.7	0	6.7	.7	6.2	.7
Eau Claire	6.3	1.0	8.6	1.7	6.5	.6
Florence	9.9	.3	5.1	.8	5.5	1.0
Fond du Lac	6.3	.5	8.5	1.0	8.1	.8
Forest	7.7	.5	7.7	1.1	9.1	.8
Grant	6.7	.2	7.2	.4	4.5	.8
Green	6.1	1.0	7.3	1.2	5.0	1.1
Green Lake	7.8	.4	9.0	.9	9.6	.5
Iowa	5.0	.2	6.0	.4	4.2	.5
Iron	5.2	.3	8.6	1.3	8.3	1.2
Jackson	5.0	.4	6.0	1.2	4.5	.1
Jefferson	6.8	.9	8.8	1.4	7.7	1.4
Juneau	7.4	.7	7.1	.7	5.5	.5
Kenosha	5.8	1.1	9.2	2.1	7.6	1.2
Kewaunee	6.7	.5	8.1	.6	9.2	.7
La Crosse	6.1	1.3	8.7	1.7	5.0	1.3
Lafayette	7.7	.3	7.1	1.9	5.9	1.3
Langlade	7.4	.7	9.2	.9	7.8	1.3
Lincoln	6.9	.4	8.9	1.2	7.7	2.0
Manitowoc	7.0	.6	8.6	.7	8.4	.5
Marathon	6.2	.6	7.6	1.0	7.2	.8
Marinette	6.7	.5	8.2	2.1	7.2	1.2
Marquette	5.2	.7	7.8	1.5	8.4	.2
Milwaukee	6.1	1.4	9.2	1.7	8.8	1.0
Monroe	5.9	.7	7.6	1.1	5.1	.6
Oconto	6.7	.3	7.0	1.0	6.7	.4
Oneida	6.7	1.0	7.3	1.9	8.0	1.7

Marriage and Divorce Rates per 1,000 Population, by Counties (cont.)

County	1960		1950		1940	
	Marriage	Divorce ²	Marriage	Divorce ²	Marriage	Divorce ²
Outagamie	6.4	.6	9.0	1.0	8.3	1.0
Ozaukee	4.9	.4	8.3	6.2	9.1	12.7
Pepin	6.7	.1	9.0	.5	7.6	.9
Pierce	5.7	.1	7.1	.8	4.9	.7
Polk	6.3	.5	7.5	1.0	4.0	.5
Portage	7.0	.6	9.2	.7	7.2	.4
Price	5.4	.5	6.7	.7	8.0	.7
Racine	5.9	1.3	9.3	1.7	7.3	1.4
Richland	7.4	.5	7.8	.9	3.1	1.1
Rock	6.1	1.3	8.3	2.5	4.8	2.0
Rusk	7.0	.6	8.3	.9	7.7	.7
St. Croix	6.3	.4	19.8	.8	12.9	.3
Sauk	7.6	.8	7.6	1.4	6.4	.6
Sawyer	6.1	1.2	7.3	1.4	6.7	.3
Shawano	8.2	1.1	8.4	1.0	8.8	.8
Sheboygan	6.5	1.1	8.9	.8	8.6	.7
Taylor	7.4	.3	6.7	.5	5.9	.4
Trempealeau	6.8	.3	7.8	.6	7.7	.1
Vernon	7.1	.5	6.9	.4	3.0	1.0
Vilas	7.1	.5	7.8	1.4	9.1	.9
Walworth	6.5	1.1	8.2	1.7	6.8	1.3
Washburn	6.6	.3	6.5	3.1	4.9	.7
Washington	6.0	.4	7.8	1.4	7.9	3.7
Waukesha	4.6	.8	7.2	1.3	7.6	2.1
Waupaca	7.7	.6	8.2	1.0	8.6	1.0
Waushara	6.4	.2	7.0	.9	7.4	.4
Winnebago	6.0	.9	9.2	1.3	7.1	1.3
Wood	6.6	.6	8.4	1.2	7.0	1.1

¹Computed using county population figures from Blue Book (1962), p. 659, and marriage and divorce figures from State Board of Health publications, Public Health Statistics (1960), pp. 70-71, Morbidity and Mortality (1950), pp. 10-11, and Thirty-ninth Report (1942), p. 107.

²Includes annulments but does not include legal separations.