

State of Wisconsin

SUBJECT MATTER JURISDICTION  
OF WISCONSIN STATE COURTS

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## SUBJECT MATTER JURISDICTION OF WISCONSIN STATE COURTS\*

In Wisconsin the state court system consists of a Supreme Court, circuit courts, county courts, municipal justice of the peace courts and constitutional justice of the peace courts. These courts receive their jurisdiction, that is, the legal power, right or authority to hear and determine a cause, from the Wisconsin Constitution, the Wisconsin statutes and the statutes of the United States. Occasionally an opinion written to support a decision in a court case in which one of these jurisdictional provisions of the Wisconsin Constitution or statutes plays a significant role, will amplify the scope and meaning of the provision. This bulletin is designed to tell you what subject matter authority has been given to each type of state court in the Wisconsin Constitution and statutes. It will discuss only incidentally court opinions which may have interpreted jurisdictional provisions.

Although you will find only information on the state court system here, remember that there is a federal court system also, consisting of three levels: district courts, circuit courts of appeal, and the U.S. Supreme Court. (In addition, Congress has created special courts to deal with particular types of cases.) This court system often exercises concurrent jurisdiction, that is, authority over the same subject matter, as the state courts. Therefore you will sometimes discover that you have a choice as to whether you wish to bring a matter before a state or federal court. Neither court system should be considered as inferior or superior to the other, except of course that the U.S. Supreme Court is the supreme judicial body of the nation in matters involving subjects of federal concern. The authority of federal courts is derived from the U.S. Constitution, statutes and case law.

### JURISDICTION OF THE WISCONSIN SUPREME COURT

#### Original jurisdiction

The Supreme Court has original jurisdiction (which means it can take charge of a case at the very inception of its legal proceedings) in only a small number of situations. The exercise of this original jurisdiction given to our Supreme Court by the state constitution, includes the issuance of writs. A writ is an order issued by the court itself in the name of the state, addressed to a specific recipient directing him to take whatever action is named in the writ. It is a mandatory order and must be returned to the court from which it was issued. Some writs are specifically provided for by statute. But the Supreme Court has authority to issue any writ necessary to enforce the administration of right and justice throughout the state, even if it is not mentioned in a statute. The names of the various writs seem strange and archaic. This is because many were named in the 11th century. The original writs were the outcome of a long and complicated struggle whereby the king drew into his court all the litigation of the realm. The following is a list of writs which are specifically mentioned in the Wisconsin constitution or statutes over which the Supreme Court has jurisdiction.

1. Certiorari: This is a writ (or order) issued by the Supreme Court or a circuit court to a lower court of record (meaning a court whose proceedings are recorded and which has power to fine or imprison for contempt) or a government agency. It demands

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\*This bulletin was prepared by Mrs. Alice M. Schmidt, attorney and legal draftsman.

of the lower court or agency that it send to the issuing court a record of a proceeding which is either pending or which has already been completed in that court or agency so that the issuing court may review the action which was taken. There must be a good cause for the court to issue this writ (or for that matter any of the others). The writ of Certiorari is not defined in the statutes as some of the others are. But this is what the term "Writ of Certiorari" means at common law.

Common law is law which was originally developed and administered in England and is recognized in most state constitutions as being in force and effect even though unwritten, if not inconsistent with written laws. Article XIV, Section 13 of the Wisconsin Constitution states:

Such parts of the common law as are now in force in the territory of Wisconsin, not inconsistent with this constitution, shall be and continue part of the law of this state until altered or suspended by the legislature.

2. Habeas Corpus (which means in Latin: "You have the body.")

This is a writ which people who are unlawfully restrained of their liberty, or imprisoned, may apply for by preparing and signing a petition, and presenting it to the Supreme Court, circuit court of the county, county court, or any justice or judge of the Supreme, circuit or county court or to any court commissioner within the county where the prisoner is detained. If there is no judge in that county, or if the judge for any reason is incapable of acting or refuses to grant the writ, you may apply to a judge residing in an adjoining county. Every application made by a person sentenced to the state prison however, must be made to the Supreme Court or to a justice of the Supreme Court. If the person who is imprisoned cannot make the application for the writ of Habeas Corpus, someone else may do it on his behalf. The statements which the application must contain are set forth in Wisconsin Statute section 292.04. The form which the writ is to follow is described in Wisconsin Statute section 292.07.

If you are imprisoned or confined in any hospital or asylum as insane (except Central State hospital), you may apply for a writ of Habeas Corpus. But no person is entitled to apply who has been committed or detained by virtue of a final judgment or order of any competent court of civil or criminal jurisdiction or because of an execution issued upon such an order or judgment. Prisoners who have been charged with or convicted of a crime and who are passing through this state do not have the right of habeas corpus available to them. If you have been imprisoned for contempt, this writ is not applicable either.

When a prisoner presents an application or petition for a writ of Habeas Corpus to a proper authority, that judge or court must grant the writ without delay unless it appears from the petition or from the documents attached to the petition that the prisoner is not eligible to make the application. If the writ has been legally applied for, the judge must issue an order to the person holding the prisoner in custody which demands that he bring the prisoner before the court at a designated time. If at that time no legal cause is shown for the imprisonment the judge makes a final order discharging the prisoner from the custody under which he is held.

The judge must make a final order to send the prisoner back if he is in custody either:

1. under process issued by any court or judge of the U.S., in a case where that court or judge has exclusive jurisdiction; or
2. by virtue of a final judgment or order of any competent court of civil or criminal jurisdiction or of any execution issued upon such judgment or order; or
3. for any contempt, especially and plainly charged in the commitment by some court, officer or body having authority to commit for the contempt charged; or
4. because the time during which he may be legally detained has not expired.

If a prisoner is in custody because of a civil process issued by a court or any officer in the course of judicial proceedings before him, a prisoner can be discharged in the following cases only:

1. where the jurisdiction of the court or officer has been exceeded, either as to matter, place, law or person;
2. where, although the original imprisonment was lawful, yet by some act, omission or event which has taken place afterward the prisoner is entitled to be discharged;
3. where the process is void;
4. when the process was issued in a case not allowed by law;
5. where the person having custody of the prisoner is not empowered by law to detain him; or
6. where the process is not authorized by any judgment or order of any court nor by any provision of law.

The sole function of the writ of Habeas Corpus is to release prisoners from unlawful imprisonment. It does not determine guilt or innocence.

### 3. Mandamus

The law directs that public officials or bodies perform specific duties. If an official or body does not perform one of these duties, you are adversely affected by this refusal, and there is no other adequate legal remedy, you may ask the Supreme Court for a writ of Mandamus. This is an order directed to the nonperforming party which demands that he (or it, if a public body is concerned) perform his statutory duty and restore the complainant (you) to the rights or privileges of which you have been illegally deprived by the refusal. The hearing on a writ of Mandamus is a civil action. An action is an ordinary court proceeding by which one person prosecutes (or proceeds against) another person for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. A civil action is any action which is not criminal (one which is prosecuted by the state against a person charged with a public offense, to secure his punishment). The issues of fact in mandamus proceedings started in the Supreme Court

are tried in the circuit court of the county within which the cause of action arose or in any other county that the Supreme Court orders.

4. Procedendo

When the Supreme Court feels that a case that has been removed from a lower court to the Supreme Court (by writ of certiorari, or in some other way) was removed from that court on insufficient grounds it can send it back to that court to be proceeded in there, by means of a writ of Procedendo. The writ demands that the lower court proceed to the final hearing and determination of the case.

5. Prohibition

If you are involved in a case which is being tried in a lower state court and are convinced that the court does not have jurisdiction over the case, you may petition (or apply to) the Supreme Court for a writ of Prohibition. If the Supreme Court feels that you have sufficient cause for your belief, it will issue the writ which orders the lower court and the party pursuing the action to stop further proceedings until the Supreme Court hears the proofs and allegations of both parties and renders judgment, either that the lower court must not proceed any further in the action, or that the court has jurisdiction to proceed.

6. Quo Warranto

If you have an interest in the question, you may file a complaint with the Wisconsin Attorney General who can bring an action for quo warranto when:

1. Any person usurps, intrudes into or unlawfully holds or exercises any public office, civil or military, or any franchise within Wisconsin, or any office in a corporation created by the authority of the state;
2. Any civil or military public officer has done an act for which, under the law, he must forfeit his office; or
3. Any association or group of persons acts as a corporation in Wisconsin without having been incorporated.

When the attorney general refuses to act or when the office usurped pertains to a county, town, city, village or school district, you may bring the action in the name of the state on your own complaint.

7. Supersedeas

This is the name of a writ containing a command to stay (hold in abeyance) proceedings at law. Its application is limited to a judgment from which an appeal is taken. It suspends the power of a trial court to issue an execution on the judgment appealed from, or, if a writ of execution has been issued, it is a prohibition against execution of the writ.

8. Error

A writ of error is an order issued by the Supreme Court (or some other appellate court),

directed to a judge of a court of record. It requires him to remit to the Supreme Court the record of an action presently before the Supreme Court in which a final judgment or an order in the nature of a final judgment has been entered. This is done in order that an examination may be made of certain errors alleged to have been committed in the lower court, and so that the Supreme Court may reverse, correct or affirm the decision, as it may require. The right to a writ of Error is secured by Article I, section 21 of the Wisconsin Constitution which provides that writs of error shall never be prohibited by law. It is, however, infrequently used in this state.

## 9. Injunction

A writ of Injunction requires the person to whom it is directed to do or refrain from doing a particular thing.

The Wisconsin Constitution, in Article 7, section 3, states "The Supreme Court shall have . . . power to issue writs of . . . injunction . . ." Section 268.01 of the Wisconsin Statutes, says, in part, "The writ of injunction is abolished".

In Attorney General v. Railway Companies, 35 Wis. 425, 596 (1874) the Supreme Court said:

"No statute could have force to abolish any writ given to this court by the constitution, as it existed when the constitution was adopted."

Does the Wisconsin Supreme Court have jurisdiction to issue a writ of injunction? The question is open to debate.

An original action may be brought before the Supreme Court if the question is one of law alone, the need for prompt decision is great, and the question is one which affects the interest or welfare of the public as a whole. There are no constitutional or statutory limits set or conditions prescribed under which the Supreme Court will exercise this power. In order to bring such an action, one must petition the court for leave to do so.

## Appellate jurisdiction

When original jurisdiction is not specifically provided for by the Wisconsin Constitution, the Supreme Court has appellate jurisdiction only. This power of review extends to all matters of appeal, error or complaint from the decisions or judgments of any of the circuit or county courts if specifically provided for by statute. It also extends to all questions of law which may arise in these courts upon a motion for a new trial, in arrest of judgment or in cases reserved by these courts.

One way in which the Supreme Court exercises appellate jurisdiction is through hearing appeals. Appeals to the Supreme Court may be taken from the circuit courts unless in a certain type of situation the right is specifically denied by statute. Appeals may also be taken to the Supreme Court from the county courts unless in a specific type of case an express provision is made by state law for appeal to the circuit court. But no appeal may be taken from the county court on any claim unless the amount in dispute is at least \$20. The Supreme Court may hear appeals from any other court of record having civil

jurisdiction when no other court of appeal is provided.

This is a general statement of the law regarding the places from where an appeal to the Supreme Court may be taken. The next question which must be answered is, "On what may appeals be taken?"

The answer: the right of appeal applies to final orders and judgments including those rendered upon appeals from or reviews of the proceedings of tribunals, boards and commissions. It makes no difference whether the judgment or order was rendered in an action or in a special proceeding, but the right to appeal is purely statutory. It must be permitted by a specific statute and exercised upon such terms and within such limitations as that statute prescribes. Examples of such statutes are Wis. Stat. 102.25, authorizing appeals from judgments in workmen's compensation cases, and Wis. Stat. 298.15, providing for appeals from orders or judgments in arbitration cases.

The written law says that an order, when made by a lower court in an action, may be appealed to the Supreme Court if it (a) affects a substantial right, (b) in effect determines the action and (c) prevents judgment from which an appeal may be taken. An order made by a lower court in a special proceeding or in a summary application in an action after judgment is appealable to the Supreme Court if it is final and affects a substantial right. An order of a lower court, no matter what type of proceeding it was made in, is appealable to the Supreme Court if it: grants, refuses, continues, or modifies a provisional remedy (a temporary process available to a plaintiff in a civil action which secures him against loss, irreparable injury or dissipation of property while the action is pending); grants, refuses, modifies or dissolves an injunction (which may take the form of an order, rather than a formal writ); sets aside or dismisses a writ of attachment; grants a new trial; sustains or overrules a demurrer (a pleading by a party to an action, which admits the truth of the facts well pleaded by the opposite party, but maintains that they are insufficient in law to sustain his claim, or that there is some other defect on the face of the pleadings constituting a legal reason why the opposing party should not be allowed to proceed further); decides a question of jurisdiction; determines an issue submitted under Wisconsin Statute section 263.225; or denies an application for summary judgment.

Only those orders described above which were made by a court may be appealed to the Supreme Court. This means that an order made by a judge when he is not sitting as a court, as for instance, an order which is made in chambers, is not appealable. However, an order made by the court vacating or refusing to set aside an order made in chambers, where an appeal might have been taken if the order had been made by the court, may be appealed.

An appeal can only be taken by a party who is aggrieved by the order or judgment being appealed from. An aggrieved party is one who has an interest recognized by law in the subject matter which is injuriously affected by the judgment.

The Supreme Court will not hear moot cases, on appeal or otherwise. A moot case is one which seeks to determine an abstract question which does not arise upon existing facts or rights, or one which seeks a judgment on a pretended controversy.

In all cases, time limits for taking an appeal, whether to the Supreme or circuit court, are set by statute.

Superintending control over lower courts

The Supreme Court, by Article 7, section 3 of the state constitution, is given power to exercise superintending control over all lower courts of the state. This has been held in numerous court decisions to vest in this court a jurisdiction which is separate and apart from its original and appellate jurisdictions (State ex rel Reynolds v. County Court of Kenosha County, 11 Wis. (2d) 560, 564 (1960)). It includes the review of judicial actions of lower state courts and extends to judicial as well as jurisdictional errors committed by them. This superintending control is unlimited in extent and indefinite in character. The means by which it is to be carried out are not specified by the constitution or statute. The court may use any writ or any other means which it finds applicable to this purpose. But the court itself stated at the turn of the century that it will not exercise this jurisdiction when there is another adequate remedy (as for example, by appeal), nor unless the exigency is of such an extreme nature that the interposition of this power is obviously justified (State ex rel Meggett v. O'Neill, 104 Wis. 227, (1899) State ex rel Milwaukee v. Ludwig, 106 Wis. 226 (1900)). The strictness of this rule has been somewhat relaxed recently. (State ex rel Niedziejko v. Coffey, 22 Wis. (2d) 392, 396 (1963)).

The Supreme Court has jurisdiction to make rules regulating pleading, practice and procedure in all lower state courts. The aim of this rule-making power is to simplify pleading, practice and procedure in the lower courts and to promote the speedy determination of litigation. Statutes relating to any of these three areas may be modified or suspended by Supreme Court rules.

## CIRCUIT COURTS

Jurisdiction generally

Article VII, section 8 of the Wisconsin Constitution says that circuit courts are to have original jurisdiction in all civil and criminal matters within the state which are not made an exception in the constitution or prohibited by law. Civil actions ordinarily arise out of civil wrongs called torts, and breaches of contract. Torts are wrongful acts (other than breaches of contract) for which damages may be recovered by the injured or damaged person in a law suit. Trespass, negligence, libel, slander, assault and fraud are examples of torts. Circuit courts have exclusive jurisdiction of actions for damages in which \$100,000 or more is demanded.

A criminal action is one prosecuted by the state against a person charged with a public offense or crime to secure punishment (A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both; conduct punishable only by a forfeiture is not a crime). Circuit courts have exclusive jurisdiction over treason and concurrent jurisdiction with county courts over other crimes.

Circuit courts hear and determine such actions, and have all the powers necessary to exercise full and complete jurisdiction of such causes and parties and to fully and completely administer justice and to carry into effect their judgments, orders and other determinations. Their judgments, orders and determinations are of course subject to re-examination by the Supreme Court as provided by law.

The circuit courts also have appellate jurisdiction over all lower courts and tribunals as well as a supervisory control over them. In addition, they have power to issue any writs which are necessary to carry into effect their orders, judgments and decrees, and to give them a general control over lower courts and jurisdictions.

As you can see, the circuit court is the principal trial court of the state. There are now 26 judicial circuits, several of which are divided into more than one branch. The counties of Milwaukee, Dane, Kenosha, Walworth, Racine and Waukesha each serve as a single circuit and the rest of the circuits are composed of multicounty units.

The wide scope of its exclusive jurisdiction includes:

Altering or vacating plats 236.40 and 236.43

Appointing a temporary district attorney and assistants 59.44

Appointing and removing trustees 231.26, 231.27 and 231.28

Checking proposed consolidation ordinances 66.02

Compelling compulsory division of election districts 6.06

Creditors actions 128.01

Detaching farm lands from cities and annexing it to an adjoining town or towns under certain conditions 62.075

Determining condemnation contests 32.05 (5) and 32.06 (10)

Determining heirship 296.41

Dissolving and liquidating assets and business of co-operatives under certain conditions 185.72 and 185.73

Dissolving and liquidating assets and business of corporations under certain conditions 180.769 and 180.771

Dissolving and liquidating assets and business of nonstock corporations under certain conditions 181.56 and 181.57

Drainage district proceedings and issues 89.02, 89.03, 89.07

Enforcing radiation protection act 140.58 (4) (Dane county circuit court)

Executing express trusts upon death of trustee 231.24

Hearing election recount disputes 6.66

Hearing harbor improvement disputes 30.30 (3) (c)

Hearing village and city incorporation disputes, inspecting the incorporation petition and ordering incorporation referendums 66.014

Issuing injunctions preventing and restraining violations of statutes requiring licensing of child welfare agencies, foster homes, and day care centers and restricting independent placements of children 48.77

Ordering annexation referendum election 66.024

Preventing or restraining the formation of any contract or combination in the nature of a trust or conspiracy in restraint of trade or commerce 133.02

Reappraising inheritance tax cases 72.15 (12)

Requiring compliance with order to raze or remove building 66.05 (2) (b)

Requiring sale, mortgage or lease of realty held by trustee 231.31

Restoring evidence of citizenship if lost 328.345

Reviewing orders of Wisconsin Employment Relations Board 111.07

Supervising creditors actions 128.01

Tax lien foreclosures 75.521

The circuit court has jurisdiction which is concurrent with the county court in:

Actions affecting marriage which includes 247.01, 247.03

1. affirming marriage
2. annulment
3. divorce
4. legal separation
5. custody
6. for support
7. for alimony
8. for property division

Changing names upon petition 296.36

Compelling specific performance of any contract made by a person who becomes incompetent before its performance 296.02

Correcting description of real estate in conveyances 235.65

Correcting marriage records 69.50

Discharging mortgages and liens under certain conditions 235.60

Nontestamentary or intervivos trust proceedings 231.36

Ordering conveyance of lands held in trust by incompetent 296.01

Releasing dower of insane wife 235.30, 235.31 and 235.32

### Review of administrative rules

Some state government agencies are by statute given rule-making authority, which means that they may adopt rules prescribing forms and procedures, specifying policies, or generally interpreting the provisions of statutes which they enforce or administer.

The circuit court for Dane county is given exclusive jurisdiction to make a judicial determination regarding the validity of such a rule. The court may review an administrative rule only in an action for declaratory judgment. A declaratory judgment is one which simply declares the rights, status or relations of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done. It is not necessary, as in other actions, that an actual wrong giving rise to damages has been committed, but it must appear from the complaint and the evidence presented in support of the complaint that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory action is, of course, not peculiar to the review of administrative rules or to circuit courts. When an action for a declaratory judgment on the validity of an administrative rule is brought, the agency whose rule is involved is the defendant. In certain other cases the validity of an administrative rule may be determined in judicial proceedings where the invalidity of the rule is material to the cause of action or to the defense.

The circuit court for Dane county also has jurisdiction to review the decision of most state agencies regarding the validity of an administrative rule (decisions of the Department of Taxation, the Commissioner of Banks and the Commissioner of Savings and Loan Associations are not subject to judicial review in this manner). In order for this court to proceed with such a review however, the administrative decision concerned must directly affect the legal rights, duties or privileges of the person seeking the review.

The review is conducted by the court without a jury. Except where irregularities are alleged to have taken place in the procedure by which the agency arrived at its decision regarding the ruling in question, the court is confined in its review to reading the record of the case, and no testimony is taken. The court has authority to affirm the decision of the agency or to reverse or modify it if the substantial rights of the appellant (the party taking the appeal) have been prejudiced as a result of a finding, interference, conclusion or decision of the agency which was:

1. Contrary to his constitutional rights or privileges; or

2. In excess of the statutory authority or jurisdiction of the agency or affected by an error of law; or
3. Made or promulgated upon unlawful procedure; or
4. Arbitrary or capricious.

## JURISDICTION OF COUNTY COURTS

### Civil actions

The jurisdiction of the county court is established by statute and is uniform throughout the state. Authority over civil actions including those for the foreclosure of a land contract, mortgage or lien, and for special proceedings of all kinds, is concurrent with the circuit court, with one exception. If, in an action for damages, the complaint demands a sum in excess of \$100,000 exclusive of interest and costs, the circuit court has jurisdiction. The county court also has jurisdiction over all actions for ordinance violations within the county unless the municipality concerned has established a municipal justice court. Except for the jurisdiction given by statute over garnishment actions to municipal justice courts, the county court has exclusive jurisdiction of garnishment actions where the amount involved is under \$500. The adoption of adults and abandonment proceedings are other matters over which this court is given sole power.

### Juvenile court

The county court also exercises exclusive jurisdiction over all matters arising under the Children's Code, which is Chapter 48 of the Wisconsin Statutes. This is a systematic and unified codification of the laws relating to children, the result of the work of a committee appointed by the Legislature in 1953 for the purpose of evaluating the administrative and judicial programs and procedures relating to children, bringing together the scattered enactments in these areas found throughout the statutes, eliminating those which were obsolete and adjusting the laws relating to children to present needs.

In every county but Milwaukee, the judge of the county court sets apart a time and place for the purpose of holding juvenile court. During this time set apart by the court in which it hears cases arising under the Children's Code, the court is known as the juvenile court. In Milwaukee county, Branch 11 of the county court acts as a full-time juvenile court.

Matters over which the juvenile court has exclusive jurisdiction under the Children's Code include cases in which a child (meaning a person under 18 years of age) is alleged to be delinquent, neglected or dependent. A child may be held delinquent under state law if he has violated a statute or local ordinance, or is habitually truant from school or from home. A child may also be held to be delinquent because he is uncontrolled by a parent, guardian or custodian, because he is wayward or habitually disobedient or because he reports himself so as to injure or endanger the morals or health of himself or another person.

A dependent child may be a child without a parent or guardian or who is in need of special care and treatment because of his physical or mental conditions and whose parents or guardian cannot provide such special care and treatment, or a child who is without

necessary care or support through no fault of his parent or guardian. It may also be a child whose parent or legal custodian, for good cause, desires to be relieved of his legal custody.

A child may be alleged neglected if:

1. He is abandoned by his parent, guardian or legal custodian; or
2. He is without proper parental care because of the faults or habits of his parent, guardian or legal custodian; or
3. He is without necessary subsistence, education or other care necessary for his health, morals or well-being because his parent, guardian or legal custodian neglects or fails to provide it; or
4. He is without the special care made necessary by his physical or mental condition because his parent, guardian or legal custodian neglects or fails to provide it; or
5. His occupation, behavior, condition, environment or associations are such as to injure or endanger his welfare or that of others; or
6. He is in an unlicensed foster home; or
7. He is in a nonapproved adoptive home; or
8. He is in the custody of a person whose petition for adoption has been denied and the case is transferred to the juvenile court; or
9. He has committed an act of delinquency, but his conduct results, in whole or in part, from parental neglect.

The juvenile court also has exclusive jurisdiction over the adoption of a child, the termination of parental rights to minors, the appointment and removal of a guardian of the person where parental rights have been terminated or of where a child is found to be dependent because he is without a parent or guardian, and over the transfer of legal custody of mentally deficient and mentally ill children. It also has exclusive jurisdiction of custody actions or proceedings where the children involved are not the wards of another court.

Although the jurisdiction of the juvenile court is paramount in all the cases involving children described above, other courts have the right to determine the legal custody of children upon writs of Habeas Corpus or to determine the legal custody or guardianship of children when the custody or guardianship is incidental to the determination of another cause pending in that court. Except in Milwaukee County, courts of civil jurisdiction have concurrent jurisdiction with the juvenile court in proceedings against children for violation of county or municipal traffic ordinances in the operation of a motor vehicle. Disposition of moving traffic violations, however, must be made under the Children's Code, rather than under the ordinance, as would be done if the violator were an adult. In regard to violations of other types of ordinances and state laws by persons 16 years of age or older, the judge

of the juvenile court must enter an order waiving his jurisdiction before a criminal or civil court may exercise jurisdiction. In counties with a population of 500,000 or more such a case may be brought and heard initially before the traffic-misdemeanor court branch, if one exists, without a waiver by the juvenile court judge.

Jurisdiction is also given to the juvenile court to order conditions on the conduct of a person 18 years of age or older in cases where the person has contributed to the delinquency or neglect of a child or in situations where the State Department of Public Welfare presents a petition to the court asking that it be permitted to retain legal custody of a person already within its custody because of an adjudication of delinquency past the age of 21.

The purpose of the juvenile court is therapeutic and preventive, rather than retributive and punitive. It recognizes the individuality of the child and adapts its orders to further his best interests. This difference from other courts in philosophy results in a difference in operation. Hearings are private. Only such persons are admitted as the court finds have a direct interest in the case or in the work of the court. The procedure followed at the hearing is determined by the juvenile court judge and is as formal or informal as he considers desirable. No finding by this court can impose any civil liabilities on a child nor is he to be deemed a criminal. Evidence given in a juvenile court is not admissible against the child in any case in any other court. The juvenile court is furnished with investigative and supervisory services by the county in one or more of several ways provided for by statute. There is also a greater latitude given to this court to make dispositions than is allowed to the criminal court in cases involving adults.

### Probate

Exclusive jurisdiction has been given to the county court by state statute over probate. To exercise its jurisdiction in probate, as in every other area, the court must of course have jurisdiction of the person, that is, the power to subject the parties in a particular case to its decisions and rulings. The term "probate" refers to the hearing and determining of questions or issues arising in matters concerning the settlement of estates of deceased persons. The county court, acting in probate, may grant letters testamentary and letters of administration. "Letters testamentary" is a legal term meaning a formal written document issued by the court giving a specific person selected by a deceased person before his death and named in his will, authority to carry out the directions and requests of the will and to dispose of his property according to the terms of that will. Such a person is called an executor. A letter of administration is a document of the same nature, but it is directed to a person, termed an administrator, appointed by the court to carry out such duties in respect to a will, rather than a person who has been selected by the deceased prior to his death.

The court may also, under its probate jurisdiction, perform such functions as appointing guardians, hearing objections to the granting of or ordering refusal of licenses to marry, or, as was held in 1952, determining the title to real estate (Estate of King, 261 Wis. 266, 52 N.W. (2d) 885) when it is necessary for the complete administration of an estate. A county court has authority over all cases involving construction of wills admitted to probate in that court. A case concerned with the construction of a will means one in which the court determines the real meaning or proper explanation of obscure or ambiguous terms or provisions contained in the will or the proper application of the will.

This is done by reasoning in the light derived from extraneous connected circumstances, laws, or written matter, or by seeking and applying the probable aim and purpose of the provision in question.

Cases involving trusts and trust powers created by will and admitted to probate are also within the realm of the probate jurisdiction of the county court.

#### Criminal actions

The county court normally has concurrent jurisdiction with the circuit court over all criminal matters except treason. But in counties with a population of 500,000 or more section 253.12 of the Wisconsin Statutes gives the county court jurisdiction to hear, try and determine all charges for misdemeanors and all offenses for which the punishment does not exceed one year's imprisonment or a fine of \$1,000, arising within the county. In direct conflict with this statute, section 954.13 (1) provides that in such counties, where a defendant has been charged with a felony, he shall be committed to await trial in the circuit court. Which statute is to prevail? Where the defendant requests a preliminary hearing, the Supreme Court has held that the latter law shall apply. But where the preliminary hearing is waived, or the defendant pleads guilty, the county court has jurisdiction (State ex rel Sucher v. County Court of Milwaukee County, 16 Wis. (2d) 565 (1962)).

#### Small claims actions

A special procedure was established in 1961 by Chapter 299 of the Wisconsin statutes for use by the county court in small claims type actions. This considerably shortened and simplified procedure and makes it possible to recover a relatively small amount of money with a minimum of time and expense. It is used in unlawful detainer actions (a method of removing a tenant who is holding over without permission), actions to recover forfeitures, actions for replevin (recovery of property by seizure) and other civil actions where the amount claimed is \$500 or less, provided that the actions are for money judgments other than cognovit judgments, for attachment or garnishment actions under Chapters 266 and 267 of the Wisconsin Statutes, with a few exceptions, or for enforcement of a lien upon personalty or to recover a tax.

There is no minimum amount which may be sued for in a small claims action and parties are not required to have legal counsel. Appeals may be taken to the circuit court. On appeal, the circuit court has power to review and to affirm, reverse, or modify the judgment appealed from. In addition the circuit court may order a new trial in whole or in part which takes place in the circuit court.

#### JUSTICE OF THE PEACE COURTS

The office of justice of the peace is established by Article VII, section 15 of the Wisconsin Constitution, which also says that justices of the peace shall have such criminal and civil jurisdiction as is given to them by law. The 1965 Legislature gave second consideration approval to a provision (Senate Joint Resolution 26) which abolishes constitutional justices of the peace. As with all constitutional amendments, the proposal must be submitted to the Wisconsin electorate for approval before it becomes effective. The question

will be presented to the voters at the election held on the first Tuesday of April 1966. Presently the state statutes give these officials jurisdiction over civil actions in which the amount claimed does not exceed \$200:

1. Arising out of contract;
2. On instalments as they become due on any written instrument;
3. On any official bond;
4. For injuries to persons or to property and on all actions;
5. On any surety bond or undertaking (a promise or security) taken by a justice; or
6. To recover a tax.

In regard to criminal matters, justice of the peace courts may hold court to try and determine charges of battery and disorderly conduct.

Justices of the peace may punish for contempt if a person is guilty of disorderly, contemptuous and insolent behavior towards him while engaged in a judicial proceeding, and it tends to interrupt the proceeding or impair the respect due his authority. A person guilty of resistance or disobedience to an order made or a process issued by him may also be punished for contempt.

They are specifically forbidden to exercise jurisdiction over actions:

1. Against an executor or administrator for any debt or demand due from the decedent;
2. For libel, slander, malicious prosecution or false imprisonment;
3. Where title to real property comes in question;
4. For or against a town, city or village in which the justice was elected (except actions started by a town for violation of a town, city or village ordinance);
5. Of garnishee and attachment; and
6. To hold preliminary examinations in felony cases.

#### JURISDICTION OF THE MUNICIPAL JUSTICE COURT

The municipal justice of the peace, whose court is called the Municipal Justice Court, is by Wisconsin Statute section 62.24 (2) given the same jurisdiction both as to subject matter and territory enjoyed by any other justice of the peace, although in actuality most of his work is concerned with traffic cases. Generally territorial jurisdiction is county-wide. In forcible entry and unlawful detainer actions though, only when the premises

concerned are located in the city does a municipal justice of the peace court have jurisdiction. (See Wis. Stat. 291.05 and 51 Opinions of the Attorney General, p. 111.) In villages and cities lying in more than one county municipal justice courts and justice of the peace courts exercise jurisdiction in both counties.

In addition it has jurisdiction of:

1. Offenses against ordinances of the city (which is exclusive);
2. Actions to recover the possession of personal property with damages for its unlawful taking or detention when the value of the property claimed does not exceed \$200;
3. Actions for forcible entry and unlawful detainer;
4. Actions for a penalty or forfeiture given by statute which does not exceed \$200;
5. Crimes arising within the county for which the penalty is not more than a \$200 fine or 6 months in jail or both;
6. Garnishment actions and actions started by a warrant of attachment against the property of a debtor; and to
7. Accept pleas of guilty if the defendant upon arraignment requests the entry of a plea of guilty and the offense is one punishable by a fine of not more than \$500 or 6 months in jail or both, or is for violation of a state statute setting weight limitations for vehicles using certain highways ("Arraignment" is a procedure whereby a person accused of a crime is brought to the bar of a court to answer the matter with which he is charged in an indictment. An indictment is an accusation in writing); and to
8. Cause the laws for the preservation of peace to be kept;
9. Cause to come before him and commit to jail or assign bail to persons who break or attempt to break the peace;
10. Cause to come before him keepers and frequenters of "houses of ill fame" and prostitutes, to compel them to give security for good behavior, and persons who are charged with committing a crime, for the purpose of committing them to jail or assigning bail.

The municipal justice of the peace may punish a violation of a municipal ordinance by ordering payment of a forfeiture plus costs of prosecution or by imprisonment in case the forfeiture and costs are not paid. He may sentence any person convicted of a misdemeanor to pay a fine and the costs of prosecution or to imprisonment in the county jail, or, if the prisoner is able, to hard labor.

Civil actions, except those under a municipal ordinance, brought in a municipal justice court may be transferred to another municipal justice court. If the municipal justice court does not have jurisdiction over an action brought before it, the action may be transferred

to the county court. In counties having a population of less than 500,000, the defendant in any action brought in a justice court may transfer the case to the county court of that county. The request for transfer must be accompanied by a fee of \$1.00. Upon receipt of the fee, the justice transmits all the papers in the case to the clerk of the county court.

A common council may by ordinance abolish a municipal justice court at the end of any term for which the municipal justice of the peace then in office has been elected.

State statutes give authority to the village board of any village and the common council of any city to create, by ordinance, the office of municipal justice of the peace. Where the office has been created, it is filled by election. A salary is paid to the officer elected by the city or village. Cities of the first class may have more than one municipal justice court.

#### COURT OF IMPEACHMENT

Article VII, Section 1, of the Wisconsin Constitution creates a court for the trial of impeachments. (An impeachment is a calling to account of a public officer for misconduct while in office.) This court is composed of the state senate. Before any trial of an impeachment, the members of the court (the senators) take an oath stating they will truly and impartially try the impeachment according to the evidence. No person may be convicted without the concurrence of 2/3 of the members present. Judgment, in cases of impeachment, does not extend further than to removal from office or to removal from office and disqualification to hold any state office. The party impeached is, however, liable to indictment, trial and punishment.

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