

CHAPTER 328.

PRESUMPTIONS AND JUDICIAL NOTICES.

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328.01 Judicial notice of foreign laws. (1) **COURTS TAKE NOTICE.** Every court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States.

(2) **INFORMATION OF THE COURT.** The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

(3) **DETERMINED BY COURT; RULING REVIEWABLE.** The determination of such laws shall be made by the court and not by the jury, and shall be reviewable.

(4) **EVIDENCE OF FOREIGN LAWS.** Any party may also present to the trial court any admissible evidence of such laws, but, to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties either in the pleadings or otherwise.

(5) **FOREIGN COUNTRY.** The law of a jurisdiction other than those referred to in subsection (1) shall be an issue for the court, but shall not be subject to the foregoing provisions concerning judicial notice.

(6) **INTERPRETATION.** This section shall be so interpreted as to make uniform the law of those states which enact it.

(7) **SHORT TITLE.** This section may be cited as the Uniform Judicial Notice of Foreign Law Act.

328.02 Municipal ordinances. Municipal courts shall take judicial notice of ordinances in cities in which they have jurisdiction.

The supreme court is not required to take any pertinent matters of which the trial court may take judicial notice be offered in evidence in that court or otherwise made a part of the record. *State v. Hackbarth*, 256 W 545, 41 NW (2d) 594, 42 NW (2d) 358.

328.021 County and city ordinances; administrative rules of state agencies. The courts of this state, including the supreme court, shall take judicial notice of:

(1) County and municipal ordinances in those counties in which the particular court has jurisdiction; and

(2) All rules of state agencies which have been published in the Wisconsin administrative code or register and all orders of such agencies.

History: 1955 c. 221.

Committee Note, 1955: This is substantially a restatement of former 328.021 except that judicial notice of rules is made dependent upon the fact of publication in the Wisconsin administrative code or register, whereas under former law it is based upon their having the "force and effect of law." This revised version is more satisfactory because it is consistent with the fundamentals of judicial notice. (Bill 5-S)

The court will take judicial notice of a motor-carrier certificate of authority on file with the public service commission. *Milwaukee & S. T. Corp. v. Public Service Comm.* 267 W 144, 64 NW (2d) 356.
The supreme court takes judicial notice of the Public Service Commission Reports. *Milwaukee v. Public Service Comm.* 268 W 116, 66 NW (2d) 716.
The supreme court takes judicial notice

of a rate or fare order of the public service commission, pertinent to the decision in the instant case but not a part of the record. *Milwaukee & S. T. Corp. v. Public Service Comm.* 268 W 573, 68 NW (2d) 552.

328.03 Lists of state lands. All statements or lists of lands which shall have been certified by the president of the United States, or by any other officer of the government thereof, as conveyed to the state under or by any act of congress, being produced by the proper custodians thereof, shall be received in all cases as presumptive evidence that the title of the lands therein described became thereby vested in the state.

328.04 Certificate as to public lands. The certificate of the chief clerk of the state land office under the official seal, that any specified piece or tract of land belongs to or is mortgaged to the state, or that the state has any interest, legal or equitable, therein shall be presumptive evidence of the facts so stated. The certificate of the secretary of the conservation commission under the official seal of the commission that authority has been given to any person, naming him, to seize timber or other materials specified in chapter 26 shall be presumptive evidence of the fact so stated.

328.05 Land patents by state officers. Every patent which shall have been executed and delivered by the commissioners of school and university lands or by the commissioners of public lands, purporting to convey any land, and every deed or patent which shall have been executed and delivered by the governor, purporting to convey any lands granted to the state by the United States, shall be received as presumptive evidence of the facts therein stated and that the grantee named therein became vested thereby at the date thereof with an absolute title in fee to the lands therein described.

328.06 Deed on judicial sale. Every conveyance of land or any estate or interest therein executed by any sheriff, referee, receiver or other person, in pursuance of a sale made by virtue of any judgment, order, license or execution of any court of record in this state, and which shall have been recorded in the proper county, as well as such record, shall be received, as presumptive evidence of the facts therein stated and that the title, estate or interest in the land therein described, which such conveyance purports to convey, of every person whom it purports to affect passed to and vested in the grantee therein at the date thereof or at such previous date as such conveyance purports to fix for that purpose.

328.07 Certificate of judicial sale. Every certificate of sale of land or any estate or interest therein executed by any sheriff, referee, receiver or other person, in pursuance of a sale made by virtue of any judgment, order, license or execution of any court of record in this state, and the record thereof, shall be received as presumptive evidence of the facts therein stated.

328.08 Records showing revenue stamps. Whenever the record, in the office of a register of deeds, of any conveyance or of any instrument whatever, upon which revenue stamps may have been at any time required to be affixed by any act of congress, shall show such stamps or any of them, more or less, to have been affixed, it shall be presumptive evidence that such conveyance or instrument had properly affixed to it the number and denomination of stamps required by law.

328.09 Record of births, stillbirths, fetal deaths, deaths and marriages. (1) RECORDS AS EVIDENCE. The record of any marriage, birth, stillbirth, fetal death or death kept in the office of any register of deeds or city health officer or in the state bureau of vital statistics shall be received as presumptive evidence of the marriage, birth, stillbirth, fetal death or death so recorded.

(2) **CHURCH AND DOCTOR'S RECORDS.** Any church, parish or baptismal record, and any record of a physician or a person authorized to solemnize marriages, in which record are preserved the facts relating to any birth, stillbirth, fetal death, marriage or death, including the names of the persons, dates, places and other material facts, may be admitted as prima facie evidence of any fact aforesaid. But such record must be produced by its proper custodian and be supported by his oath that it is such a record as it purports to be and is genuine to the best of his knowledge and belief.

(3) **CERTIFICATES OF FOREIGN BIRTHS, ETC.** Official certificates of births, marriages or deaths, issued in foreign countries in which such births, marriages or deaths have occurred, purporting to be founded on books of record and authenticated by the signature of any United States minister, secretary of legation or other diplomatic officer, or by a consul of the United States accredited to or appointed for the foreign country in which such certificates are issued, shall be received as presumptive evidence of the facts in such certificates stated.

History: 1953 c. 631.

See note to 327.18, citing *Estate of Eannelli*, 269 W 192, 68 NW (2d) 791.

328.10 Village records. The papers, documents and orders relating to the organization and incorporation or the alteration of the boundaries of any village, being recorded

in the office of the proper register of deeds pursuant to law, and such record and also the record thereof in the office of the village clerk shall be received as presumptive evidence of the facts therein stated.

328.11 County records as to taxation. (1) All books and files in the office of any county treasurer or county clerk, all assessments and tax rolls and certificates and warrants thereto attached, all notices required to be published or posted by the county treasurer or county clerk, and the proofs of publication or posting filed in the office of either, pursuant to any law relating to the assessment or collection of taxes or to lands sold for taxes, shall be received as presumptive evidence of the facts therein stated.

(2) A transcript of so much of said books, files and records, as relates to the assessment or sale for taxes of any parcel of land in any specified year or years, certified in substantially the following form:

I hereby certify that the annexed and foregoing is a true and correct transcript of all books, records, papers, files and proceedings of every name and nature on file or of record in my office relating in any wise to the assessment of taxes upon or to the sale for taxes of the following described lands situated in the county of, state of Wisconsin, for the year (or years) A. D., and of the whole thereof. In testimony whereof I have hereunto set my hand this day of, A. D.

County Clerk (or Treasurer) of county.

shall be received in evidence with the same effect as the originals and as presumptive evidence of the facts stated in such certificate.

328.12 Land office receipt. The receiver's receipt or certificate of purchase of public lands, signed by the receiver, and the official certificate of any register or receiver of the entry or purchase of any land or the location of any land by any land warrant shall be received, when held by the original claimant, his heirs or assigns, as presumptive evidence that the title to the lands therein described passed to and is vested in the person therein named, his heirs or assigns, except when, at the time of such entry or purchase, the land was owned or occupied by any person as mineral ground on which discoveries of mineral ores had been made.

328.14 State land office certification of title. A certificate of the chief clerk of the state land office, or any one of the commissioners of the public lands substantially in the following form:

Office of the Commissioners of the Public Lands, Madison, Wis.,, A. D.

I hereby certify that from the books, files and records of the office of the commissioners of public lands it appears that on the day of, A. D., the following described real estate, situate in the state of Wisconsin, viz. . . . was duly transferred by the United States to the state of Wisconsin, and that on the day of, A. D., the above described real estate was duly transferred by the state of Wisconsin to

In witness whereof, I have hereunto set my hand and affixed the official seal of the commissioners of the public lands this day of, A. D.

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shall be received as presumptive evidence of the facts stated, and that the person named became vested at the date stated with an absolute title in fee to the lands described.

328.16 Certificate of land transfers. A certificate by the secretary of state, under the great (or lesser) seal, to any facts which appear from the books, files and records in his office or the office of the commissioners of public lands in regard to the grant, conveyance or transfer of any land by the United States to the territory or state of Wisconsin, and also in regard to the sale, conveyance or transfer of any such land by said territory or state shall be received as presumptive evidence of the facts so certified.

328.17 Certificate of adjutant general. A certificate by the adjutant general to any facts which appear from the books, files and records in his office shall be received as presumptive evidence of the facts so certified.

328.18 Affidavits of service. Whenever any notice or other writing is by law authorized or required to be served the affidavit of the person serving it, setting forth the facts necessary to show that it was duly served, shall be presumptive proof that such notice or writing was duly served. But this section shall not apply to any service where another way of proving such service is expressly prescribed by law.

328.19 Proof of publication. (1) **AFFIDAVIT OF PRINTING.** The affidavit of the editor, publisher, printer or proprietor of any newspaper, or of his foreman or principal clerk, of the publication of any notice or advertisement required to be published by any law of the state, annexed to a copy of such notice or advertisement, clipped from such newspaper,

and specifying the time when, and the paper in which it was published, shall be received in all cases as presumptive evidence of such publication and of the facts stated therein.

(2) **TIME OF FILING.** Such affidavit may be filed with the proper officer at any time after the last day of the publication of such notice, unless the filing time is otherwise specified.

(3) **SAME.** The affidavit of publication of any notice of a sale of real property required by law to be published may be filed, at any time within six months after the last day of such publication, with the register of deeds of the county in which the premises are situated.

328.20 Articles of incorporation, presumptions. Any charter or patent of incorporation which shall have been issued by the governor or secretary of state, or both, to any corporation under any law of the state; any certificate of organization or association of any corporation or joint stock company; the articles of association or organization of any corporation, or a certified copy thereof, which shall have been filed or recorded in the office of the secretary of state, or of any register of deeds or clerk of the circuit court under any law of the state; any certificate or resolution for the purpose of amendment, and every amendment in any form, of the charter, patent, certificate or articles of association or organization or of the name, corporate powers or purposes of any corporation, filed or recorded in either of said offices and a duly certified copy of any such document so filed or recorded shall be received as conclusive evidence of the existence of the corporation or joint stock company mentioned therein, or of the due amendment of the charter, patent, certificate or articles of association or organization thereof in all cases where such facts are only collaterally involved; and as presumptive evidence thereof and of the facts therein stated in all other cases.

328.21 Affidavit of notice of corporate meeting. Whenever any corporation notice is given, posted or served, an affidavit of the person who gave, posted or served the same, specifying the manner and time of doing so, annexed to a copy of such notice, may be filed with the clerk or secretary of the corporation, and when so filed, the original or certified copies thereof, shall be presumptive evidence in all cases of the facts contained in such affidavit.

328.22 Certificate of insurance assessment. Whenever an action is brought by any mutual insurance company to collect any assessment, the certificate of the secretary of said company, specifying such assessment, the amount due said company by means thereof, and that notice thereof was given the person liable therefor, shall be received as presumptive evidence of the facts so certified.

328.23 Copies of insurance books. Copies of the entries in the books of any life or mutual benefit insurance corporation or association engaged in doing business on the level premium or assessment plan, together with statements verified by the custodian of such books, showing the number of members insured in or belonging to such corporation or association, and the number of members in each class or grade thereof, and the aggregate amount which would be due from them upon a single assessment, and that such copies are true and are taken from the regular books of the corporation or association used and kept for the transaction of its business, and that such books are now in his custody or under his control, shall be received in all proceedings as prima facie evidence of such entries or statements. No officer of any such corporation or association shall be compelled (unless by special order of the court or officer before whom the action or proceeding is pending) to produce any books or records thereof; provided, such verified copies and statements shall be furnished to the attorney who reasonably requires them, at least six days before the term of court or time set for the trial or hearing of the action or proceeding, and that such books and records shall be subject to the inspection of any interested party or his attorney to the extent prescribed by such court or officer.

328.24 Evidence from bank books. Whenever any bank or any of its officers shall be subpoenaed to produce its books containing a specified account or other specified entries, such bank may, if it so elects, produce a copy of the specified account or other entries, verified under oath by one of its officers, stating that the books called for are the ordinary books of the bank used in the transaction of its business, that the entries copied were made therein at the dates thereof and in the usual course of business, that there are no interlineations or erasures in or among the items copied, that the books are in the custody or control of the bank, and that he has carefully compared the copy with the books and found it to be a correct copy of the specified account or entries. Such verified copy shall be prima facie evidence of such entries, and, when presented, no officer of the bank shall be compelled to produce the books demanded or attend the trial or hearing, unless specially ordered so to do by the court or officer before whom it is pending; provided, that such books shall be open to the inspection of all parties to the action or proceeding.

328.25 Presumptions as to signatures. When any written instrument constitutes the subject of the action or proceeding or when the signing of such instrument is put in issue and the instrument purports to have been signed, the instrument itself is proof that it was signed until denied by the oath or affidavit of the person by whom it purports to have been signed or by a pleading duly verified. This section does not extend to an instrument purporting to have been signed by a person who died before proof is required.

328.26 Possession proof of indorsement. In all actions brought on promissory notes or bills of exchange by the indorsee the possession of the note shall be presumptive evidence that the same was indorsed by the persons by whom it purports to be indorsed.

See note to 116.01, citing *Implement Credit Corp. v. Elsingher*, 268 W 143, 66 NW (2d) 657.

328.27 Effect of seal. A seal upon an executory instrument shall be received as only presumptive evidence of a sufficient consideration.

See note to 241.02, citing *Jacobi v. Cielinski*, 262 W 100, 53 NW (2d) 718.

328.28 Area of towns and counties. Whenever the total area of towns or counties shall be in question, townships not returned as fractional by the surveys under which the public lands were sold by the United States, shall be held to be six miles square; and townships returned as fractional shall be held to contain the areas shown by such surveys or the plats thereof.

328.29 Allegations of copartnership. Whenever in any action or proceeding a party shall allege in his pleadings that named persons were partners at any particular time, or that as such partners they used any particular partnership name or style under which business was done, such averments shall be taken to be true unless expressly denied by the affidavit of the opposite party or some one in his behalf or by his pleading duly verified, within the usual time of pleading.

328.30 Joint liability. In actions or proceedings upon written contracts alleged to have been executed by the defendants, proof of the joint liability of the defendants shall not be required to entitle the plaintiff to judgment unless such execution is denied by a verified answer.

328.31 Corporate existence. In an action or proceeding by or against any corporation, it shall not be necessary to prove the existence of such corporation unless its existence is specially denied by an answer, duly verified.

328.32 Allegation as to executor, guardian, etc. Whenever a plaintiff shall sue as an executor, administrator, guardian or trustee and shall allege in his complaint his due appointment as such, and, if appointed in another state or foreign country, the filing or recording of the authenticated copy of his appointment, as required by the laws of this state, such allegations shall be taken as true unless specifically denied by the defendant by his answer duly verified.

328.33 Proof of malice in slander and libel. If the defendant in any action for slander or libel shall set up in his answer that the words spoken or published were true, such answer shall not be proof of the malice alleged in the complaint.

328.34 Presumption as to citizenship. Whenever in any proceeding to test the qualifications of any person to hold office the question of the citizenship of said person is raised, the burden of proof as to such citizenship shall be upon the person whose qualifications are contested.

328.345 Establishment of citizenship. Upon petition and proper showing made, that naturalization papers, or written records thereof, have been lost or destroyed, the circuit court of the county in which the petitioner resides may make an order that the petitioner is a citizen of the United States. Any such order or certified copy thereof shall be prima facie evidence of such citizenship.

328.35 Execution of official bond. In every action upon any official bond the original bond or a certified copy thereof shall be presumptive evidence of the due execution thereof by the officer and his sureties.

328.36 Evidence of title to realty. In all criminal proceedings in which it is necessary for the state to prove that any person owns or has an interest in any real estate, a conveyance to such person of such real estate or an interest therein, so executed and acknowledged or proved as to be entitled to record, or the record of such conveyance or a certified copy of such record or such proof of possession as would entitle a plaintiff to recover in an action for trespass shall be received as presumptive evidence that such person owned or had an interest in the real estate in question.

328.37 Presumption as to officer's return. The return of a sheriff or constable to any writ shall be presumptive evidence that such return is correct and that the service has been rendered or disbursement made.

328.38 Officer's certificate as evidence. The certificate of the sheriff or other proper officer indorsed upon the summons, stating the time when he received the same for service, shall be presumptive evidence that he did receive the summons for service on the day in such certificate named.

328.39 Presumption of legitimacy; self-crimination, birth certificates. (1) (a) Whenever it is established in an action or proceeding that a child was born to a woman while she was the lawful wife of a specified man, any party asserting the illegitimacy of the child in such action or proceeding shall have the burden of proving beyond all reasonable doubt that the husband was not the father of the child. In all such actions or proceedings the husband and the wife are competent to testify as witnesses to the facts. The court or judge shall in such cases order the child made a party and shall appoint a guardian ad litem to appear for and represent the child whose paternity is questioned.

(b) In divorce and separation actions, in which the question of illegitimacy is raised, and in illegitimacy proceedings, the court being satisfied that the parties to the action are unable to adequately compensate any guardian ad litem for his services and expenses, the court shall then make an order specifying the guardian's fee and expenses, which fee and expenses shall be paid as provided in s. 957.26.

(2) The mother of the child shall not be excused or privileged from testifying fully in any action or proceeding mentioned in subsection (1) in which the legitimacy of a child born in wedlock is involved or in issue, when ordered to testify by a court of record or any judge thereof; but she shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which she so testifies or produces evidence, except for perjury committed in giving such testimony.

(3) Whenever any court pursuant to this section shall adjudge a child born in wedlock to be illegitimate, the clerk of court shall report the facts to the state registrar, who shall issue a new birth certificate showing the correct facts as found by the court, and shall dispose of the original, with the court's report attached, as provided in section 69.33 (5). He shall notify local registrars as provided in section 69.33 (6).

History: 1955 c. 660.

Under (1), where a child was born to the plaintiff while she was the lawful wife of the defendant, the burden was on him, as the party asserting the illegitimacy of the child in the wife's action for divorce, of proving beyond all reasonable doubt that he was not the father of the child. *Mader v. Mader*, 258 W 117, 44 NW (2d) 924.

The provision in (1) that where the parties are unable adequately to compensate the guardian ad litem, the court shall make an order specifying the guardian's fee and expenses, which "shall be paid as provided in 357.26," that is, by the county, does not limit the court to applying the schedule of fees set out in 357.26. *Shewalter v. Shewalter*, 259 W 636, 49 NW (2d) 727.

On the issue raised by the husband as to the paternity of a child born to the wife during their marriage, the medical evidence as to probability of time of conception and as to similarity of blood types warranted a determination that the husband had not sustained the burden required of him by (1) proving beyond all reasonable doubt that he was not the father of the child, and sustained a finding that the child was the

lawful and legitimate issue of the marriage of the parties. *Shewalter v. Shewalter*, 259 W 636, 49 NW (2d) 727.

At common law there is a rebuttable presumption of the legitimacy of a child born during wedlock. Under (1), there must be proof beyond a reasonable doubt that the husband is not the father of a child born to a woman during wedlock, in order to establish the illegitimacy of such a child but, when the evidence in such a case does establish beyond a reasonable doubt that the husband is not the father, it is the duty of the court so to find. Evidence disclosing that the mother of the child in the instant case was cohabiting with a man other than her husband during the inception of and throughout the normal gestation period, coupled with the known nonaccess of the husband for at least 321 days, established beyond a reasonable doubt that the husband was not the father of the child, and such evidence, together with the testimony of both the mother and the other man that the latter was the father, established that he was the father. *In re Aronson*, 263 W 604, 53 NW (2d) 553.

328.395 Presumption as to time of conception. In any paternity proceeding, where the child whose paternity is at issue weighed 5½ pounds or more at the time of its birth, the testimony of the mother as to such weight shall be presumptive evidence that the child was a full term child, unless competent evidence to the contrary is presented to the court. The conception of such child shall be presumed to have occurred within a span of time extending from 240 days to 300 days before the date of its birth, unless competent evidence to the contrary is presented to the court.

History: 1957 c. 296.

328.43 Public records, relief from destruction of. [Not printed; 1927 c. 523 s. 115; see 1925 Stats.]