notes, and these, agreeing with each other, are received without objection, this is also a compliance. Bacon v. Eccles, 43 W 227.

A principal is not bound by an agreement made in his name by a person claiming to be his agent, unless such person had, at the time of making it, power to bind him and did bind him; nor can such principal, if he was not then bound, afterwards affirm the agreement so far as to bind the other party without his assent. Atlee v. Bartholomew, 69 W 43, 33 NW 110.

The note or memorandum of sale required by sec. 2327, R. S. 1878, may be signed by an agent of the buyer. Hawkinson v. Harmon, 69 W 551, 35 NW 28.

243.06 History: 1943 c. 49; Stats. 1943 s. 243.06.

CHAPTER 245.

Marriage.

245.001 History: 1959 c. 595 s. 4; Stats. 1959 s. 245.001.

Legislative Council Note, 1959: This section is new. The treatment of chapters 245 to 248 as a code assures uniform interpretation consistent with the declaration of legislative policy expressed in sub. (2) which emphasizes the importance to society of stability in marriage. The language of sub. (2) is in conformity with supreme court decisions, notably, Fricke v. Fricke, 257 W 124, 126 (1950), and the code is to be liberally construed in light of this language as provided in sub. (3). (Bill 151-A)

245.002 History: 1959 c. 595 s. 4; Stats. 1959 s. 245.002; 1961 c. 505.

Legislative Council Note, 1959: This new section clarifies the meaning of clergyman. The definition was taken from In re Swenson, 183 Minn. 602 (1931). (Bill 151-A)

245.01 History: R. S. 1849 c. 78 s. 1; R. S. 1858 c. 109 s. 1; R. S. 1878 s. 2328; Stats. 1898 s. 2328; 1925 c. 4; Stats. 1925 s. 245.01; 1959 c. 595 s. 5.

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 W 464, 1 NW 98.

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 law or by the death of one of the parties. Estate of Campbell, 260 W 625, 51 NW (2d) 709.

245.02 History: R. S 1849 c. 78 s. 2; R. S. 1858 c. 109 s. 2; R. S. 1878 s. 2329; Stats. 1898 s. 2329; 1917 c. 218 s. 3; 1917 c. 539; 1917 c. 671 s. 27; 1917 c. 678 s. 4; Stats. 1917 s. 2329, 2339n-5; 1925 c. 4; Stats. 1925 s. 245.02, 245.16; 1953 c. 8; 1959 c. 595 s. 6, 7; Stats. 1959 s. 245.02; 1961 c. 505; 1969 c. 352.

Legislative Council Note, 1959: As to (1): This is a restatement of present law, except that the minimum marriageable age for females has been raised from 15 to 16 to conform to laws of surrounding states. (Bill 151-A)

Sec. 2329, R. S. 1878, abrogates the common-law rule as to ages of consent. Eliot v. Eliot, 77 W 634, 46 NW 806.

A marriage entered into by persons below the age of consent and above the age of 7 years who are capable of consummating the marriage is voidable and not void. A plaintiff does not by his fraudulent conduct estop himself from setting up his nonage. The equitable rule does not apply to an action to annul a voidable marriage. Swenson v. Swenson, 179 W 536, 192 NW 70.

Under 245.16, Stats. 1945, it is necessary to have the consent of both parents where a party to a marriage is between the ages of 18 and 21 if a male, and between the ages of 15 and 18 if a female, except that the consent of but one parent is necessary where such parent has the actual care, custody and control of said party. 34 Atty. Gen. 76.

245.03 History: R. S. 1849 c. 78 s. 3; R. S. 1858 c. 109 s. 3; R. S. 1878 s. 2330; Stats. 1898 s. 2330; 1901 c. 271 s. 1; 1905 c. 456 s. 1; Supl. 1906 s. 2330; 1909 c. 323; 1911 c. 239 s. 1, 2; 1913 c. 709; 1917 c. 218 s. 2; 1919 c. 309; 1925 c. 4; Stats. 1925 s. 245.03; 1927 c. 473 s. 42b; 1935 c. 214 s. 7; 1935 c. 379; 1953 c. 63; 1959 c. 595 s. 8; 1959 c. 690 s. 1.

The remarriage of one of the parties does not create an absolute legal presumption of the dissolution of a former marriage. Without such dissolution a second marriage is void ab initio. Williams v. Williams, 63 W 58, 23 NW 110.

Notwithstanding an order for a judgment of divorce the parties to the suit continue to be husband and wife until judgment is actually entered pursuant to the order. If for any purpose the judgment, when entered, takes effect from the date of the order therefor, it will not operate to make an act a crime which was not a crime when it was committed, or, if then a crime of one grade, to make it a crime of a higher grade. State v. Eaton, 85 W 587, 55 NW 890.

A woman who marries a man who is within the prohibited degree of consanguinity acquires only such rights in his property as are given her by will; she takes nothing by virtue of law. Dicke v. Wagner, 95 W 260, 70 NW 159.

The marriage of a divorced person resident of this state, performed outside of the state, was absolutely void if within one year after the divorce. Severa v. Beranak, 138 W 144, 119 NW 814.

See note to section 247.37, citing White v. White, 167 W 615, 168 NW 704.

The test of mental capacity to enter into a marriage contract is not whether that capacity measures up to the requirements for training children, but whether the party understands and realizes the immediate transaction and consents thereto. The fact that the party is under guardianship does not constitute incapacity to marry. Roether v. Roether, 180 W 24, 191 NW 576.

Under 225.03, Stats. 1945, a marriage with an epileptic is void. In view of this statute and 245.04 (1), and an Illinois statute declaring a marriage of nonresidents in Illinois void if the marriage would be void if contracted in the state of their residence, a mar-

riage entered into in Illinois by Wisconsin residents, the woman being an epileptic, was void. Consequently, the other party was not entitled to the administration of the woman's estate on her death, since he was not the husband or otherwise the heir of the woman. Estate of Canon, 221 W 322, 266 NW 918.

A marriage contracted outside of Wisconsin by residents thereof and less than one year after the entry of a Wisconsin decree divorcing one of the parties is void. A marriage with a soldier, void because entered into within one year after the wife's divorce, was not validated by the subsequent decree annulling the wife's marriage with her former husband, so as to entitle her to war risk insurance. Cummings v. United States, 34 F (2d) 284.

Though generally a marriage valid where celebrated is valid everywhere, that is not true where marriage is declared by statute to have no validity. To enable Anna Soucek, an Austrian, to enter the United States on a nonquota visa, her sister, Mary Waltz, living in Wisconsin with her husband, Albert Waltz, a naturalized American citizen, obtained a decree of divorce from him on February 25, 1930, in circuit court in Milwaukee county. Anna came to Canada and Albert went there and on July 26, 1930 he went through a marriage ceremony with her. He returned to Wisconsin never having lived with Anna. On December 29, 1930 Anna entered the United States on a nonquota visa as the wife of an American citizen. Waltz continued to live with his first wife Mary. On July 28, 1931 he obtained a divorce decree from Anna, and on August 4, 1931 he remarried Mary. The marriage of Albert and Anna was void under the Wisconsin law as respects Anna's rights to enter the United States on a nonquota visa. The granting of the divorce to Albert from Anna in Wisconsin was not res judicata on the subject of the validity of their marriage in Canada within a year from the first divorce, where the validity of the marriage was not determined in the second (Albert's) divorce suit. Ex parte Soucek, 101 F (2d) 405.

A nonresident who had been divorced in a state prohibiting remarriage within one year may not be granted a license within the year. 2 Atty. Gen. 545.

A man who marries the daughter of his first cousin, in Wisconsin, violates sec. 2330, Stats. 1921, and they may be prosecuted for incest, if they live together in this state. 12 Atty. Gen. 12. See also 5 Atty. Gen. 227.

A divorced nonresident must abide by Wisconsin regulations governing the issuance of marriage licenses. 55 Atty. Gen. 240.

Marriage within the statutory prohibited period after divorce. Nordahl, 30 MLR 108.

Legal consequences in Wisconsin of remarriage after divorce. Boyle, 32 MLR 205.

Unfitness to marry. 3 WLR 116.

245.035 History: 1953 c. 470; Stats. 1953 s. 245.035.

Editor's Note: For background information the following statutes and reports of decisions should be consulted: Ch. 218, Laws 1917 (which amended sec. 2330, Stats. 1915); Kitzman v. Werner, 167 W 308, 166 NW 789; Estate of Jansa, 169 W 220, 171 NW 947; Estate of Canon, 221 W 322, 266 NW 918; and ch. 63, Laws 1953 (which amended 245.03, Stats.1951).

245.04 History: 1915 c. 270; Stats. 1915 s. 2330m; 1925 c. 4; Stats. 1925 s. 245.04; 1959 c. 595 s. 9; 1961 c. 505.

Editor's Note: For foreign decisions construing the "Uniform Marriage Evasion Act" consult *Uniform Laws, Annotated.*

The general rule that a marriage valid where solemnized is valid everywhere is modified by sec. 2330m, Stats. 1915, which declares as the public policy of the state that marriages contracted within or without the state in violation of the laws of the state where the parties reside shall be void. Hall v. Industrial Comm. 165 W 364, 162 NW 312.

The marriage in Minnesota of an epileptic in fraudulent evasion of the statutes of that state to a woman who went there with him for that purpose after they, residents of Wisconsin, had been refused a marriage license here, was not void but voidable in Minnesota and subject to be avoided in Wisconsin also if contrary to the public policy of this state. Kitzman v. Werner, 167 W 308, 166 NW 789.

Sec. 2330m, Stats. 1919, renders null and void such marriages only by residents of this state solemnized outside the state as would be void if solemnized here. It does not avoid marriages solemnized in other states without submitting to antenuptial examination required by this state, or without observance of the marriage license laws which have no extraterritorial effect. Lyannes v. Lyannes, 171 W 381, 177 NW 683.

Marriage of a Wisconsin resident in Indiana within one year of entry in 1920 of an Illinois divorce judgment was valid, notwithstanding statutory limitations. Fitzgerald v. Fitzgerald, 210 W 543, 550, 246 NW 680.

Even though a man and woman, while residents of Wisconsin, may have established a common-law marriage in Texas, such marriage was void for all purposes in Wisconsin; the woman was not the wife of such man and was not entitled to any rights as widow and heir in his estate on his death. Estate of Van Schaick, 256 W 214, 40 NW (2d) 588.

The evidence was insufficient to show that either of the parties was disabled or prohibited from being married under the laws of Wisconsin, or that the marriage in Illinois was for the purpose of evading any provision of the Wisconsin statutes. The fact that a question in the application for a marriage license in Illinois, asking whether the applicant was prohibited from intermarrying by the laws of the jurisdiction where he resided, was unanswered did not establish that the parties, residents of Wisconsin, went to Illinois for the purpose of evading the marriage laws of Wisconsin nor overcome the presumption of regularity which the issuance of the marriage license carried with it. Estate of Campbell, 260 W 625, 51 NW (2d) 709.

A marriage of Wisconsin residents outside the state after the husband secured in Wisconsin a divorce judgment which charged him with support of minor children was not subject to the provisions of 245.04, Stats. 1963; hence his failure to secure permission to remarry under the terms of 245.10 did not ren-

der the marriage void. (Estate of Ferguson, 25 W (2d) 75, followed.) Korf v. Korf, 38 W (2d) 413, 157 NW (2d) 691.

See note 245.03, citing Ex parte Soucek, 101 F (2d) 405.

Vacating a decree of divorce by the proper court within one year from entry thereof returns husband and wife to full marital status. Any marriage entered into by either party in another state within said period of one year is void. 26 Atty. Gen. 161.

A Texas statute providing in effect that neither party to a divorce granted on the ground of cruel and inhuman treatment shall marry any other person within year after a divorce is granted has no extraterritorial effect since it is construed as making marriage voidable only and will not under facts stated prevent one of the parties to a Texas divorce from entering into a lawful marriage in Wisconsin with a third person, before the expiration of a year from the date of the Texas divorce. The facts do not bring the case within the provisions of 245.03 (2) or 245.04 (1) or (2). 36 Atty. Gen. 71.

Marriage within the statutory prohibited period after divorce. Nordahl, 30 MLR 108.

Legal consequences in Wisconsin of remarriage after divorce. Boyle, 32 MLR 205.

245.05 History: 1917 c. 218 s. 3; Stats. 1917 s. 2339n—2; 1925 c. 4; Stats. 1925 s. 245.13; 1941 c. 162; 1959 c. 595 s. 21; Stats. 1959 s. 245.05.

Legislative Council Note, 1959: This is a restatement of present s. 245.13 which requires that a marriage license be obtained in the county where one of the parties resides. Since residence can be established in a single day this requirement is easily circumvented. A new provision requires a county residence of 30 days. Another provision requires the distribution of a marital information card by the county clerk to marriage applicants. The card emphasizes the importance of stability in marriage, its seriousness, and urges premarital counseling. (Bill 151-A)

Under 245.05, Stats. 1967, a marriage license may be issued to nonresidents of the state without requiring one of them to establish residency in the county of application for 30 days next preceding the application. 57 Atty. Gen. 127.

245.06 History: 1945 c. 114; Stats. 1945 s. 245.10 (6) (b); 1959 c. 595 s. 11, 16; 1959 c. 690 s. 2; Stats. 1959 s. 245.06; 1969 c. 276 s. 603 (5); 1969 c. 366 s. 117 (2) (a).

Editor's Note: The legislative council notes to Bill 151-A (1959) indicate that (1) (a), (b), (c), (d) and (e) are in part a restatement of old 245.10 (1), (5) and (6) (a), and that (2) is a restatement of the old 245.10 (6) (b) with minor changes for greater clarity.

See note to sec. 1, art I, on exercises of police power, citing Peterson v. Widule, 157 W 641, 147 NW 966.

A licensed osteopath can make eugenic examinations. The term "licensed physician" includes an osteopath. 9 Atty. Gen. 292; 12 Atty. Gen. 520.

A chiropractor may not make a so-called eugenic examination. 12 Atty. Gen. 520.

245.06 and 245.11, Stats. 1939, must be construed together. The state health officer is authorized by 245.11 (4) to issue a certificate that an individual is not in an infective or communicable stage of syphilis only if such individual has complied with 245.10 (5) by submitting to a blood test for syphilis within 15 days before applying for a marriage license, which test resulted positively. 29 Atty. Gen. 354.

All male applicants for marriage licenses are required to present a certificate pursuant to 245.10 (1), Stats. 1945, including those applicants who must also present a certificate under 245.11 (4). Clinical and laboratory tests must be used in an application for a certificate under 245.10 (1) when in the discretion of the examining physician they are necessary. 36 Atty. Gen. 217.

245.07 History: 1917 c. 483; Stats. 1917 s. 2339n; 1925 c. 4; Stats. 1925 s. 245.11; 1939 c. 252; 1957 c. 546; 1959 c. 595 s. 18, 19; Stats. 1959 s. 245.07; 1969 c. 366.

245.08 History: 1959 c. 595 s. 13; Stats. 1959 s. 245.08; 1961 c. 505.

Legislative Council Note, 1959: This is a restatement of present s. 245.14 which requires a 5-day waiting period to obtain a marriage license except where dispensation is granted by a judge. The family law committee found abuse of the dispensation privileges; accordingly the following changes have been made:

1. Only a judge of a court of record may grant dispensation.
2. Evidence to support such dispensation must be documentary.
3. Dispensation privileges have been extended to persons in the military service.
4. The fee for the dispensation order has been increased from $2 to $5. (Bill 151-A)

A court has no power to authorize the issuance of a marriage license before the expiration of 5 days after application therefor, unless one of the facts enumerated in sec. 2339m—3, Stats. 1921, is shown to exist. 12 Atty. Gen. 80.

245.09 History: 1959 c. 595 s. 14; Stats. 1959 s. 245.09; 1961 c. 505.

Legislative Council Note, 1959: This is a restatement of present s. 245.15. The following changes have been made:

1. Persons already lawfully married to each other are prohibited from obtaining a marriage license. This is aimed at secret marriages and subsequent public ceremonies. It is not designed to preclude a second marriage if the first one is of doubtful validity.
2. Documentary proof is required as to residence and identification.
3. Required background information has been broadened to include dates and dissolution of prior marriages, names of former spouses, names, ages, and residence of children of prior marriages. This information is necessary because judicial approval is required in certain instances where there is a minor child of a prior marriage. (See note to s. 245.10) (Bill 151-A)

Under 245.15, Stats. 1945, the county clerk has the power and duty to determine wheth-

er the facts stated in an application for a marriage license present any reason why a lawful marriage could not be entered into in the state by parties making such application. 36 Atty. Gen. 71.

245.10 History: 1959 c. 595 s. 17; Stats. 1959 s. 245.10; 1961 c. 505; 1965 c. 480, 625; 1969 c. 116, 331.

Editor's Note: In connection with the amendatory legislation of 1965 see Estate of Ferguson, 25 W (2d) 75, 130 NW (2d) 300, and Korf v. Korf, 38 W (2d) 413, 157 NW (2d) 691.

A criminal complaint charging defendant with violation of 245.10 and 245.30 (1), Stats. 1965, for remarrying in Illinois without permission, although a Wisconsin resident twice divorced in this state and under obligation to support minor children of both marriages, was improperly dismissed by the circuit court on the ground that the statutes upon which the charge was founded were an unconstitutional effort to give extraterritorial effect to the criminal laws of Wisconsin, for under the statutes due process is not violated (only the conduct of Wisconsin residents is punished); the interest Wisconsin seeks to protect is legitimate and substantial both as to welfare of minors and the marriage relationship of its residents; the statutes do not call for enforcement, impose duties upon, nor conflict with the laws of any foreign state; and the statutory permission to marry and enforcement of the law is in the courts of this state. State v. Mueller, 44 W (2d) 387, 171 NW (2d) 414.

245.11 History: 1917 c. 218 s. 3; 1917 c. 539; Stats. 1917 s. 2339n—6; 1925 c. 4; Stats. 1925 s. 245.17; 1937 c. 184; 1959 c. 595 s. 24; Stats. 1959 s. 245.11; 1965 c. 252.

Legislative Council Note, 1959: Present s. 245.17 (1) and (2) have been restated. Sub. (1) is broadened to permit objections to a marriage by a child, his guardian or a family court commissioner. Sub. (2) requires the court to report a denial to grant a marriage license to the district attorney to facilitate an investigation of falsified information. (Bill 151-A)

245.12 History: 1917 c. 218 s. 3; 1917 c. 539; Stats. 1917 s. 2339n—10; 1925 c. 4; Stats. 1925 s. 245.21; 1959 c. 595 s. 20, 26; Stats. 1959 s. 245.12.

Legislative Council Note, 1959: The last sentence of present s. 245.15 has been restated [in (1)]. References to other sections have been changed to conform to renumbering in the revision. The substance of present law has not been changed.

This [(2)] is a restatement of present s. 245.21. The substance of the law has not been changed. (Bill 151-A)

245.13 History: 1917 c. 218 s. 3; Stats. 1917 s. 2339n—11; 1919 c. 418; 1925 c. 4; Stats. 1925 s. 245.22; 1959 c. 595 s. 27; Stats. 1959 s. 245.13.

245.14 History: 1917 c. 218 s. 3; Stats. 1917 s. 2339n—12; 1925 c. 4; Stats. 1925 s. 245.23; 1959 c. 595 s. 28; Stats. 1959 s. 245.14.

245.15 History: 1917 c. 218 s. 3; Stats. 1917 s. 2339n—27; 1925 c. 4; Stats. 1925 s. 245.38; 1939 c. 73; 1959 c. 595 s. 38; Stats. 1959 s. 245.15; 1963 c. 569; 1965 c. 163; 1965 c. 659 s. 23 (4); 1967 c. 26; 1967 c. 291 s. 14; 1969 c. 154.

The county clerk may charge only $4 for issuance of a marriage license, but may charge a 50-cent notarial fee in addition. If part of an application is completed by another county clerk he is entitled to the notary fee also. 55 Atty. Gen. 239.

245.16 History: 1959 c. 595 s. 23; 1959 c. 690 s. 3; Stats. 1959 s. 245.16.

Legislative Council Note, 1959: This is a restatement of ss. 245.05, 245.06 and 245.12. In order to lend greater dignity to a civil ceremony the proposed section permits only a judge of a court of record to perform the ceremony, and attending witnesses must be adults. (Bill 151-A)

An ordained minister may perform a marriage ceremony even though he be not in active charge of a parish or church. 4 Atty. Gen. 978.

Common-law marriage is abolished. 7 Atty. Gen. 525.

One who assumes the position of a minister of the Gospel but who has not been ordained or appointed by a denominational or nondenominational group is not authorized to solemnize marriages. 27 Atty. Gen. 460.

"Spiritual Assembly of the Bahais" may not file credentials, but marriage may be contracted according to its customs, rules and regulations, under the provisions of 245.12, Stats. 1921. 32 Atty. Gen. 105.

245.17 History: 1901 c. 30 s. 1; Supl. 1906 s. 2331b; 1925; c. 4; Stats. 1925 s. 245.07; 1959 c. 595 s. 12; Stats. 1959 s. 245.17; 1961 c. 505.

Legislative Council Note, 1959: Restatement of present s. 245.07, with minor changes for clarity. (Bill 151-A)

A certificate of authority to solemnize marriages may not be issued by a clerk of circuit court under 245.07, Stats. 1947, to a member of a nondenominational religious society who purportedly was designated by "elders" thereof as a bishop for the purpose of performing marriages. 37 Atty. Gen. 449.

A certificate of a Lutheran minister's authority, signed by another Lutheran minister who certified that he had authority to do so, is entitled to be filed and recorded under 245.08, Stats. 1949. 39 Atty. Gen. 485.

245.18 History: 1917 c. 218 s. 3; Stats. 1917 s. 2339n—13; 1925 c. 4; Stats. 1925 s. 245.24; 1927 c. 222; 1943 c. 503 s. 66; 1947 c. 143; 1959 c. 595 s. 29; Stats. 1959 s. 245.18.

Legislative Council Note, 1959: Present s. 245.24 relating to the marriage certificate has been restated and divided into subsections for reference convenience. The use of a carbon paper is permitted to facilitate the work of the officiating person. The certificate must be signed by adult witnesses in conformity with proposed s. 245.16. (Bill 151-A)

245.19 History: 1917 c. 218 s. 3; Stats. 1917 s. 2339n—14; 1925 c. 4; Stats. 1925 s. 245.25; 1927 c. 222; 1943 c. 503 s. 66, 67; 1947 c. 143; 1959 c. 595 s. 30; Stats. 1959 s. 245.19.

An out-of-state marriage certificate may be

filed only with the register of deeds or city health officer of the county or city where one of the parties resided at the time of the marriage. 34 Atty. Gen. 336.

A marriage certificate must be accepted for filing even though such certificate and the marriage license are irregular. 35 Atty. Gen. 299.

A certificate of marriage of a Wisconsin resident married outside of the United States is eligible for filing. 35 Atty. Gen. 313.

245.20 History: 1917 c. 218 s. 3; Stats. 1917 s. 2339n—9; 1925 c. 4; Stats. 1925 s. 245.20; 1943 c. 393.

The state registrar of vital statistics has authority to prescribe format for various marriage forms enumerated in 245.20 and local registrars and registers of deeds must use the forms prescribed and supplied by the state registrar. 49 Atty. Gen. 49.

245.21 History: 1917 c. 218 s. 3; Stats. 1917 s. 2339n—21; 1925 c. 4; Stats. 1925 s. 245.32; 1959 c. 595 s. 34; Stats. 1959 s. 245.21.

A woman cannot be excused for lack of knowledge of the law in entering into a common-law marriage under the belief that such marriages are still valid and legal in Wisconsin, and she cannot maintain an action for equitable division of the property of the parties, where she seeks to enforce rights arising solely by reason of the illegal marriage relationship, and not by reason of a partnership or other joint venture antedating the marriage relationship, or some other legal basis. Smith v. Smith, 255 W 96, 38 NW (2d) 12.

See note to 245.24, citing Davidson v. Davidson, 35 W (2d) 401, 151 NW (2d) 53.

Under the provisions of 245.32, Stats. 1927, marriage contracted in violation of the requirements of 245.12 is null and void. So-called common-law marriage is not now recognized in Wisconsin. 17 Atty. Gen. 383.

The voidable void marriage in Wisconsin. Foley, 49 MLR 751.

245.22 History: 1917 c. 218 s. 3; Stats. 1917 s. 2339n—22; 1925 c. 4; Stats. 1925 s. 245.33; 1959 c. 595 s. 35; Stats. 1959 s. 245.22.

245.23 History: 1917 c. 218 s. 3, 1917 c. 539; Stats. 1917 s. 2339n—23; 1925 c. 4; Stats. 1925 s. 245.34; 1959 c. 595 s. 36; Stats. 1959 s. 245.23.

Legislative Council Note, 1959: A significant change has been made in the present law. Marriage involving a minor required to have consent of his parents is void if such consent was not obtained. This is in keeping with the philosophy that marriage is a serious undertaking, and that basic legal requirements cannot be ignored. (Bill 151-A)

245.24 History: 1917 c. 218 s. 3; Stats. 1917 s. 2339n—24; 1925 c. 4; Stats. 1925 s. 245.35; 1959 c. 595 s. 36; Stats. 1959 s. 245.24.

Where a marriage of Wisconsin residents in Illinois was void, under 245.03 (2) and 245.04 (1), Stats. 1925, because contracted within one year of the woman's divorce in Wisconsin, but the testimony of the man himself, in a divorce action wherein he alternately prayed for an annulment, warranted the conclusion that such marriage was entered into by the man in good faith and in the full belief that the woman's former marriage had been dissolved by a divorce, and the impediment to the marriage of the parties was thereafter removed by the woman's divorce becoming absolute, and the parties continued to live together as husband and wife in good faith on the part of the man, the parties must be held, under 245.35, to have been legally married from and after the removal of the impediment. Hoffman v. Hoffman, 242 W 83, 7 NW (2d) 428.

Where the wife entered into the New Mexico marriage within the proscribed one-year period from the date of the judgment of divorce, knowing that she could not remarry anywhere within the proscribed period without violating Wisconsin law, she was not entitled to the benefit of 245.24, Stats. 1961. Roddis v. Roddis, 18 W (2d) 118, 118 NW (2d) 109.

A marriage contracted before a prior divorce is granted is voidable, not void. An action for annulment by the wife after removal of the impediment abated with the wife's death and cannot be revived by her administrator as an action to recover property. Davidson v. Davidson, 35 W (2d) 401, 151 NW (2d) 53.

245.25 History: 1917 c. 218 s. 3; Stats. 1917 s. 2339n—25; 1925 c. 4; Stats. 1925 s. 245.36; 1951 c. 471; 1957 c. 296 s. 15; 1959 c. 595 s. 36; Stats. 1959 s. 245.25; 1969 c. 339 s. 27; 1969 c. 392.

Where the evidence showed that R and B were the natural parents of one E, who claimed to be a son of the deceased, and that R and B later married so that the son became legitimated, he must be deemed to be their son, and could not claim to be the heir of deceased because of an alleged written recognition by the deceased. Estate of Drexheimer, 197 W 145, 221 NW 737.

A marriage to one not the father occurring before the marriage of the mother and natural father does not prevent the legitimization of the child by the second marriage. Estate of Cogan, 267 W 20, 64 NW (2d) 454.

The status of a child, for the purpose of sharing in the distribution of the personal property of an intestate deceased person, is to be determined by the law of the domicile of the deceased, and if he is legitimate by the law of the deceased's domicile, he may take, even though illegitimate elsewhere; and the trial court, in the instant proceeding to determine who constituted the heirs-at-law of a resident of Wisconsin who died here intestate, correctly determined that the paternal ancestor of certain interested parties, who was born in Germany, became legitimated on the marriage of his parents in Germany. Estate of Engelhardt, 272 W 275, 75 NW (2d) 631.

245.30 History: 1959 c. 595 s. 32; Stats. 1959 s. 245.30; 1961 c. 505.

Legislative Council Note, 1959: The penalties in this section have all been taken from present law but the upper limit of monetary penalties has been doubled in most cases. (Bill 151-A)

See note to 245.10, citing State v. Mueller, 44 W (2d) 387, 171 NW (2d) 414.

245.31 History: 1917 c. 218 s. 3; Stats. 1917

s. 2339n—20; 1925 c. 4; Stats. 1925 s. 245.31; 1959 c. 595 s. 33; 1963 c. 6.

Legislative Council Note, 1959: This is a restatement of present law. (Bill 151-A)

CHAPTER 246.

Property Rights of Married Women.

246.01 History: 1850 c. 44 s. 1; R. S. 1858 c. 95 s. 1; R. S. 1878 s. 2340; Stats. 1898 s. 2340; 1925 c. 4; Stats. 1925 s. 246.01.

The provisions of ch. 95, R. S. 1858, do not in any way deprive the husband of his estate as tenant by curtesy. Kingsley v. Smith, 14 W 360.

When parties married before enactment of ch. 44, Laws 1850, property then held by wife and not reduced to possession by husband in his lifetime remained separate property. Miller v. Aram, 37 W 142.

Secs. 2340-2343, R. S. 1878, have substantially been in force since February 1, 1850. But a married woman could not dispose of her property by last will and testament without the consent of her husband until March 23, 1859 (sec. 1, ch. 66, R. S. 1849; sec. 1, ch. 97, R. S. 1858; sec. 2, ch. 91, 1859). In re Ward, 70 W 251, 35 NW 731. See also Nichols v. Nichols, 43 W (2d) 346, 168 NW (2d) 876.

The property rights of married women under modern laws. Winslow, 1 MLR 7 and 53.

The legal status of women in Wisconsin. Stout, 14 MLR 66, 121 and 199.

246.02 History: 1850 c. 44 s. 2; R. S. 1858 c. 95 s. 2; R. S. 1878 s. 2341; Stats. 1898 s. 2341; 1925 c. 4; Stats. 1925 s. 246.02.

A bond given in illegitimacy proceedings is not extinguished by the marriage of the parties, as the interest in the bond continues the separate property of the wife after the marriage. Meyer v. Meyer, 123 W 538, 102 NW 52.

An indebtedness due to the husband and wife cannot be garnished in an action against the husband alone. Badger L. Co. v. Stern, 123 W 618, 101 NW 1093.

A charge for funeral expenses of a married woman where she leaves separate property is primarily a charge against her estate. Schneider v. Breier's Estate, 129 W 446, 109 NW 99.

Where a wife has been awarded certain property by a judgment of divorce, it becomes her separate estate and is not affected by her marriage to her former husband. Kistler v. Kistler, 141 W 491, 124 NW 1028.

246.03 History: R. S. 1858 c. 95 s. 3; R. S. 1878 s. 2342; 1895 c. 86; Stats. 1898 s. 2342; 1925 c. 4; Stats. 1925 s. 246.03.

Execution of a mortgage is the clearest indication of intention to charge her separate estate. Dodge v. Silverthorn, 12 W 644.

There is no presumption against a separate estate except in favor of creditors. A wife's title is established against a trespasser by the same evidence as in other cases. Weymouth v. Chicago & N. W. R. Co. 17 W 550.

A chattel mortgage directly from husband to wife is good at law where the consideration was her separate property. Fenelon v. Hogoboom, 31 W 172.

Money derived by gift or bequest from a husband's father is separate property. Smith v. Hardy, 36 W 417.

A wife may buy a farm on credit and it will be separate property. Dayton v. Walsh, 47 W 113, 2 NW 65; Cramer v. Hanaford, 53 W 85, 10 NW 15.

A deed from husband to wife conveys a full equitable estate. Horton v. Dewey, 53 W 410, 10 NW 599.

A wife's interest in money paid by a third person to husband and wife in consideration of their joint covenant to support the former is separate property. Houghton v. Milburn, 54 W 554, 11 NW 517, 12 NW 23.

Deeds and contracts for land running to a married woman are prima facie evidence of her title to the land and the timber cut therefrom as against her husband's creditors. Brickley v. Walker, 68 W 563, 32 NW 773.

A married woman who claims, as against her husband's creditors, property directly conveyed to her after his indebtedness accrued, must show by clear and satisfactory evidence that she purchased and paid for it out of her separate estate. Rozek v. Redzinski, 87 W 525, 58 NW 262.

An insolvent debtor cannot accumulate property in the name of his wife, while acting ostensibly as her agent, and hold it as against his creditors; and where such a claim is made the ownership of the business and whether the alleged agency was a mere scheme and device to defraud creditors are questions of fact. Ansorge v. Barth, 88 W 553, 60 NW 1055.

Conveyance to a husband and wife makes them joint tenants, and the wife may convey as if unmarried. Wallace v. St. John, 119 W 585, 97 NW 197.

The principles governing contracts of married women in 1906 are stated, and the cases on that point are cited in Merrill v. Purdy, 129 W 331, 109 NW 82.

Where a contract was made for the support of a mother during life, the relieving of the daughters from liability under the statutes for furnishing such support operated as a benefit to their separate estates in such a way as to allow them to bind such estates for the performance of the contract. Payne v. Payne, 129 W 450, 109 NW 105.

A married woman may obtain title to property by warranty deed from the grantee of a tax deed and holds by possession under such deed. Brunette v. Norber, 130 W 632, 110 NW 785.

The provision allowing a married woman to devise property held by her in joint tenancy with her husband gives to a married woman who is a joint tenant the same rights in the property as she would possess if she were unmarried, but she cannot defeat the right of survivorship by devising the property. Bassler v. Rewodlinski, 130 W 26, 109 NW 1032; Friedrich v. Huth, 155 W 196, 144 NW 202.

A married woman may give a valid mortgage on her own property in payment of or as security for her husband's debt. Krause v. Reichel, 167 W 360, 167 NW 817.

The transfer of property by a wife to her husband raises no presumption of gift, and the husband is deemed to hold the property in trust for his wife. In case he claims it