Chapter 43

1967 REPLACEMENT PART
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Public Writings and Their Admissibility

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DEFINITIONS

43.010 Public writings. Public writings are the written acts, or records of the acts, of the sovereign authority, official bodies and tribunals and public officers, legislative, judicial and executive, of this state, the United States, a sister state or a foreign country.

43.020 Kinds of public writings. Public writings are divided into:

(1) Laws.

(2) Judicial records.

(3) Other official documents.

(4) Public records, kept in this state, of private writings.

43.030 Laws, written or unwritten. Laws, whether organic or ordinary, are either written or unwritten.

43.040 Written laws. A written law is that which is promulgated in writing and of which a record is in existence. The written law of this state is contained in the Constitution and statutes of this state and the Constitution and statutes of the United States.

43.050 Organic law. The organic law is the Constitution of the United States and the Constitution of this state, and is written.

43.060 Public and private statutes; recitals as evidence. Statutes are public or private. A private statute concerns only certain designated persons, and affects only their private rights. The recitals in a private statute are conclusive evidence of the facts recited between parties who claim under its provisions, but no further. All other statutes are public including those creating or affecting corporations. The recitals in a public statute are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further.

43.070 Unwritten law. Unwritten law is that which is not promulgated and recorded, as mentioned in ORS 43.040, but which is nevertheless observed and administered in the courts. It has no certain repository, but is collected from the reports of the decisions of courts and the treatises of learned men.

43.080 Judicial record. A judicial record is the record, official entry or files of the proceedings in a court, or of the official act of a judicial officer, in an action, suit or proceeding.

PROOF AND EFFECT OF JUDICIAL RECORDS

43.110 Judicial records, how proved. A judicial record of this state or of the United States may be proved by the production of the original, or by a copy certified by the clerk or other person having legal custody of the record, with the seal of the court affixed, if there is a seal. A judicial record of a foreign country, a sister state, the District of Columbia or a territory of the United States may be proved by the production of a copy thereof, certified by the clerk or other person having legal custody of the record, with the seal of the court affixed, if there is a seal, together with the certificate of the chief judge or presiding magistrate that the certificate is in due form and made by the clerk or other person having legal custody of the original.

43.120 Judicial record of foreign country, proof by oral evidence. A copy of the judicial record of a foreign country is also admissible in evidence upon proof that:

(1) The copy offered has been compared by the witness with the original, and it is an exact transcript of the whole;

(2) The original was in the custody of the clerk or other legal keeper; and,

(3) The copy has affixed to it a seal proven to be the seal of the court where the original record remains, or if there is no seal, the signature of the legal keeper of the record.

43.130 Judicial orders that are conclusive. The effect of a judgment, decree or final order in an action, suit or proceeding before a court or judge of this state or of the United States, having jurisdiction is as follows:

(1) In case of a judgment, decree or order against a specific thing or in respect to the probate of a will or the administration of the estate of a deceased person or in respect to the personal, political, or legal condition or relation of a particular person, the judgment, decree or order is conclusive upon the title to the thing, the will or administration, or the condition or relation of the person.

(2) In other cases, the judgment, decree or order is, in respect to the matter directly determined, conclusive between the parties,

their representatives and their successors in interest by title subsequent to the commencement of the action, suit or proceeding, litigating for the same thing, under the same title and in the same capacity.

43.140 Judicial orders that create a disputable presumption. A judicial order, other than a judgment, decree or final order, in an action, suit or proceeding before a court or judge of this state or of the United States creates a disputable presumption concerning the matter directly determined between the same parties, their representatives and their successors in interest by title subsequent to the commencement of the action, suit or proceeding, litigating for the same thing, under the same title and in the same capacity.

43.150 When parties the same. The parties are the same when those between whom the evidence is offered were adverse in the former case, and a judgment, decree or other determination could have been made between them alone, though other parties were joined.

43.160 What determined by former judgment. That only is determined by a former judgment, decree or order which appears upon its face to have been so determined or which was actually and necessarily included therein or necessary thereto.

43.170 Effect on principal of judgment against surety. Whenever, pursuant to ORS 43.130 to 43.160, a party is bound by a record, and stands in the relation of surety for another, the latter is also bound from the time that he has notice of the action, suit or proceeding and a request from the surety to defend against it.

43.180 Judicial record of other jurisdictions, effect. The effect of a judicial record of a sister state, the District of Columbia or a territory of the United States is the same in this state as in the place where it was made, except it can only be enforced here by an action, suit or proceeding, and except also the authority of a guardian, committee, executor or administrator does not extend beyond the jurisdiction of the government under which he was invested with his authority.

43.190 Judicial orders of a tribunal of a foreign country, effect. The judgment, decree or final order of a tribunal of a foreign country having jurisdiction, except as provided for in ORS 43.200:

(1) If against a specific thing, is conclusive upon the title to the thing.

(2) If against a person, creates a disputable presumption of a right as between the parties, their representatives and their successors in interest by title subsequent, and can only be overcome by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud or clear mistake of law or fact.

43.200 Judicial record of foreign admiralty court, effect. The effect of a judicial record of a court of admiralty of a foreign country is the same as if it were the record of a court of admiralty of the United States.

43.210 Justice's judgment in other jurisdictions, proof and effect. A transcript from the record or docket of a justice of the peace of a sister state, the District of Columbia or a territory of the United States, of a judgment given by him, and of the proceedings in the matter before and after judgment is primary evidence of the facts stated if there is attached to the transcript:

(1) A certificate of the justice having legal custody of the record, that the transcript is complete and correct and the justice who gave the judgment had jurisdiction; and

(2) A certificate of the clerk of the county, having official cognizance of the fact, under the seal of his office, that the person certifying the transcript was on that date a justice of the peace in the county and the signature is genuine.

43.220 Impeachment of judicial record. Any judicial record may be impeached and the presumption arising therefrom overcome by evidence of a want of jurisdiction, collusion between the parties, or fraud in the party offering the record. The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties and, when a specific thing is the subject of the determination, over the thing.

PROOF AND EFFECT OF OTHER OFFICIAL DOCUMENTS, RECORDS AND ENTRIES

43.310 Evidence of written laws of other jurisdictions. Books, printed or published under the authority of a sister state, the District of Columbia, a territory of the United States or of a foreign country, and purporting to contain their statutes, code or other written law, or proved to be commonly admitted in their tribunals as evidence of their written law, are admissible in this state as evidence of that law. Their public seal, affixed to a copy of a written law is also admissible as evidence of that law or writing.

43.320 Evidence of unwritten law of other jurisdictions. The oral testimony of witnesses skilled therein is admissible as evidence of the unwritten law of a sister state, the District of Columbia, a territory of the United States or foreign country, as are also printed and published books of their reported court decisions, or those proved to be commonly admitted in their courts.

43.330 Proof of other official documents. Other official documents may be proved as follows:

(1) Acts of the executive or administrative departments of this state and of the United States by the records of the departments, certified by the department heads; or by public documents prepared or printed by order of the Legislative Assembly, Congress, or by either house.

(2) The proceedings of the Legislative Assembly of this state, or of Congress, by their journals, or the journals of either house; by statutes or resolutions published by their order; or by copies certified by the legal keeper of the originals.

(3) The acts of the executive or administrative departments, or the proceedings of the legislature of a sister state, the District of Columbia or territory of the United States, in the same manner.

(4) The acts of the executive or administrative departments or the proceedings of the legislature of a foreign country, by journals, statutes or resolutions, published by their authority or commonly received in that country as such; by a copy certified under the great or principal seal of that country or the sovereign thereof; or by a recognition in or by some public act of the executive of the United States.

(5) Acts of a public corporation of this state or of a board or department, by a copy certified by the legal keeper, or by a printed copy published by the authority of the corporation or department.

(6) Documents of any other class in this state or the United States by the original or by a copy certified by the legal keeper.

(7) Documents of any other class in a sister state, the District of Columbia or territory of the United States, by the original or by a copy certified by the legal keeper, together with the certificate of the Secretary of State, judge of a court of record or mayor of a city of the state, that the copy is certified by the officer having the legal custody of the original.

(8) Documents of any other class in a foreign country, by the original or by a copy certified by the legal keeper, together with a certificate under the great or principal seal of the country or sovereign thereof, or under the hand and seal of the American consul residing in the foreign country nearest the place where the record is kept that it is a valid and subsisting document of the country and that the copy is certified by the officer having the legal custody of the original.

(9) The documents mentioned in subsections (6), (7) and (8) of this section include fingerprints, photographs and other identification records of any penitentiary, jail, reformatory or other place of confinement of convicted felons. Such fingerprints, photographs and other identification records, or a facsimile, shall, when certified as required in this section, be admitted in evidence to prove the identity of any person convicted of a felony or charged with being an habitual criminal.

43.340 Proof of public record of private writing. A public record of a private writing may be proved by the original record or by a copy certified by the legal keeper of the record.

43.350 Effect of certified copies of public writings. A certified copy of a public writing made by the officer having custody of the writing is primary evidence of the original writing.

43.360 Records of United States officers. Any paper or the record of any instrument filed or recorded in the office of any officer or agent of the United States or of any of its departments or bureaus, or

a copy of that paper or record certified by the officer or person who has legal custody, may be read in evidence with like effect as the original. The effect of that evidence may be rebutted by other competent testimony.

43.370 Entries in official records. Entries in public or other official records, including books, data processing devices and computers, made by a public officer of this state or the United States in the performance of his duty or by another person in the performance of a duty specially enjoined by the law of either, are primary evidence of the facts stated.
[Amended by 1967 c.489 §1]

43.380 Vital statistics certificates and copies. (1) Each certificate provided for in ORS chapter 432, filed within six months after the time prescribed for its filing, shall be prima facie evidence of the facts stated. Data pertaining to the father of a child are evidence if the alleged father is, or becomes, the husband of the mother in a legal marriage. If not, the data pertaining to the father are not evidence in any civil or criminal proceeding adverse to the interests of the alleged father, his heirs, devisees or other successors in interest, if the paternity is controverted.

(2) The contents, or part of the contents, and the due execution of any certificate on file in the Bureau of Vital Statistics, may be evidenced by a copy of the material in the certificate, as certified by the State Registrar of Vital Statistics. The certified copies shall be admitted as evidence the same as the originals.

(3) The admissibility in evidence of a "delayed" or "altered" certificate, as defined in ORS 432.140, shall be subject to the discretion of the court, judicial or administrative body or official to whom that certificate is offered.

43.390 Certified copies of records filed with State Treasurer. Copies of all deeds, bonds, documents or papers filed in the office of the State Treasurer, and transcripts from the books or records kept therein, certified by him, shall be evidence in like manner as the originals.

43.400 Entries and documents in tax proceedings. The entries made in the assessment and tax rolls and the warrants and certificates thereto attached, in the county assessor's, county clerk's, county treasurer's, tax collector's and sheriff's books, and the receipts and certificate stubs, and duplicates recorded by the county assessor, county clerk, county treasurer, tax collector or sheriff or his deputy, shall be prima facie evidence in all judicial proceedings.

43.410 Certified copies of records in custody of State Archivist. A copy of any legislative record, as defined by ORS 171.410, or public record or writing, as defined by ORS 192.005, that is in the official custody of the State Archivist, when certified by him under his seal, shall be received in evidence like the original.
[Amended by 1961 c.150 §7; 1961 c.160 §3a]

43.420 Record or copy of sheriff's deed as evidence where original destroyed. When county records or any part of them have been destroyed, and any sheriff's deed or the effect of any sheriff's deed purporting to be made pursuant to an execution or order of sale issued on a judgment or decree in that county, or the existence of the execution, order of sale, judgment or decree shall come in question or be material in any suit, action or proceeding, and the date of the deed is more than 10 years prior to the time when the question arises, if it appears to the court probable that the original or record of the execution, order of sale, judgment or decree, has been lost or destroyed, the sheriff's deed or the record thereof or a certified copy of the records, shall be prima facie evidence of all facts therein recited regarding the execution, order of sale, judgment or decree, without regard to the form of the recital.

43.430 Copies of books, records and documents of the United States executive department or government owned corporations. At any trial or hearing before any court, tribunal, board, commission, official body or public officer, there shall be admitted in evidence, equally with the original, a copy of any book, record, paper or other document, in any of the executive departments of the United States or of any corporation all the stock of which is beneficially owned by the United States, when the copy is authenticated under the seal of that department or corporation.

43.440 Books, records of account and minutes of the United States executive department or government owned corporation. Books or records of accounts in whatever form, and minutes of proceedings, or portions thereof, of any executive department

or corporation, described in ORS 43.430, or copies of those books, records or minutes, authenticated under the seal of the department or corporation, shall be admissible as evidence of the act, transaction, occurance or event, as a memorandum of which the books, records or minutes were kept or made.

43.450 Official records and files of United States Army, Navy and Air Force. Relevant official records and files of the Departments of the Army, Navy and Air Force of the United States shall be accorded prima facie probative value in evidence before any court or agency in which there is an issue of fact as to the death or disappearance of any person while serving in or with the Armed Forces of the United States.

43.460 Certified copy of a record or file of United States Army, Navy or Air Force. A copy of any record or file referred to in ORS 43.450, bearing a certificate executed by an officer or agent of the United States purporting to act in an official capacity that it is a true copy of the original, shall be disputably presumed to have been executed by the officer or agent within the scope of his authority and issued pursuant to law. A copy so certified shall be received and accepted in lieu of the original as prima facie evidence of any pertinent facts found, determined or narrated in the original.

43.470 Form of certificate on certified copies. (1) Whenever a copy of a writing is certified to be used as evidence, the certificate shall state that a copy has been compared by the certifying officer with the original, and that it is a correct transcript of the whole or of a specified part.

(2) Whenever a transcript of a public writing stored in machine language in a data processing device or computer is certified to be used as evidence, it shall be stated by the certifying officer that it is a correct transcript of specified data contained within the data processing device or computer.

(3) The official seal, if there is any, of the certifying officer, shall also be affixed to the certificate or any other certificate, except when the certificate of a clerk of a court is used in the same court or before an officer thereof.

[Amended by 1967 c.489 §2]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1967.

Robert W. Lundy
Legislative Counsel