

The following would either be enacted by the Legislature as a statute or promulgated by the Council as rules. ORS 14.010 to 14.035 would be repealed.

RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule ^{or procedure} 7 ~~(Oregon Rule of Civil Procedure 4)~~ under any of the following circumstances:

A. Local presence or status. In any action ^{or procedure} whether arising within or without this state, against a defendant who when the action is commenced ^{or procedure}:

- (1) Is a natural person present within this state when served; or
- (2) Is a natural person domiciled within this state; or
- (3) Is a corporation created by or under the laws of this state; or
- (4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise.
- (5) Has specifically consented to the exercise of personal jurisdiction over such defendant, ~~whether by appointment of agent for service of process in this state or otherwise.~~

B. Special jurisdiction statutes. In any action ^{or procedure} which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

C. Local act or omission. In any action ^{or procedure} claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action ^{or procedure} claiming ⁰⁶ injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

(2) Products, materials or things ^{distributed,} processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

E. Local services, goods or contracts. In any action which:

(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff or to guarantee payment for such services; or

(2) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant or payment for such services was guaranteed by the defendant; or

(3) Arises out of a promise made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ship from this state goods, documents of title, or other things of value or to guarantee payment for such goods, documents or things; or

¹⁰¹(4) Relates to goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant on the defendant's order or direction or shipped to a third person when payment for such goods, documents or things was guaranteed by defendant; or

(5) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

F. Local property. In any action which arises out of the ownership, use or possession of real property situated in this state or the ownership, use

or possession of other tangible property, assets or things of value which were within this state at the time of such ownership, use or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage or trust deed note or conditional sale contract or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

G. Director or officer of a domestic corporation. In any action ^{or proceeding} against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

H. Taxes or assessments. In any action ^{or proceeding} for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state.

I. Insurance or insurers. In any action ^{or proceeding} which arises out of a promise made anywhere to the plaintiff or some third party ^{or} by the defendant to insure any person, property or risk and in addition either:

(1) The person, property or risk was located in this state at the time of the promise; or

(2) The person, property or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property or risk insured was located.

J. Securities, in any action ^{or proceeding} arising under the Oregon securities law, including an action or proceeding brought by the Corporation Commission ^{Applicant} against

(1) an ~~applicant~~ ^{Applicant} for registration or registration, and any person who offers or sells a security in this state, directly or indirectly, unless the security

(2) any person, a resident or non resident of
this state who has engaged in conduct prohibited
or made actionable under the Oregon Securities Law.

K. Certain marital and domestic relations actions.

(1) In any action to determine a question of status instituted under ORS Chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state; or

(2) In any action to enforce personal obligations arising under ORS Chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or ¹⁰⁹country before filing of such action; but if an action to enforce personal obligations arising under ORS Chapter 106 or 107 is not commenced within one year following the date which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this ~~section~~ ^{subsection} in any such action.

(3) In a filiation proceeding under ORS Chapter 109, when the act or acts of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

M. Personal representative. In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in sections (subsections) ~~3.~~ ^B to ~~5.~~ ^L would have furnished a basis for jurisdiction over the deceased had he been living and it is immaterial under this subsection whether the action had been commenced during the lifetime of the deceased.

N. Joinder of claims in the same action. In any action brought in reliance upon jurisdictional grounds stated in sections (subsections) ~~3.~~ ^B to ~~5.~~ ^L, there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this section for personal jurisdiction over the defendant as to the claim or cause to be joined.

Rule 4

COMMENT:

This section is designed~~X~~ to : (a) bring together all ~~basis~~^{provisions} for ~~XXXX~~ personal jurisdiction, except ^{for} child custody cases, together in one rule; (2) to extend the ~~basis for personal~~^{exercise of} jurisdiction ~~in~~^{over persons by} Oregon Courts to the permissible limit under the United States and Oregon Constitutions; and (3) to ~~give~~^{and useful} a comprehensive description of generally accepted ~~basis~~^{grounds} for personal jurisdiction, using language descriptive of the type of activities or contacts ~~that will give rise to personal jurisdiction rather than using legal abstractions~~^{the rule deals only with amenability to jurisdiction} or legal fictions such as consent and appointment of ~~XXXXXX~~^{Methods or service or process covered in Rule 7.} public officials as agents. The basic form of the rule was drawn from Wisconsin Statutes s. 801.05, modified to incorporate Oregon statutes and case law.

~~xx~~ A. This section includes the traditional territorial ~~bases~~^{creates} of jurisdiction that ~~give rise to~~ general amenability to jurisdiction without any reference to the subject matter of the action. In slightly different language they are all ¹⁰ covered under existing Oregon statutes, see ORS 14.010, 14.020 and 15.080(6). Subsection 4 covers a situation where a defendant engages in such substantial activities in this state, that it would be subject to jurisdiction in any ~~suit~~^{action} whether or not ~~it~~^{the action} arose out of activities in the state. See Perkins v Benquet Consolidated Mining Corp. 342 US 437(1952).

B. This section recognizes the possibility that future statutes or rules will provide sor basis of jurisdiction beyond this rule and the existence of a separate provision relating to child custody cases in ORS Ch. 109.

C. and D. These sections would ~~pick up~~^{Apply in} all tort and contactual claims for injury when either the acts giving rise to the ~~injury~~^{injury} occurred in the ~~state of~~^{Oregon} the injury took place in Oregon. The ~~qualifications~~^{Limits} of the application of D are the generally accepted ~~limits~~^{of} Due process in this area, ~~based upon~~^{see!} Hanson v ~~Denckla~~^{357 US 235} 78 SC6 1228 (1958). ~~These sections also would incorporate~~^{state any} anything covered by the present ~~non resident Motor Vehicle Act~~^{need for a separate}, Ors 15.190 and 15.200.

E. This section ~~generally~~ covers contractual activity, ~~having sufficient contacts with the stateX giving rise to the action. There is no present specific provision relating to contracts in the Oregon Long arm statute.~~

F. This is based on ORS 14.035 (1) (c). Coverage is extended to actions arising out of ~~XXXXXX~~ personal property if the property was located in the state at the time the action arose. ~~XXXXXXXXXX~~ No provision ~~is made for jurisdiction over personal property~~ for quasi-in-rem jurisdiction (is made). See Shaffer v Heitner 97 § Ct. 2569 (1977)

the situation described is that covered in,
G. No specific provision governing this area is made in the existing Oregon statutes. ~~See~~ Shaffer v Heitner, *Supra*

H. This was the situation covered ~~by~~ International Shoe Co. v State of Washington 326 US. 310(1945)

I. This is a lightly expanded version of ORS 14.035 (1) (d)

J. This section incorporates the provisions of ORS 59.155

K, *↓* Subsection (1) of this section should be read in conjunction with ORS 107.075 Subsection(2) maintains ~~the existing XXXXXXXX XXXX jurisdiction covered by~~ ORS 14.035(2). *is the same as* Subsection (3) is not covered by existing statutes, but provides a statutory base for ~~XXX~~ jurisdiction in the situation involved in State ex. rel. Poole v Dorrah, 271 Or 410(1975) and State ex. rel. McKenna v Bennett 28 Or App. 155 (1977)

L. This section is designed to extend jurisdiction in any case not covered in the specific sections, *within the limits of due process.* ~~but where a constitutional basis for jurisdiction exists.~~ It is modeled upon *Rule* 4.2 or the Alabama ~~XXXXX~~ Supreme Court Rules.

M. ~~This section makes clear that~~ *the* If a basis for jurisdiction over a decedent exists under sections B through L, this also provides a basis for jurisdiction over ~~a~~ personal representative.

N. This ~~XXXXX~~ is the equivalent of ORS 14.035 (4).

Rule 4-

Personal Jurisdiction

Background

For statutes relating to consent
to ~~jurisdiction~~ appointment of
Registered Agents and consent to
jurisdiction by engaging in
activities within the state, see:
57.075, 57.485, 57.630, 57.700
57.721, 57.822, 61.086, 61.471
69.450, 69.520, ~~91.520~~ 91.611
92.375

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For jurisdiction in child custody
matters, see ORS 109.200 et seq.

~~OR~~ ORS sections Repealed: 14.010, 14.020,
14.030, 14.035, 15.190, 15.200, 59.155.

comment.

RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a person served ~~with the sum~~ in an action or proceeding pursuant to Rule 7 under any of the following circumstances:

A. Local presence or status. In any action or proceeding whether arising within or without this state, against a defendant who when the action or proceeding is commenced:

A.(1) Is a natural person present within this state when served;

or

A.(2) Is a natural person domiciled within this state; or

A.(3) Is a corporation created by or under the laws of this state; or

A.(4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise.

A.(5) Has specifically consented to the exercise of personal jurisdiction over such defendant.

B. Special jurisdiction statutes. In any action or proceeding which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

C. Local act or omission. In any action or proceeding claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action or proceeding claiming

injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

D.(2) Products, materials or things distributed, processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

E. Local services, goods or contracts. In any action or proceeding which:

E.(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff or to guarantee payment for such services; or

E.(2) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant or payment for such services was guaranteed by the defendant; or

E.(3) Arises out of a promise made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ship from this state goods, documents of title, or other things of value or to guarantee payment for such goods, documents or things; or

E.(4) Relates to goods, documents of title, or other things of

value shipped from this state by the plaintiff to the defendant on the defendant's order or direction or shipped to a third person when payment for such goods, documents or things was guaranteed by defendant; or

E. (5) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

F. Local property. In any action or proceeding which arises out of the ownership, use or possession of real property situated in this state or the ownership, use or possession of other tangible property, assets or things of value which were within this state at the time of such ownership, use or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage or trust deed note or conditional sale contract or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

G. Director or officer of a domestic corporation. In any action or proceeding against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

H. Taxes or assessments. In any action or proceeding for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state.

I. Insurance or insurers. In any action or proceeding which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property or risk and in

addition either:

I.(1) The person, property or risk was located in this state at the time of the promise; or

I.(2) The person, property or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

I.(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property or risk insured was located.

J. Securities. In any action or proceeding arising under the Oregon Securities Law, including an action or proceeding brought by the Corporation Commissioner, against

J.(1) An applicant for registration or registrant, and any person who offers or sells a security in this State, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; or

J.(2) Any person, a resident or non-resident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

K. Certain marital and domestic relations actions.

K.(1) In any action to determine a question of status instituted under ORS Chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state; or

K.(2) In any action to enforce personal obligations arising under ORS Chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or

country before filing of such action; but if an action to enforce personal obligations arising under ORS Chapter 106 or 107 is not commenced within one year following the date which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

K.(3) In a filiation proceeding under ORS Chapter 109, when the act or acts of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

L. Other minimum contacts. In an action or proceeding otherwise arising out of some minimum contacts by the defendant with this state where, under the circumstances, it is fair and reasonable to require the defendant to come to this state to defend an action. The minimum contacts referred to in this section shall be deemed sufficient, notwithstanding a failure to satisfy the requirement of sections B. to L. of ^{this} Rule , so long as the prosecution of the action against a defendant in this state is not inconsistent with the Constitution of this state or the Constitution of the United States.

X =

sections and none missing

BACKGROUND NOTE

For statutes relating to ~~consent~~ appointment of registered agents and consent to jurisdiction by engaging in activities within the state, see: 57.075, 57.485, 57.630, 57.700, 57.721, 57.822, 61.086, 61.471, 69.450, 69.520, 91.611, 92.375.

For jurisdiction in child custody matters, see ORS 109.700 et seq. ^{and 110.175}

ORS sections ^{superseded} replaced: 14.010, 14.020, ~~14.030~~, 14.035, 15.190, 15.200, 59.155.

Page retyped & added 10 (a)

COMMENT

This ^{Rule} section is designed to: (a) bring together all provisions for personal jurisdiction, except for child custody cases, in one rule; (b) to extend the exercise of jurisdiction over persons by Oregon courts to the permissible limit under the United States and Oregon Constitutions; and (3) to give a comprehensive and useful description of generally accepted grounds for personal jurisdiction. The rule deals only with amenability to jurisdiction. Methods of service of process are found in Rule 7. The basic form of the rule was drawn from Wisconsin Statutes s. 801.05, modified to incorporate Oregon statutes and case law.

4 A. This section includes the traditional territorial jurisdiction that creates general amenability to jurisdiction without any reference to the subject matter of the action. In slightly different language they are all covered under existing Oregon statutes. See ORS 14.010, 14.020 and 15.080(6). Subsection A.(4) covers a situation where a defendant engages in such substantial activities in this State, that it would be subject to jurisdiction in any action whether or not the action arose out of activities in the State. See Perkins v. Benguet Consolidated Mining Corp., 342 U.S. 437 (1952).

4 B. This section recognizes the possibility that future statutes or rules will provide for basis of jurisdiction beyond this rule and the existence of a separate provision relating to child custody cases in ORS Chapters 109 and 110

Sections C. through L. all require that the cause of action arise out of a described contact with this State.

4 C. and D. These sections apply in all tort and contractual claims for injury when either the acts giving rise to the injury occurred in Oregon or the injury took place in Oregon. The limits of the application of D. are the generally accepted limit of due process in this area. See: Hanson v. Denckla, 357 U.S. 235 (1958). These sections also state any need for a separate Nonresident Motor Vehicle Act, ORS 15.190 and 15.200.

4 E. This section covers contractual activity.

4 F. This is based on ORS 14.035 (1)(c). Coverage is extended to actions arising out of ownership, use or possession of personal property if the property was located in the state at the time the action arose. No provision is made for quasi-in-rem jurisdiction. See Shaffer v. Heitner, 97 S. Ct. 2569 (1977).

4 G. The situation described is that covered in Shaffer v. Heitner, supra.

4 H. This was the situation covered in International Shoe Co. v. State of Washington, 326 U.S. 310 (1945).

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4 I. This is a ~~highly~~ expanded version of ORS 14.035 (1)(d). ^{K.}

4 J. This section incorporates the provisions of ORS 59.155. Sub-
section (1) ~~of this section~~ should be read in conjunction with ORS
107.075. Subsection (2) is the same as ORS 14.035(2). Subsection (3)
is not covered by existing statutes, but provides a ~~statutory~~ ^{statutory} basis for
jurisdiction in the situation involved in State ex rel Poole v. Dorrah,
271 Or 410 (1975) and State ex rel McKenna v. Bennett, 28 Or App. 155
(1977).

4 L. This section is designed to extend jurisdiction in any case
not covered in the specific sections, within the limits of due process.
It is modeled upon Rule 4.2 of the Alabama ~~Supreme Court Rules~~.

4 M. If a basis for jurisdiction over a decedent exists under
sections B through L., this also provides a basis for jurisdiction over the
personal representative. ^{Rules of Civil Procedure.}

4 N. This is the equivalent of ORS 14.035 (4).

RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a ^{party =} person served in an action or proceeding pursuant to Rule 7 under any of the following circumstances:

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A. Local presence or status. In any action or proceeding whether arising within or without this state, against a defendant who when the action or proceeding is commenced:

A.(1) Is a natural person present within this state when served; or

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A.(2) Is a natural person domiciled within this state; or

A.(3) Is a corporation created by or under the laws of this state; or

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A.(4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise; or

A.(5) Has specifically consented to the exercise of personal jurisdiction over such defendant.

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B. Special jurisdiction statutes. In any action or proceeding which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

C. Local act or omission. In any action or proceeding claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action or proceeding claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

D.(2) Products, materials, or things distributed, processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

E. Local services, goods or contracts. In any action or proceeding which:

E.(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff or to guarantee payment for such services; or

E.(2) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant or payment for such services was guaranteed by the defendant; or

E.(3) Arises out of a promise made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ~~ship~~ send

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from this state goods, documents of title, or other things of value or to guarantee payment for such goods, documents, or things; or

E.(4) Relates to goods, documents of title, or other things of value ^{sent} ~~(shipped)~~ from this state by the plaintiff to the defendant on the defendant's order or direction or ^{sent} ~~(shipped)~~ to a third person when payment for such goods, documents, or things was guaranteed by defendant; or

E.(5) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

F. Local property. In any action or proceeding which arises out of the ownership, use, or possession of real property situated in this state or the ownership, use, or possession of other tangible property, assets, or things of value which were within this state at the time of such ownership, use, or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage ~~or trust deed note~~ or conditional sale contract or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

G. Director or officer of a domestic corporation. In any action or proceeding against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office

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as a director or officer.

H. Taxes or assessments. In any action or proceeding for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state.

I. Insurance or insurers. In any action or proceeding which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property, or risk and in addition either:

I.(1) The person, property, or risk ^{insured} was located in this state at the time of the promise; or

I.(2) The person, property, or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

I.(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property, or risk insured was located.

J. Securities. In any action or proceeding arising under the Oregon Securities Law, including an action or proceeding brought by the Corporation Commissioner, against:

J.(1) An applicant for registration or registrant, and any person who offers or sells a security in this State, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; or

J.(2) Any person, a resident or nonresident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

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K. Certain marital and domestic relations actions.

K.(1) In any action to determine a question of status instituted under ORS Chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state; or

K.(2) In any action to enforce personal obligations arising under ORS Chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or country before filing of such action; but ~~if~~ if an action to enforce personal obligations arising under ORS Chapter 106 or 107 is not commenced within one year following the date ^{on} which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

K.(3) In a filiation proceeding under ORS Chapter 109, when the act or acts of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

L. Other minimum contacts. In an action or proceeding otherwise arising out of some minimum contacts by the defendant with this state where, under the circumstances, it is fair and reasonable to require the defendant to come to this state to defend an action. The minimum contacts referred to in this section shall be deemed sufficient, notwithstanding a failure to satisfy the requirement of sections (B. ~~B. 1~~ ^{through 2, K.}) of this rule, so long as the prosecution of the action against a defendant in this state is not

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inconsistent with the Constitution of this state or the Constitution of the United States.

M. Personal representative. In any action or proceeding against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in section B. ^{through} ~~to~~ L. would have furnished a basis for jurisdiction over the deceased had the deceased been living and it is immaterial ~~under this subsection~~ whether the action or proceeding had been commenced during the lifetime of the deceased.

N. Joinder of claims in the same action. In any action or proceeding brought in reliance upon jurisdictional grounds stated in sections B. ^{through} ~~to~~ L., there cannot be joined in the same action or proceeding any other claim or cause against the defendant unless grounds exist under this ^{rule or other rule on statute} ~~section~~ for personal jurisdiction over the defendant as to the claim or cause to be joined.

BACKGROUND NOTE

For statutes relating to appointment of registered agents and consent to jurisdiction by engaging in activities within the state, see: 57.075, 57.485, 57.630, 57.700, 57.721, 57.822, 61.086, 61.471, 69.450, 69.500, 69.520, 91.578, 91.611, 92.375, 345.060, 486.521, 509.910, 648.061, 650.070, 650.075, 673.395, 696.250, 697.640, 703.120, 722.102, 731.324, 731.370, 744.055, 746.320, 746.330, 746.340, 746.350, 746.360, 746.370, 767.495. For jurisdiction in child custody matters, see ORS 109.700 et seq. and 110.75. ORS sections superseded: 14.010, 14.020, 14.035, 15.190, 15.200, 59.155.

COMMENT

This rule is designed to: (a) incorporate most provisions for personal jurisdiction in one rule; (b) to extend the exercise of jurisdiction over persons by Oregon courts to the permissible limit under the United States and Oregon Constitutions; and

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(c) to give a comprehensive and useful description of generally accepted grounds for personal jurisdiction. The rule deals only with amenability to jurisdiction. Methods of service of process are found in Rule 7. The basic form of the rule was drawn from Wisconsin Statutes § 801.05, modified to incorporate Oregon statutes and case law.

4 A. This section includes the traditional territorial jurisdiction that creates general amenability to jurisdiction without any reference to the subject matter of the action. In slightly different language the grounds for jurisdiction are all covered under existing Oregon statutes. See ORS 14.010, 14.020 and 15.080(6). Subsection A.(4) covers a situation where a defendant engages in such substantial activities in this state, that it would be subject to jurisdiction in any action whether or not the action arose out of activities in the state. See Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

4 B. This section recognizes that some other statutes or rules provide grounds for jurisdiction beyond this rule, including the separate provision relating to child custody cases in ORS Chapters 109 and 110.

Sections 4 C. through L. all require that the cause of action arise out of a described contact with this state.

4 C. and D. These sections apply in all tort and contractual claims for injury when either the acts giving rise to the injury occurred in Oregon or the injury took place in Oregon. The limits of the application of section 4 D. are the generally accepted limit of due process in this area. See: Hanson v. Denckla, 357 U.S. 235 (1958). These sections also eliminate any need for a separate Nonresident Motor Vehicle Act, ORS 15.190 and 15.200.

4 E. This section covers contractual activity. ~~See~~ ~~Shaffer v. Heitner~~

4 F. This is based on ORS 14.035 (1)(c). Coverage is extended to actions arising out of ownership, use or possession of personal property if the property was located in the state at the time the action arose. No provision is made for quasi in rem jurisdiction. See Shaffer v. Heitner, 433 U.S. 186 (1977).

4 G. The situation described is that covered in Shaffer v. Heitner, supra.

4 H. This was the situation covered in International Shoe Co. v. Washington, 326 U.S. 310 (1945).

4 I. This is an expanded version of ORS 14.035 (1)(d).

4 J. This section incorporates the provisions of ORS 59.155.

4 K. Subsection K.(1) should be read in conjunction with ORS 107.075. Subsection K.(2) is the same as ORS 14.035(2). Subsection K.(3) is not covered by existing statutes, but provides a basis for jurisdiction in the situation involved in State ex rel Poole v. Dorroh, 271 Or 410 (1975) and State ex rel McKenna v. Bennett, 28 Or App. 155 (1977).

4 L. This section is designed to extend jurisdiction in any case not covered in the specific sections, within the limits of due process. It is modeled upon Rule 4.2 of the Alabama Rules of Civil Procedure.

4 M. If a basis for jurisdiction over a decedent exists under sections 4 B. through L., this also provides a basis for jurisdiction over the personal representative.

4 N. This is the equivalent of ORS 14.035 (4).

RULE 5
JURISDICTION IN REM

A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem on the grounds stated in this section. A judgment in rem may affect the interests of a defendant in the status, property or thing acted upon only if a summons has been served upon the defendant pursuant to Rule 7. Jurisdiction in rem may be invoked in any of the following cases:

A. When the subject of the action of proceeding is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This ~~section~~ ^{also} shall apply when any such defendant is unknown.

B. When the action or proceeding is to foreclose, redeem from, or satisfy a mortgage, claim, or lien upon real property within this

Hollis memo
p 2
intro

OR other
Applicable
Statute on
Rule.

Hollis memo
p 2
Property
description

p4
Nov
13 memo
only
unknown

RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action or proceeding pursuant to Rule 7 under any of the following circumstances:

A. Local presence or status. In any action or proceeding whether arising within or without this state, against a defendant who when the action or proceeding is commenced:

A. (1) Is a natural person present within this state when served;

or

A. (2) Is a natural person domiciled within this state; or

A. (3) Is a corporation created by or under the laws of this state; or

A. (4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise.

A. (5) Has specifically consented to the exercise of personal jurisdiction over such defendant.

B. Special jurisdiction statutes. In any action or proceeding which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

C. Local act or omission. In any action or proceeding claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action or proceeding claiming

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injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

D.(2) Products, materials or things distributed, processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

E. Local services, goods or contracts. In any action or proceeding which:

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E.(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff or to guarantee payment for such services; or

E.(2) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant or payment for such services was guaranteed by the defendant; or

E.(3) Arises out of a promise made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ship from this state goods, documents of title, or other things of value or to guarantee payment for such goods, documents or things; or

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E.(4) Relates to goods, documents of title, or other things of

value shipped from this state by the plaintiff to the defendant on the defendant's order or direction or shipped to a third person when payment for such goods, documents or things was guaranteed by defendant; or

E.(5) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

F. Local property. In any action or proceeding which arises out of the ownership, use or possession of real property situated in this state or the ownership, use or possession of other tangible property, assets or things of value which were within this state at the time of such ownership, use or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage or trust deed note or conditional sale contract or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

G. Director or officer of a domestic corporation. In any action or proceeding against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

H. Taxes or assessments. In any action or proceeding for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state.

I. Insurance or insurers. In any action or proceeding which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property or risk and in

addition either:

I.(1) The person, property or risk was located in this state at the time of the promise; or

I.(2) The person, property or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

I.(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property or risk insured was located.

J. Securities. In any action or proceeding arising under the Oregon Securities Law, including an action or proceeding brought by the Corporation Commissioner, against

J.(1) An applicant for registration or registrant, and any person who offers or sells a security in this State, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; or

J.(2) Any person, a resident or non-resident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

K. Certain marital and domestic relations actions.

K.(1) In any action to determine a question of status instituted under ORS Chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state; or

K.(2) In any action to enforce personal obligations arising under ORS Chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or

country before filing of such action; but if an action to enforce personal obligations arising under ORS Chapter 106 or 107 is not commenced within one year following the date which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

K. (3) In a filiation proceeding under ORS Chapter 109, when the act or acts of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

L. Other minimum contacts. In an action or proceeding otherwise arising out of some minimum contacts by the defendant with this state where, under the circumstances, it is fair and reasonable to require the defendant to come to this state to defend an action. The minimum contacts referred to in this section shall be deemed sufficient, notwithstanding a failure to satisfy the requirement of sections B. to L. of this rule, so long as the prosecution of the action against a defendant in this state is not inconsistent with the Constitution of this state or the Constitution of the United States.

M. Personal representative. In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in sections B. to L. would have furnished a basis for jurisdiction over the deceased had he been living and it is immaterial under this subsection whether the action had been commenced during the lifetime of the deceased.

N. Joinder of claims in the same action. In any action brought in reliance upon jurisdictional grounds stated in sections B. to L., there cannot be joined in the same action any other claim or cause against the

defendant unless grounds exist under this section for personal jurisdiction over the defendant as to the claim or cause to be joined.

BACKGROUND NOTE

For statutes relating to appointment of registered agents and consent to jurisdiction by engaging in activities within the state, see: 57.075, 57.485, 57.630, 57.700, 57.721, 57.822, 61.086, 61.471, 69.450, 69.520, 91.611, 92.375.

For jurisdiction in child custody matters, see ORS 109.700 et seq. and 110.75.

ORS sections superseded: 14.010, 14.020, 14.035, 15.190, 15.200, 59.155.

COMMENT

This rule is designed to: (a) bring together all provisions for personal jurisdiction, except for child custody cases, in one rule; (b) to extend the exercise of jurisdiction over persons by Oregon courts to the permissible limit under the United States and Oregon Constitutions; and (3) to give a comprehensive and useful description of generally accepted grounds for personal jurisdiction. The rule deals only with amenability to jurisdiction. Methods of service of process are found in Rule 7. The basic form of the rule was drawn from Wisconsin Statutes § 801.05, modified to incorporate Oregon statutes and case law.

4 A. This section includes the traditional territorial jurisdiction that creates general amenability to jurisdiction without any reference to the subject matter of the action. In slightly different language they are all covered under existing Oregon statutes. See ORS 14.010, 14.020 and 15.080(6). Subsection A.(4) covers a situation where a defendant engages in such substantial activities in this state, that it would be subject to jurisdiction in any action whether or not the action arose out of activities in the state. See Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

4 B. This section recognizes the possibility that future statutes or rules will provide for basis of jurisdiction beyond this rule and the existence of a separate provision relating to child custody cases in ORS Chapters 109 and 110.

Sections 4 C. through L. all require that the cause of action arise out of a described contact with this state.

4 C. and D. These sections apply in all tort and contractual claims for injury when either the acts giving rise to the injury occurred in Oregon or the injury took place in Oregon. The limits of the application of section 4 D. are the generally accepted limit of due process in this area. See: Hanson v. Denckla, 357 U.S. 235 (1958). These sections also eliminate any need for a separate Nonresident Motor Vehicle Act, ORS 15.190 and 15.200.

4 E. This section covers contractual activity.

4 F. This is based on ORS 14.035 (1)(c). Coverage is extended to actions arising out of ownership, use or possession of personal property if the property was located in the state at the time the action arose. No provision is made for quasi-in-rem jurisdiction. See Shaffer v. Heitner, 433 U.S. 186 (1977).

4 G. The situation described is that covered in Shaffer v. Heitner, supra.

4 H. This was the situation covered in International Shoe Co. v. Washington, 326 U.S. 310 (1945).

4 I. This is an expanded version of ORS 14.035 (1)(d).

4 J. This section incorporates the provisions of ORS 59.155.

4 K. Subsection J.(1) should be read in conjunction with ORS 107.075. Subsection J.(2) is the same as ORS 14.035(2). Subsection J.(3) is not covered by existing statutes, but provides a basis for jurisdiction in the situation involved in State ex rel Poole v. Dorroh, 271 Or 410 (1975) and State ex rel McKenna v. Bennett, 28 Or App. 155 (1977).

4 L. This section is designed to extend jurisdiction in any case not covered in the specific sections, within the limits of due process. It is modeled upon Rule 4.2 of the Alabama Rules of Civil Procedure.

4 M. If a basis for jurisdiction over a decedent exists under sections 4 B. through L., this also provides a basis for jurisdiction over the personal representative.

4 N. This is the equivalent of ORS 14.035 (4).

RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action or proceeding pursuant to Rule 7 under any of the following circumstances:

A. Local presence or status. In any action or proceeding whether arising within or without this state, against a defendant who when the action or proceeding is commenced:

A.(1) Is a natural person present within this state when served; or

A.(2) Is a natural person domiciled within this state; or

A.(3) Is a corporation created by or under the laws of this state; or

A.(4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise; or

A.(5) Has specifically consented to the exercise of personal jurisdiction over such defendant.

B. Special jurisdiction statutes. In any action or proceeding which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

C. Local act or omission. In any action or proceeding claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action or proceeding claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

D.(2) Products, materials or things distributed, processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

E. Local services, goods or contracts. In any action or proceeding which:

E.(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff or to guarantee payment for such services; or

E.(2) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant or payment for such services was guaranteed by the defendant; or

E.(3) Arises out of a promise made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ship

from this state goods, documents of title, or other things of value or to guarantee payment for such goods, documents or things; or

E.(4) Relates to goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant on the defendant's order or direction or shipped to a third person when payment for such goods, documents or things was guaranteed by defendant; or

E.(5) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

F. Local property. In any action or proceeding which arises out of the ownership, use or possession of real property situated in this state or the ownership, use or possession of other tangible property, assets or things of value which were within this state at the time of such ownership, use or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage or trust deed note or conditional sale contract or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

G. Director or officer of a domestic corporation. In any action or proceeding against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office

as a director or officer.

H. Taxes or assessments. In any action or proceeding for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state.

I. Insurance or insurers. In any action or proceeding which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property or risk and in addition either:

I.(1) The person, property or risk was located in this state at the time of the promise; or

I.(2) The person, property or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

I.(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property or risk insured was located.

J. Securities. In any action or proceeding arising under the Oregon Securities Law, including an action or proceeding brought by the Corporation Commissioner, against:

J.(1) An applicant for registration or registrant, and any person who offers or sells a security in this State, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; or

J.(2) Any person, a resident or nonresident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

K. Certain marital and domestic relations actions.

K.(1) In any action to determine a question of status instituted under ORS Chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state; or

K.(2) In any action to enforce personal obligations arising under ORS Chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or country before filing of such action; but if an action to enforce personal obligations arising under ORS Chapter 106 or 107 is not commenced within one year following the date which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

K.(3) In a filiation proceeding under ORS Chapter 109, when the act or acts of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

L. Other minimum contacts. In an action or proceeding otherwise arising out of some minimum contacts by the defendant with this state where, under the circumstances, it is fair and reasonable to require the defendant to come to this state to defend an action. The minimum contacts referred to in this section shall be deemed sufficient, notwithstanding a failure to satisfy the requirement of sections B. to L. of this rule, so long as the prosecution of the action against a defendant in this state is not

inconsistent with the Constitution of this state or the Constitution of the United States.

M. Personal representative. In any action or proceeding against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in section B. to L. would have furnished a basis for jurisdiction over the deceased had the deceased been living and it is immaterial under this subsection whether the action or proceeding had been commenced during the lifetime of the deceased.

N. Joinder of claims in the same action. In any action or proceeding brought in reliance upon jurisdictional grounds stated in sections B. to L., there cannot be joined in the same action or proceeding any other claim or cause against the defendant unless grounds exist under this section for personal jurisdiction over the defendant as to the claim or cause to be joined.

BACKGROUND NOTE

For statutes relating to appointment of registered agents and consent to jurisdiction by engaging in activities within the state, see: 57.075, 57.485, 57.630, 57.700, 57.721, 57.822, 61.086, 61.471, 69.450, 69.500, 69.520, 91.578, 91.611, 92.375, 345.060, 486.521, 509.910, 648.061, 650.070, 650.075, 673.395, 696.250, 697.640, 703.120, 722.102, 731.324, 731.370, 744.055, 746.320, 746.330, 746.340, 746.350, 746.360, 746.370, 767.495. For jurisdiction in child custody matters, see ORS 109.700 et seq. and 110.75. ORS sections superseded: 14.010, 14.020, 14.035, 15.190, 15.200, 59.155.

COMMENT

This rule is designed to: (a) incorporate most provisions for personal jurisdiction in one rule; (b) to extend the exercise of jurisdiction over persons by Oregon courts to the permissible limit under the United States and Oregon Constitutions; and

(c) to give a comprehensive and useful description of generally accepted grounds for personal jurisdiction. The rule deals only with amenability to jurisdiction. Methods of service of process are found in Rule 7. The basic form of the rule was drawn from Wisconsin Statutes § 801.05, modified to incorporate Oregon statutes and case law.

4 A. This section includes the traditional territorial jurisdiction that creates general amenability to jurisdiction without any reference to the subject matter of the action. In slightly different language the grounds for jurisdiction are all covered under existing Oregon statutes. See ORS 14.010, 14.020 and 15.080(6). Subsection A.(4) covers a situation where a defendant engages in such substantial activities in this state, that it would be subject to jurisdiction in any action whether or not the action arose out of activities in the state. See Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

4 B. This section recognizes that some other statutes or rules provide grounds for jurisdiction beyond this rule, including the separate provision relating to child custody cases in ORS Chapters 109 and 110.

Sections 4 C. through L. all require that the cause of action arise out of a described contact with this state.

4 C. and D. These sections apply in all tort and contractual claims for injury when either the acts giving rise to the injury occurred in Oregon or the injury took place in Oregon. The limits of the application of section 4 D. are the generally accepted limit of due process in this area. See: Hanson v. Denckla, 357 U.S. 235 (1958). These sections also eliminate any need for a separate Nonresident Motor Vehicle Act, ORS 15.190 and 15.200.

4 E. This section covers contractual activity.

4 F. This is based on ORS 14.035 (1)(c). Coverage is extended to actions arising out of ownership, use or possession of personal property if the property was located in the state at the time the action arose. No provision is made for quasi in rem jurisdiction. See Shaffer v. Heitner, 433 U.S. 186 (1977).

4 G. The situation described is that covered in Shaffer v. Heitner, supra.

4 H. This was the situation covered in International Shoe Co. v. Washington, 326 U.S. 310 (1945).

4 I. This is an expanded version of ORS 14.035 (1)(d).

4 J. This section incorporates the provisions of ORS 59.155.

4 K. Subsection K.(1) should be read in conjunction with ORS 107.075. Subsection K.(2) is the same as ORS 14.035(2). Subsection K.(3) is not covered by existing statutes, but provides a basis for jurisdiction in the situation involved in State ex rel Poole v. Dorroh, 271 Or 410 (1975) and State ex rel McKenna v. Bennett, 28 Or App. 155 (1977).

4 L. This section is designed to extend jurisdiction in any case not covered in the specific sections, within the limits of due process. It is modeled upon Rule 4.2 of the Alabama Rules of Civil Procedure.

4 M. If a basis for jurisdiction over a decedent exists under sections 4 B. through L., this also provides a basis for jurisdiction over the personal representative.

4 N. This is the equivalent of ORS 14.035 (4).

RULE 5 JURISDICTION IN REM

A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem on the grounds stated in this section. A judgment in rem may affect the interests of a defendant in the status, property or thing acted upon only if a summons has been served upon the defendant pursuant to Rule 7. Jurisdiction in rem may be invoked in any of the following cases:

A. When the subject of the action or proceeding is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This subsection shall apply when any such defendant is unknown.

B. When the action or proceeding is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real property within this

RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a ^{Party} ~~person~~ served in an action or proceeding pursuant to Rule 7 under any of the following circumstances:

A. Local presence or status. In any action ~~or proceeding~~ whether arising within or without this state, against a defendant who when the action ~~or proceeding~~ is commenced:

A.(1) Is a natural person present within this state when served; or

A.(2) Is a natural person domiciled within this state; or

A.(3) Is a corporation created by or under the laws of this state; or

A.(4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise; or

A.(5) Has ^{expressly} specifically consented to the exercise of personal jurisdiction over such defendant.

B. Special jurisdiction statutes. In any action ~~or proceeding~~ ^{or rules} which may be brought under statutes/of this state that specifically confer grounds for personal jurisdiction over the defendant.

C. Local act or omission. In any action ~~or proceeding~~ claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action ~~or proceeding~~ claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

D.(2) Products, materials, or things distributed, processed, serviced, or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

E. Local services, goods or contracts. In any action or proceeding which:

E.(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state, ~~or~~ to pay for services to be performed in this state by the plaintiff, or to guarantee payment for such services; or

E.(2) Arises out of services actually performed for the plaintiff by the defendant within this state, ^(out) or services actually performed for the defendant by the plaintiff within this state, if such performance within this state was authorized or ratified by the defendant or payment for such services was guaranteed by the defendant; or

E.(3) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ~~ship~~ ^{send}

from this state goods, documents of title, or other things of value or to guarantee payment for such goods, documents, or things; or

E.(4) Relates to goods, documents of title, or other things of value ^{sent} shipped from this state by the plaintiff to the defendant on the defendant's order or direction or ^{sent} shipped to a third person when payment for such goods, documents, or things was guaranteed by defendant; or

E.(5) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

F. Local property. In any action ~~or proceeding~~ which arises out of the ownership, use, or possession of real property situated in this state or the ownership, use, or possession of other tangible property, assets, or things of value which were within this state at the time of such ownership, use, or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage, ~~or trust deed note or~~ conditional sale contract, or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

G. Director or officer of a domestic corporation. In any action ~~or proceeding~~ against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office

as a director or officer.

H. Taxes or assessments. In any action or ~~proceeding~~ for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state.

I. Insurance or insurers. In any action ~~or proceeding~~ which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property or risk and in addition either:

I.(1) The person, property, or risk [✓] insured was located in this state at the time of the promise; or

I.(2) The person, property, or risk [✓] insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

I.(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property or risk insured was located.

J. Securities. In any action ~~or proceeding~~ arising under the Oregon Securities Law, including an action ~~or proceeding~~ brought by the Corporation Commissioner, against:

J.(1) An applicant for registration or registrant, and any person who offers or sells a security in this State, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; or

J.(2) Any person, a resident or nonresident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

K. Certain marital and domestic relations actions.

K.(1) In any action to determine a question of status instituted under ORS Chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state; or

K.(2) In any action to enforce personal obligations arising under ORS Chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or country before filing of such action; but ^(out) if an action to enforce personal obligations arising under ORS Chapter 106 or 107 is not commenced within one year following the date which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

K.(3) In a filiation proceeding under ORS Chapter 109, when the act or acts of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

Actions

L. Other ~~minimum contacts~~ actions. ~~In an action or proceeding otherwise arising out of some minimum contacts by the defendant with this state where, under the circumstances, it is fair and reasonable to require the defendant to come to this state to defend an action. The minimum contacts referred to in this section shall be deemed sufficient,~~ Notwithstanding a failure to satisfy the requirement of sections B. ^{through K.} of this rule, ^{in any action where} as long as the prosecution of the action against a defendant in this state is not

inconsistent with the Constitution of this state or the Constitution of the United States.

M. Personal representative. In any action or proceeding against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in section B. ~~to~~ L. would have furnished a basis for jurisdiction over the deceased had the deceased been living, ~~and~~ ^{through} it is immaterial ~~under this subsection~~ whether the action ~~or proceeding~~ ^{is} ~~had been~~ commenced during the lifetime of the deceased.

N. Joinder of claims in the same action. In any action ~~or proceeding~~ brought in reliance upon jurisdictional grounds stated in sections B. ~~to~~ L., there cannot be joined in the same action or proceeding any other claim or cause against the defendant ^{through} unless grounds exist under this ~~section~~ ^{rule, or other rule or statute,} for personal jurisdiction over the defendant as to the claim or cause to be joined.

O. Defendant defined. For purposes of this rule and Rules 5 and 6, "defendant" includes any party subject to the jurisdiction of the court.

COMMENT

This rule is designed ~~to~~ ^{to}: (a) incorporate most provisions for personal jurisdiction in one rule; (b) to extend the exercise of jurisdiction over persons by Oregon courts to the permissible limit under the United States and Oregon Constitutions; and (c) to give a comprehensive and useful description of generally accepted grounds for personal jurisdiction. The rule deals only with amenability to jurisdiction. Methods of service of process are found in ORCP 7. The basic form of the rule was drawn from Wisconsin Statutes § 801.05, modified to incorporate Oregon statutes and case law.

The Council recognizes that ultimately the permissible exercise of personal jurisdiction will be defined by court action interpreting constitutional limits. Where such limits presently are not well defined, persons relying upon bases of jurisdiction described specifically in the rule must always recognize the possibility of future court action defining the limits of personal jurisdiction. For example, where two non-residents contracted outside the state under ORCP 4 E.(1) or (2) and no action took place in the state, there is no controlling case deciding that a mere promise to act in Oregon is a sufficient minimum contact. As another example, future cases might limit the territorial bases of jurisdiction in ORCP 4 A. if the trend of Shaffer v. Heitner, 433 U.S. 186 (1977) continues. The intent of the Council was to extend personal jurisdiction to the extent permitted by the federal or state constitutions and not foreclose an attempt to exercise personal jurisdiction merely because no rule or procedure of the state authorized such jurisdiction.

4 A. This section includes the traditional territorial jurisdiction that creates general amenability to jurisdiction without any reference to the subject matter of the action. In slightly different language the grounds for jurisdiction are all covered under existing Oregon statutes. See ORS 14.010, 14.020 and 15.080(6). Subsection A.(4) covers a situation where a defendant engages in such substantial activities in this state, that it would be subject to jurisdiction in any action whether or not the action arose out of activities in the state. See Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

4 B. This section recognizes that some other statutes or rules provide grounds for jurisdiction beyond this rule, including the separate provision relating to child custody cases in ORS Chapters 109 and 110. The rules do not provide for service of process on state officials, but, for the time being, the Council has not attempted to eliminate the separate statutes providing for service of process on state officials. The Council intends to study possible ways to integrate these bases of jurisdiction and service methods with ORCP 4 and 7. See: 57.075, 57.485, 56.630, 57.700, 57.721, 57.822, 59.155, 61.086, 61.471, 69.450, 69.500, 69.520, 91.578, 91.611, 92.375, 345.060, 486.521, 509.910, 648.061, 650.070, 650.075, 673.695, 696.250, 697.640, 703.120, 722.102, 731.324, 731.370, 731.434, 744.055, 746.320, 746.330, 746.340, 746.350, 746.360, 746.370, 767.495. For jurisdiction in child custody matters, see ORS 109.700 et seq. and 110.175.

Sections 4 C. through L. all require that the cause of action arise out of a described contact with this state.

4 C. and D. These sections apply in all tort and contractual claims for injury when either the acts giving rise to the injury occurred in Oregon or the injury took place in Oregon. The limits of the application of section 4 D. are the generally accepted limit of due process in this area. See: Hanson v. Denckla, 357 U.S. 235 (1958). These sections also eliminate any need for a separate Nonresident Motor Vehicle Act, ORS 15.190 and 15.200.

4 E. This section is designed to provide maximum flexibility for minimum contacts arising in situations of contractual activity and provision of goods and services.

4 F. This is based on ORS 14.035 (1)(c). Coverage is extended to actions arising out of ownership, use or possession of personal property if the property was located in the state at the time the action arose. No provision is made for quasi in rem jurisdiction. See Shaffer v. Heitner, ~~493 U.S. 186 (1977)~~, supra.

4 G. The situation described is that covered in Shaffer v. Heitner, supra.

4 H. This was the situation covered in International Shoe Co. v. Washington, 326 U.S. 310 (1945).

4 I. This is an expanded version of ORS 14.035 (1)(d).

4 J. This section incorporates the provisions of ORS 59.155. Note, ORS 59.155 has not been superseded, and the method of service of process described in that section may still be used.

4 K. Subsection K.(1) should be read in conjunction with ORS 107.075. Subsection K.(2) is the same as ORS 14.035(2). Subsection K.(3) is not covered by existing statutes, but provides a basis for jurisdiction in the situation involved in State ex rel Poole v. Dorroh, 271 Or 410 (1975) and State ex rel McKenna v. Bennett, 28 Or App. 155 (1977).

4 K. Subsection K.(1) should be read in conjunction with ORS 107.075. Subsection K.(2) is the same as ORS 14.035(2). Subsection K.(3) is not covered by existing statutes, but provides a basis for jurisdiction in the situation involved in State ex rel Poole v. Dorroh, 271 Or 410 (1975) and State ex rel McKenna v. Bennett, 28 Or App. 155 (1977).

4 L. This section is designed to extend jurisdiction in any case not covered in the specific sections, within the limits of due process. ~~It is modeled upon Rule 4.2 of the Alabama Rules of Civil Procedure.~~

4 M. If a basis for jurisdiction over a decedent exists under sections 4 B. through L., this also provides a basis for jurisdiction over the personal representative.

4 N. This is the equivalent of ORS 14.035 (4).

40. This makes clear that the rules for jurisdiction apply to any party where the court is seeking to exercise jurisdiction of such party, whatever formal designation is given to that party.

RULE 5
JURISDICTION IN REM

A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem on the grounds stated in this section. A judgment in rem may affect the interests of a defendant in the status, property, or thing acted upon only if a summons has been served upon the defendant pursuant to Rule 7 ^{or other applicable rule or statute}. Jurisdiction in rem may be invoked in any of the following cases:

A. When the subject of the action of ~~proceeding~~ is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This ~~sub~~^{also}section shall apply when any such defendant is unknown.

B. When the action ~~or proceeding~~ is to foreclose, redeem from, or satisfy a mortgage, claim, or lien upon real property within this state.

~~C. When the action or proceeding is to declare property within this state a public nuisance.~~

COMMENT

With the comprehensive personal jurisdiction provided by ORCP 4, this rule probably will not be needed in most cases. No provision is made for quasi in rem jurisdiction. Shaffer v. Heitner, 433 U.S. 186 (1977).

based solely upon the seizure of defendant's property

RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a party served in an action pursuant to Rule 7 under any of the following circumstances:

A. Local presence or status. In any action, whether arising within or without this state, against a defendant who when the action is commenced:

A.(1) Is a natural person present within this state when served; or

A.(2) Is a natural person domiciled within this state; or

A.(3) Is a corporation created by or under the laws of this state; or

A.(4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise; or

A.(5) Has expressly consented to the exercise of personal jurisdiction over such defendant.

B. Special jurisdiction statutes. In any action which may be brought under statutes or rules of this state that specifically confer grounds for personal jurisdiction over the defendant.

C. Local act or omission. In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

D.(2) Products, materials, or things distributed, processed, serviced, or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

E. Local services, goods, or contracts. In any action or proceeding which:

E.(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state, to pay for services to be performed in this state by the plaintiff, or to guarantee payment for such services; or

E.(2) Arises out of services actually performed for the plaintiff by the defendant within this state or services actually performed for the defendant by the plaintiff within this state, if such performance within this state was authorized or ratified by the defendant or payment for such services was guaranteed by the defendant; or

E.(3) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to send from

this state goods, documents of title, or other things of value or to guarantee payment for such goods, documents, or things; or

E.(4) Relates to goods, documents of title, or other things of value sent from this state by the plaintiff to the defendant on the defendant's order or direction or sent to a third person when payment for such goods, documents, or things was guaranteed by defendant; or

E.(5) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

F. Local property. In any action which arises out of the ownership, use, or possession of real property situated in this state or the ownership, use, or possession of other tangible property, assets, or things of value which were within this state at the time of such ownership, use, or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage, conditional sale contract, or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

G. Director or officer of a domestic corporation. In any action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

H. Taxes or assessments. In any action for the collection of taxes or assessments levied, assessed, or otherwise imposed by a taxing authority of this state.

I. Insurance or insurers. In any action which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property, or risk and in addition either:

I.(1) The person, property, or risk insured was located in this state at the time of the promise; or

I.(2) The person, property, or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

I.(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property, or risk insured was located.

J. Securities. In any action arising under the Oregon Securities Law, including an action brought by the Corporation Commissioner, against:

J.(1) An applicant for registration or registrant, and any person who offers or sells a security in this State, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; or

J.(2) Any person, a resident or nonresident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

K. Certain marital and domestic relations actions.

K.(1) In any action to determine a question of status instituted under ORS Chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state; or

K.(2) In any action to enforce personal obligations arising under ORS Chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or country before filing of such action; but if an action to enforce personal obligations arising under ORS Chapter 106 or 107 is not commenced within one year following the date upon which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

K.(3) In a filiation proceeding under ORS Chapter 109, when the act or acts of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

L. Other actions. Notwithstanding a failure to satisfy the requirement of sections B. through K. of this rule, in any action where prosecution of the action against a defendant in this state is not inconsistent with the Constitution of this state or the Constitution of the United States.

M. Personal representative. In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in sections B. through L. would have furnished a basis for jurisdiction over the deceased had the deceased been living. It is immaterial whether the action is commenced during the lifetime of the deceased.

N. Joinder of claims in the same action. In any action brought in reliance upon jurisdictional grounds stated in sections B. through L., there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this rule, or other rule or statute, for personal jurisdiction over the defendant as to the claim or cause to be joined.

O. Defendant defined. For purposes of this rule and Rules 5 and 6, "defendant" includes any party subject to the jurisdiction of the court.

COMMENT

This rule is designed: (a) to incorporate most provisions for personal jurisdiction in one rule; (b) to extend the exercise of jurisdiction over persons by Oregon courts to the permissible limit under the United States and Oregon Constitutions; and (c) to give a comprehensive and useful description of generally accepted grounds for personal jurisdiction. The rule deals only with amenability to jurisdiction. Methods of service of process are found in ORCP 7. The basic form of the rule was drawn from Wisconsin Statutes § 801.05, modified to incorporate Oregon statutes and case law.

The Council recognizes that ultimately the permissible exercise of personal jurisdiction will be defined by court action interpreting constitutional limits. Where such limits presently are not well defined, persons relying upon bases of jurisdiction described specifically in the rule must always recognize the possibility of future court action defining the limits of personal jurisdiction. For example, where two nonresidents contracted outside the state under ORCP 4 E.(1) or (3) and no action took place in

the state, there is no controlling case deciding that a mere promise to act in Oregon is a sufficient minimum contact. As another example, future cases might limit the territorial bases of jurisdiction in ORCP 4 A. if the trend of Shaffer v. Heitner, 433 U.S. 186 (1977), continues. The intent of the Council was to extend personal jurisdiction to the extent permitted by the federal or state constitutions and not foreclose an attempt to exercise personal jurisdiction merely because no rule or procedure of the state authorized such jurisdiction.

4 A. This section includes the traditional territorial jurisdiction that creates general amenability to jurisdiction without any reference to the subject matter of the action. In slightly different language the grounds for jurisdiction are all covered under existing Oregon statutes. See ORS 14.010, 14.020, and 15.080(6). Subsection A.(4) covers a situation where a defendant engages in such substantial activities in this state, that it would be subject to jurisdiction in any action whether or not the action arose out of activities in the state. See Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

4 B. This section recognizes that some other statutes or rules provide grounds for jurisdiction beyond this rule, including the separate provision relating to child custody cases in ORS Chapters 109 and 110. For jurisdiction in child custody matters, see ORS 109.700 et seq. and 110.175. The rules do not provide for service of process on state officials, but, for the time being, the Council has not attempted to eliminate the separate statutes providing for service of process on state officials. The Council intends to study possible ways to integrate these bases of jurisdiction and service methods with ORCP 4 and 7. See: 57.075, 57.485, 57.630, 57.700, 57.721, 57.822, 59.155, 61.086, 61.471, 69.450, 69.500, 69.520, 91.578, 91.611, 92.375, 345.060, 486.521, 509.910, 648.061, 650.070, 650.075, 673.695, 696.250, 697.640, 703.120, 722.102, 731.324, 731.370, 731.434, 744.055, 746.320, 746.330, 746.340, 746.350, 746.360, 746.370, 767.495.

Sections 4 C. through L. all require that the cause of action arise out of a described contact with this state.

4 C. and D. These sections apply in all tort and contractual claims for injury when either the acts giving rise to the injury occurred in Oregon or the injury took place in Oregon. The limits of the application of section 4 D. are the generally accepted limit of due process in this area. See Hanson v. Denckla, 357 U.S. 235 (1958). These sections also eliminate any need for a separate Nonresident Motor Vehicle Act, ORS 15.190 and 15.200.

4 E. This section is designed to provide maximum flexibility for minimum contacts arising in situations of contractual activity and provision of goods and services.

4 F. This is based on ORS 14.035 (1)(c). Coverage is extended to actions arising out of ownership, use, or possession of personal property if the property was located in the state at the time the action arose. No provision is made for quasi in rem jurisdiction based solely upon seizure of property. See Shaffer v. Heitner, supra.

4 G. The situation described is that covered in Shaffer v. Heitner, supra. See ORS 722.102.

4 H. This was the situation covered in International Shoe Co. v. Washington, 326 U.S. 310 (1945).

4 I. This is an expanded version of ORS 14.035 (1)(d).

4 J. This section incorporates the provisions of ORS 59.155. Note, ORS 59.155 has not been superseded, and the method of service of process described in that section may still be used.

4 K. Subsection K.(1) should be read in conjunction with ORS 107.075. Subsection K.(2) is the same as ORS 14.035(2). Subsection K.(3) is not covered by existing statutes, but provides a basis for jurisdiction in the situation involved in State ex rel. Poole v. Dorroh, 271 Or 410 (1975), and State ex rel. McKenna v. Bennett, 28 Or App. 155 (1977).

4 L. This section is designed to extend jurisdiction in any case not covered in the specific sections, within the limits of due process.

4 M. If a basis for jurisdiction over a decedent exists under sections 4 B. through L., this also provides a basis for jurisdiction over the personal representative.

4 N. This is the equivalent of ORS 14.035 (4).

4 O. This makes clear that the rules for jurisdiction apply to any party where the court is seeking to exercise jurisdiction of such party, whatever formal designation is given to that party.

RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action or proceeding pursuant to Rule 7 under any of the following circumstances:

A. Local presence or status. In any action or proceeding whether arising within or without this state, against a defendant who when the action or proceeding is commenced:

A. (1) Is a natural person present within this state when served;

or

A. (2) Is a natural person domiciled within this state; or

A. (3) Is a corporation created by or under the laws of this state; or

A. (4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise.

A. (5) Has specifically consented to the exercise of personal jurisdiction over such defendant.

B. Special jurisdiction statutes. In any action or proceeding which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

C. Local act or omission. In any action or proceeding claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action or proceeding claiming

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injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

D.(2) Products, materials or things distributed, processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

E. Local services, goods or contracts. In any action or proceeding which:

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E.(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff or to guarantee payment for such services; or

E.(2) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant or payment for such services was guaranteed by the defendant; or

E.(3) Arises out of a promise made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ship from this state goods, documents of title, or other things of value or to guarantee payment for such goods, documents or things; or

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E.(4) Relates to goods, documents of title, or other things of

value shipped from this state by the plaintiff to the defendant on the defendant's order or direction or shipped to a third person when payment for such goods, documents or things was guaranteed by defendant; or

E.(5) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

F. Local property. In any action or proceeding which arises out of the ownership, use or possession of real property situated in this state or the ownership, use or possession of other tangible property, assets or things of value which were within this state at the time of such ownership, use or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage or trust deed note or conditional sale contract or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

G. Director or officer of a domestic corporation. In any action or proceeding against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

H. Taxes or assessments. In any action or proceeding for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state.

I. Insurance or insurers. In any action or proceeding which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property or risk and in

addition either:

I.(1) The person, property or risk was located in this state at the time of the promise; or

I.(2) The person, property or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

I.(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property or risk insured was located.

J. Securities. In any action or proceeding arising under the Oregon Securities Law, including an action or proceeding brought by the Corporation Commissioner, against

J.(1) An applicant for registration or registrant, and any person who offers or sells a security in this State, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; or

J.(2) Any person, a resident or non-resident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

K. Certain marital and domestic relations actions.

K.(1) In any action to determine a question of status instituted under ORS Chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state; or

K.(2) In any action to enforce personal obligations arising under ORS Chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or

country before filing of such action; but if an action to enforce personal obligations arising under ORS Chapter 106 or 107 is not commenced within one year following the date which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

K. (3) In a filiation proceeding under ORS Chapter 109, when the act or acts of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

L. Other minimum contacts. In an action or proceeding otherwise arising out of some minimum contacts by the defendant with this state where, under the circumstances, it is fair and reasonable to require the defendant to come to this state to defend an action. The minimum contacts referred to in this section shall be deemed sufficient, notwithstanding a failure to satisfy the requirement of sections B. to L. of this rule, so long as the prosecution of the action against a defendant in this state is not inconsistent with the Constitution of this state or the Constitution of the United States.

M. Personal representative. In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in sections B. to L. would have furnished a basis for jurisdiction over the deceased had he been living and it is immaterial under this subsection whether the action had been commenced during the lifetime of the deceased.

N. Joinder of claims in the same action. In any action brought in reliance upon jurisdictional grounds stated in sections B. to L., there cannot be joined in the same action any other claim or cause against the

defendant unless grounds exist under this section for personal jurisdiction over the defendant as to the claim or cause to be joined.

BACKGROUND NOTE

For statutes relating to appointment of registered agents and consent to jurisdiction by engaging in activities within the state, see: 57.075, 57.485, 57.630, 57.700, 57.721, 57.822, 61.086, 61.471, 69.450, 69.520, 91.611, 92.375.

For jurisdiction in child custody matters, see ORS 109.700 et seq. and 110.75.

ORS sections superseded: 14.010, 14.020, 14.035, 15.190, 15.200, 59.155.

COMMENT

This rule is designed to: (a) bring together all provisions for personal jurisdiction, except for child custody cases, in one rule; (b) to extend the exercise of jurisdiction over persons by Oregon courts to the permissible limit under the United States and Oregon Constitutions; and (3) to give a comprehensive and useful description of generally accepted grounds for personal jurisdiction. The rule deals only with amenability to jurisdiction. Methods of service of process are found in Rule 7. The basic form of the rule was drawn from Wisconsin Statutes § 801.05, modified to incorporate Oregon statutes and case law.

4 A. This section includes the traditional territorial jurisdiction that creates general amenability to jurisdiction without any reference to the subject matter of the action. In slightly different language they are all covered under existing Oregon statutes. See ORS 14.010, 14.020 and 15.080(6). Subsection A.(4) covers a situation where a defendant engages in such substantial activities in this state, that it would be subject to jurisdiction in any action whether or not the action arose out of activities in the state. See Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

4 B. This section recognizes the possibility that future statutes or rules will provide for basis of jurisdiction beyond this rule and the existence of a separate provision relating to child custody cases in ORS Chapters 109 and 110.

Sections 4 C. through L. all require that the cause of action arise out of a described contact with this state.

4 C. and D. These sections apply in all tort and contractual claims for injury when either the acts giving rise to the injury occurred in Oregon or the injury took place in Oregon. The limits of the application of section 4 D. are the generally accepted limit of due process in this area. See: Hanson v. Denckla, 357 U.S. 235 (1958). These sections also eliminate any need for a separate Nonresident Motor Vehicle Act, ORS 15.190 and 15.200.

4 E. This section covers contractual activity.

4 F. This is based on ORS 14.035 (1)(c). Coverage is extended to actions arising out of ownership, use or possession of personal property if the property was located in the state at the time the action arose. No provision is made for quasi-in-rem jurisdiction. See Shaffer v. Heitner, 433 U.S. 186 (1977).

4 G. The situation described is that covered in Shaffer v. Heitner, supra.

4 H. This was the situation covered in International Shoe Co. v. Washington, 326 U.S. 310 (1945).

4 I. This is an expanded version of ORS 14.035 (1)(d).

4 J. This section incorporates the provisions of ORS 59.155.

4 K. Subsection J.(1) should be read in conjunction with ORS 107.075. Subsection J.(2) is the same as ORS 14.035(2). Subsection J.(3) is not covered by existing statutes, but provides a basis for jurisdiction in the situation involved in State ex rel Poole v. Dorroh, 271 Or 410 (1975) and State ex rel McKenna v. Bennett, 28 Or App. 155 (1977).

4 L. This section is designed to extend jurisdiction in any case not covered in the specific sections, within the limits of due process. It is modeled upon Rule 4.2 of the Alabama Rules of Civil Procedure.

4 M. If a basis for jurisdiction over a decedent exists under sections 4 B. through L., this also provides a basis for jurisdiction over the personal representative.

4 N. This is the equivalent of ORS 14.035 (4).

RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action or proceeding pursuant to Rule 7 under any of the following circumstances:

A. Local presence or status. In any action or proceeding whether arising within or without this state, against a defendant who when the action or proceeding is commenced:

A.(1) Is a natural person present within this state when served; or

A.(2) Is a natural person domiciled within this state; or

A.(3) Is a corporation created by or under the laws of this state; or

A.(4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise; or

A.(5) Has specifically consented to the exercise of personal jurisdiction over such defendant.

B. Special jurisdiction statutes. In any action or proceeding which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

C. Local act or omission. In any action or proceeding claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action or proceeding claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

D.(2) Products, materials or things distributed, processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

E. Local services, goods or contracts. In any action or proceeding which:

E.(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff or to guarantee payment for such services; or

E.(2) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant or payment for such services was guaranteed by the defendant; or

E.(3) Arises out of a promise made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ship

from this state goods, documents of title, or other things of value or to guarantee payment for such goods, documents or things; or

E.(4) Relates to goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant on the defendant's order or direction or shipped to a third person when payment for such goods, documents or things was guaranteed by defendant; or

E.(5) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

F. Local property. In any action or proceeding which arises out of the ownership, use or possession of real property situated in this state or the ownership, use or possession of other tangible property, assets or things of value which were within this state at the time of such ownership, use or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage or trust deed note or conditional sale contract or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

G. Director or officer of a domestic corporation. In any action or proceeding against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office

as a director or officer.

H. Taxes or assessments. In any action or proceeding for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state.

I. Insurance or insurers. In any action or proceeding which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property or risk and in addition either:

I.(1) The person, property or risk was located in this state at the time of the promise; or

I.(2) The person, property or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

I.(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property or risk insured was located.

J. Securities. In any action or proceeding arising under the Oregon Securities Law, including an action or proceeding brought by the Corporation Commissioner, against:

J.(1) An applicant for registration or registrant, and any person who offers or sells a security in this State, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; or

J.(2) Any person, a resident or nonresident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

K. Certain marital and domestic relations actions.

K.(1) In any action to determine a question of status instituted under ORS Chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state; or

K.(2) In any action to enforce personal obligations arising under ORS Chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or country before filing of such action; but if an action to enforce personal obligations arising under ORS Chapter 106 or 107 is not commenced within one year following the date which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

K.(3) In a filiation proceeding under ORS Chapter 109, when the act or acts of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

L. Other minimum contacts. In an action or proceeding otherwise arising out of some minimum contacts by the defendant with this state where, under the circumstances, it is fair and reasonable to require the defendant to come to this state to defend an action. The minimum contacts referred to in this section shall be deemed sufficient, notwithstanding a failure to satisfy the requirement of sections B. to L. of this rule, so long as the prosecution of the action against a defendant in this state is not

inconsistent with the Constitution of this state or the Constitution of the United States.

M. Personal representative. In any action or proceeding against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in section B. to L. would have furnished a basis for jurisdiction over the deceased had the deceased been living and it is immaterial under this subsection whether the action or proceeding had been commenced during the lifetime of the deceased.

N. Joinder of claims in the same action. In any action or proceeding brought in reliance upon jurisdictional grounds stated in sections B. to L., there cannot be joined in the same action or proceeding any other claim or cause against the defendant unless grounds exist under this section for personal jurisdiction over the defendant as to the claim or cause to be joined.

BACKGROUND NOTE

For statutes relating to appointment of registered agents and consent to jurisdiction by engaging in activities within the state, see: 57.075, 57.485, 57.630, 57.700, 57.721, 57.822, 61.086, 61.471, 69.450, 69.500, 69.520, 91.578, 91.611, 92.375, 345.060, 486.521, 509.910, 648.061, 650.070, 650.075, 673.395, 696.250, 697.640, 703.120, 722.102, 731.324, 731.370, 744.055, 746.320, 746.330, 746.340, 746.350, 746.360, 746.370, 767.495. For jurisdiction in child custody matters, see ORS 109.700 et seq. and 110.75. ORS sections superseded: 14.010, 14.020, 14.035, 15.190, 15.200, 59.155.

COMMENT

This rule is designed to: (a) incorporate most provisions for personal jurisdiction in one rule; (b) to extend the exercise of jurisdiction over persons by Oregon courts to the permissible limit under the United States and Oregon Constitutions; and

(c) to give a comprehensive and useful description of generally accepted grounds for personal jurisdiction. The rule deals only with amenability to jurisdiction. Methods of service of process are found in Rule 7. The basic form of the rule was drawn from Wisconsin Statutes § 801.05, modified to incorporate Oregon statutes and case law.

4 A. This section includes the traditional territorial jurisdiction that creates general amenability to jurisdiction without any reference to the subject matter of the action. In slightly different language the grounds for jurisdiction are all covered under existing Oregon statutes. See ORS 14.010, 14.020 and 15.080(6). Subsection A.(4) covers a situation where a defendant engages in such substantial activities in this state, that it would be subject to jurisdiction in any action whether or not the action arose out of activities in the state. See Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

4 B. This section recognizes that some other statutes or rules provide grounds for jurisdiction beyond this rule, including the separate provision relating to child custody cases in ORS Chapters 109 and 110.

Sections 4 C. through L. all require that the cause of action arise out of a described contact with this state.

4 C. and D. These sections apply in all tort and contractual claims for injury when either the acts giving rise to the injury occurred in Oregon or the injury took place in Oregon. The limits of the application of section 4 D. are the generally accepted limit of due process in this area. See: Hanson v. Denckla, 357 U.S. 235 (1958). These sections also eliminate any need for a separate Nonresident Motor Vehicle Act, ORS 15.190 and 15.200.

4 E. This section covers contractual activity.

4 F. This is based on ORS 14.035 (1)(c). Coverage is extended to actions arising out of ownership, use or possession of personal property if the property was located in the state at the time the action arose. No provision is made for quasi in rem jurisdiction. See Shaffer v. Heitner, 433 U.S. 186 (1977).

4 G. The situation described is that covered in Shaffer v. Heitner, supra.

4 H. This was the situation covered in International Shoe Co. v. Washington, 326 U.S. 310 (1945).

4 I. This is an expanded version of ORS 14.035 (1)(d).

4 J. This section incorporates the provisions of ORS 59.155.

4 K. Subsection K.(1) should be read in conjunction with ORS 107.075. Subsection K.(2) is the same as ORS 14.035(2). Subsection K.(3) is not covered by existing statutes, but provides a basis for jurisdiction in the situation involved in State ex rel Poole v. Dorroh, 271 Or 410 (1975) and State ex rel McKenna v. Bennett, 28 Or App. 155 (1977).

4 L. This section is designed to extend jurisdiction in any case not covered in the specific sections, within the limits of due process. It is modeled upon Rule 4.2 of the Alabama Rules of Civil Procedure.

4 M. If a basis for jurisdiction over a decedent exists under sections 4 B. through L., this also provides a basis for jurisdiction over the personal representative.

4 N. This is the equivalent of ORS 14.035 (4).

RULE 5 JURISDICTION IN REM

A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem on the grounds stated in this section. A judgment in rem may affect the interests of a defendant in the status, property or thing acted upon only if a summons has been served upon the defendant pursuant to Rule 7. Jurisdiction in rem may be invoked in any of the following cases:

A. When the subject of the action or proceeding is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This subsection shall apply when any such defendant is unknown.

B. When the action or proceeding is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real property within this

RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a ^{Party} ~~person~~ served in an action or proceeding pursuant to Rule 7 under any of the following circumstances:

A. Local presence or status. In any action ~~or proceeding~~ whether arising within or without this state, against a defendant who when the action ~~or proceeding~~ is commenced:

A.(1) Is a natural person present within this state when served; or

A.(2) Is a natural person domiciled within this state; or

A.(3) Is a corporation created by or under the laws of this state; or

A.(4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise; or

A.(5) Has ^{expressly} specifically consented to the exercise of personal jurisdiction over such defendant.

B. Special jurisdiction statutes. In any action ~~or proceeding~~ ^{or rules} which may be brought under statutes/of this state that specifically confer grounds for personal jurisdiction over the defendant.

C. Local act or omission. In any action ~~or proceeding~~ claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action ~~or proceeding~~ claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

D.(2) Products, materials, or things distributed, processed, serviced, or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

E. Local services, goods or contracts. In any action or proceeding which:

E.(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state, ~~or~~ to pay for services to be performed in this state by the plaintiff, or to guarantee payment for such services; or

E.(2) Arises out of services actually performed for the plaintiff by the defendant within this state, ^(out) or services actually performed for the defendant by the plaintiff within this state, if such performance within this state was authorized or ratified by the defendant or payment for such services was guaranteed by the defendant; or

E.(3) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ~~ship~~ ^{send}

from this state goods, documents of title, or other things of value or to guarantee payment for such goods, documents, or things; or

E.(4) Relates to goods, documents of title, or other things of value ^{s-ent} shipped from this state by the plaintiff to the defendant on the defendant's order or direction or ^{sent} shipped to a third person when payment for such goods, documents, or things was guaranteed by defendant; or

E.(5) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

F. Local property. In any action ~~or proceeding~~ which arises out of the ownership, use, or possession of real property situated in this state or the ownership, use, or possession of other tangible property, assets, or things of value which were within this state at the time of such ownership, use, or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage, ~~or trust deed note or~~ conditional sale contract, or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

G. Director or officer of a domestic corporation. In any action ~~or proceeding~~ against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office

as a director or officer.

H. Taxes or assessments. In any action or ~~proceeding~~ for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state.

I. Insurance or insurers. In any action ~~or proceeding~~ which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property or risk and in addition either:

I.(1) The person, property, or risk [✓] insured was located in this state at the time of the promise; or

I.(2) The person, property, or risk [✓] insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

I.(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property or risk insured was located.

J. Securities. In any action ~~or proceeding~~ arising under the Oregon Securities Law, including an action ~~or proceeding~~ brought by the Corporation Commissioner, against:

J.(1) An applicant for registration or registrant, and any person who offers or sells a security in this State, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; or

J.(2) Any person, a resident or nonresident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

K. Certain marital and domestic relations actions.

K.(1) In any action to determine a question of status instituted under ORS Chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state; or

K.(2) In any action to enforce personal obligations arising under ORS Chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or country before filing of such action; but ^(out) if an action to enforce personal obligations arising under ORS Chapter 106 or 107 is not commenced within one year following the date which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

K.(3) In a filiation proceeding under ORS Chapter 109, when the act or acts of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

Actions

L. Other ~~minimum contacts~~ actions. ~~In an action or proceeding otherwise arising out of some minimum contacts by the defendant with this state where, under the circumstances, it is fair and reasonable to require the defendant to come to this state to defend an action. The minimum contacts referred to in this section shall be deemed sufficient,~~ Notwithstanding a failure to satisfy the requirement of sections B. ^{through K.} or E. of this rule, ^{in any action where} as long as the prosecution of the action against a defendant in this state is not

inconsistent with the Constitution of this state or the Constitution of the United States.

M. Personal representative. In any action or proceeding against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in section B. ~~to~~ ^{through} L. would have furnished a basis for jurisdiction over the deceased had the deceased been living, ~~and~~ ^{It is} immaterial ~~under this subsection~~ whether the action ~~or proceeding~~ ^{is} ~~had been~~ commenced during the lifetime of the deceased.

N. Joinder of claims in the same action. In any action ~~or proceeding~~ brought in reliance upon jurisdictional grounds stated in sections B. ~~to~~ ^{through} L., there cannot be joined in the same action or proceeding any other claim or cause against the defendant ^{rule, or other rule or statute,} unless grounds exist under this ~~section~~ for personal jurisdiction over the defendant as to the claim or cause to be joined.

O. Defendant defined. For purposes of this rule and Rules 5 and 6, "defendant" includes any party subject to the jurisdiction of the court.

COMMENT

This rule is designed ~~to~~ ^{to}: (a) incorporate most provisions for personal jurisdiction in one rule; (b) to extend the exercise of jurisdiction over persons by Oregon courts to the permissible limit under the United States and Oregon Constitutions; and (c) to give a comprehensive and useful description of generally accepted grounds for personal jurisdiction. The rule deals only with amenability to jurisdiction. Methods of service of process are found in ORCP 7. The basic form of the rule was drawn from Wisconsin Statutes § 801.05, modified to incorporate Oregon statutes and case law.

The Council recognizes that ultimately the permissible exercise of personal jurisdiction will be defined by court action interpreting constitutional limits. Where such limits presently are not well defined, persons relying upon bases of jurisdiction described specifically in the rule must always recognize the possibility of future court action defining the limits of personal jurisdiction. For example, where two non-residents contracted outside the state under ORCP 4 E.(1) or (2) and no action took place in the state, there is no controlling case deciding that a mere promise to act in Oregon is a sufficient minimum contact. As another example, future cases might limit the territorial bases of jurisdiction in ORCP 4 A. if the trend of Shaffer v. Heitner, 433 U.S. 186 (1977) continues. The intent of the Council was to extend personal jurisdiction to the extent permitted by the federal or state constitutions and not foreclose an attempt to exercise personal jurisdiction merely because no rule or procedure of the state authorized such jurisdiction.

4 A. This section includes the traditional territorial jurisdiction that creates general amenability to jurisdiction without any reference to the subject matter of the action. In slightly different language the grounds for jurisdiction are all covered under existing Oregon statutes. See ORS 14.010, 14.020 and 15.080(6). Subsection A.(4) covers a situation where a defendant engages in such substantial activities in this state, that it would be subject to jurisdiction in any action whether or not the action arose out of activities in the state. See Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

4 B. This section recognizes that some other statutes or rules provide grounds for jurisdiction beyond this rule, including the separate provision relating to child custody cases in ORS Chapters 109 and 110. The rules do not provide for service of process on state officials, but, for the time being, the Council has not attempted to eliminate the separate statutes providing for service of process on state officials. The Council intends to study possible ways to integrate these bases of jurisdiction and service methods with ORCP 4 and 7. See: 57.075, 57.485, 56.630, 57.700, 57.721, 57.822, 59.155, 61.086, 61.471, 69.450, 69.500, 69.520, 91.578, 91.611, 92.375, 345.060, 486.521, 509.910, 648.061, 650.070, 650.075, 673.695, 696.250, 697.640, 703.120, 722.102, 731.324, 731.370, 731.434, 744.055, 746.320, 746.330, 746.340, 746.350, 746.360, 746.370, 767.495. For jurisdiction in child custody matters, see ORS 109.700 et seq. and 110.175.

Sections 4 C. through L. all require that the cause of action arise out of a described contact with this state.

4 C. and D. These sections apply in all tort and contractual claims for injury when either the acts giving rise to the injury occurred in Oregon or the injury took place in Oregon. The limits of the application of section 4 D. are the generally accepted limit of due process in this area. See: Hanson v. Denckla, 357 U.S. 235 (1958). These sections also eliminate any need for a separate Nonresident Motor Vehicle Act, ORS 15.190 and 15.200.

4 E. This section is designed to provide maximum flexibility for minimum contacts arising in situations of contractual activity and provision of goods and services.

4 F. This is based on ORS 14.035 (1)(c). Coverage is extended to actions arising out of ownership, use or possession of personal property if the property was located in the state at the time the action arose. No provision is made for quasi in rem jurisdiction. See Shaffer v. Heitner, ~~493 U.S. 186 (1977)~~, supra.

4 G. The situation described is that covered in Shaffer v. Heitner, supra.

4 H. This was the situation covered in International Shoe Co. v. Washington, 326 U.S. 310 (1945).

4 I. This is an expanded version of ORS 14.035 (1)(d).

4 J. This section incorporates the provisions of ORS 59.155. Note, ORS 59.155 has not been superseded, and the method of service of process described in that section may still be used.

4 K. Subsection K.(1) should be read in conjunction with ORS 107.075. Subsection K.(2) is the same as ORS 14.035(2). Subsection K.(3) is not covered by existing statutes, but provides a basis for jurisdiction in the situation involved in State ex rel Poole v. Dorroh, 271 Or 410 (1975) and State ex rel McKenna v. Bennett, 28 Or App. 155 (1977).

4 K. Subsection K.(1) should be read in conjunction with ORS 107.075. Subsection K.(2) is the same as ORS 14.035(2). Subsection K.(3) is not covered by existing statutes, but provides a basis for jurisdiction in the situation involved in State ex rel Poole v. Dorroh, 271 Or 410 (1975) and State ex rel McKenna v. Bennett, 28 Or App. 155 (1977).

4 L. This section is designed to extend jurisdiction in any case not covered in the specific sections, within the limits of due process. ~~It is modeled upon Rule 4.2 of the Alabama Rules of Civil Procedure.~~

4 M. If a basis for jurisdiction over a decedent exists under sections 4 B. through L., this also provides a basis for jurisdiction over the personal representative.

4 N. This is the equivalent of ORS 14.035 (4).

40. This makes clear that the rules for jurisdiction apply to any party where the court is seeking to exercise jurisdiction of such party, whatever formal designation is given to that party.

RULE 5
JURISDICTION IN REM

A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem on the grounds stated in this section. A judgment in rem may affect the interests of a defendant in the status, property, or thing acted upon only if a summons has been served upon the defendant pursuant to Rule 7 ^{or other applicable rule or statute}. Jurisdiction in rem may be invoked in any of the following cases:

A. When the subject of the action of ~~proceeding~~ is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This ~~sub~~ ^{also} section shall apply when any such defendant is unknown.

B. When the action ~~or proceeding~~ is to foreclose, redeem from, or satisfy a mortgage, claim, or lien upon real property within this state.

~~C. When the action or proceeding is to declare property within this state a public nuisance.~~

COMMENT

With the comprehensive personal jurisdiction provided by ORCP 4, this rule probably will not be needed in most cases. No provision is made for quasi in rem jurisdiction. Shaffer v. Heitner, 433 U.S. 186 (1977).

based solely upon the seizure of defendant's property

RULE 4

PERSONAL JURISDICTION

A court of this state having jurisdiction of the subject matter has jurisdiction over a party served in an action pursuant to Rule 7 under any of the following circumstances:

A. Local presence or status. In any action, whether arising within or without this state, against a defendant who when the action is commenced:

A.(1) Is a natural person present within this state when served; or

A.(2) Is a natural person domiciled within this state; or

A.(3) Is a corporation created by or under the laws of this state; or

A.(4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise; or

A.(5) Has expressly consented to the exercise of personal jurisdiction over such defendant.

B. Special jurisdiction statutes. In any action which may be brought under statutes or rules of this state that specifically confer grounds for personal jurisdiction over the defendant.

C. Local act or omission. In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

D.(2) Products, materials, or things distributed, processed, serviced, or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

E. Local services, goods, or contracts. In any action or proceeding which:

E.(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state, to pay for services to be performed in this state by the plaintiff, or to guarantee payment for such services; or

E.(2) Arises out of services actually performed for the plaintiff by the defendant within this state or services actually performed for the defendant by the plaintiff within this state, if such performance within this state was authorized or ratified by the defendant or payment for such services was guaranteed by the defendant; or

E.(3) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to send from

this state goods, documents of title, or other things of value or to guarantee payment for such goods, documents, or things; or

E.(4) Relates to goods, documents of title, or other things of value sent from this state by the plaintiff to the defendant on the defendant's order or direction or sent to a third person when payment for such goods, documents, or things was guaranteed by defendant; or

E.(5) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

F. Local property. In any action which arises out of the ownership, use, or possession of real property situated in this state or the ownership, use, or possession of other tangible property, assets, or things of value which were within this state at the time of such ownership, use, or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage, conditional sale contract, or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

G. Director or officer of a domestic corporation. In any action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

H. Taxes or assessments. In any action for the collection of taxes or assessments levied, assessed, or otherwise imposed by a taxing authority of this state.

I. Insurance or insurers. In any action which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property, or risk and in addition either:

I.(1) The person, property, or risk insured was located in this state at the time of the promise; or

I.(2) The person, property, or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

I.(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property, or risk insured was located.

J. Securities. In any action arising under the Oregon Securities Law, including an action brought by the Corporation Commissioner, against:

J.(1) An applicant for registration or registrant, and any person who offers or sells a security in this State, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; or

J.(2) Any person, a resident or nonresident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

K. Certain marital and domestic relations actions.

K.(1) In any action to determine a question of status instituted under ORS Chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state; or

K.(2) In any action to enforce personal obligations arising under ORS Chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or country before filing of such action; but if an action to enforce personal obligations arising under ORS Chapter 106 or 107 is not commenced within one year following the date upon which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

K.(3) In a filiation proceeding under ORS Chapter 109, when the act or acts of sexual intercourse which resulted in the birth of the child are alleged to have taken place in this state and the child resides in this state.

L. Other actions. Notwithstanding a failure to satisfy the requirement of sections B. through K. of this rule, in any action where prosecution of the action against a defendant in this state is not inconsistent with the Constitution of this state or the Constitution of the United States.

M. Personal representative. In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in sections B. through L. would have furnished a basis for jurisdiction over the deceased had the deceased been living. It is immaterial whether the action is commenced during the lifetime of the deceased.

N. Joinder of claims in the same action. In any action brought in reliance upon jurisdictional grounds stated in sections B. through L., there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this rule, or other rule or statute, for personal jurisdiction over the defendant as to the claim or cause to be joined.

O. Defendant defined. For purposes of this rule and Rules 5 and 6, "defendant" includes any party subject to the jurisdiction of the court.

COMMENT

This rule is designed: (a) to incorporate most provisions for personal jurisdiction in one rule; (b) to extend the exercise of jurisdiction over persons by Oregon courts to the permissible limit under the United States and Oregon Constitutions; and (c) to give a comprehensive and useful description of generally accepted grounds for personal jurisdiction. The rule deals only with amenability to jurisdiction. Methods of service of process are found in ORCP 7. The basic form of the rule was drawn from Wisconsin Statutes § 801.05, modified to incorporate Oregon statutes and case law.

The Council recognizes that ultimately the permissible exercise of personal jurisdiction will be defined by court action interpreting constitutional limits. Where such limits presently are not well defined, persons relying upon bases of jurisdiction described specifically in the rule must always recognize the possibility of future court action defining the limits of personal jurisdiction. For example, where two nonresidents contracted outside the state under ORCP 4 E.(1) or (3) and no action took place in

the state, there is no controlling case deciding that a mere promise to act in Oregon is a sufficient minimum contact. As another example, future cases might limit the territorial bases of jurisdiction in ORCP 4 A. if the trend of Shaffer v. Heitner, 433 U.S. 186 (1977), continues. The intent of the Council was to extend personal jurisdiction to the extent permitted by the federal or state constitutions and not foreclose an attempt to exercise personal jurisdiction merely because no rule or procedure of the state authorized such jurisdiction.

4 A. This section includes the traditional territorial jurisdiction that creates general amenability to jurisdiction without any reference to the subject matter of the action. In slightly different language the grounds for jurisdiction are all covered under existing Oregon statutes. See ORS 14.010, 14.020, and 15.080(6). Subsection A.(4) covers a situation where a defendant engages in such substantial activities in this state, that it would be subject to jurisdiction in any action whether or not the action arose out of activities in the state. See Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

4 B. This section recognizes that some other statutes or rules provide grounds for jurisdiction beyond this rule, including the separate provision relating to child custody cases in ORS Chapters 109 and 110. For jurisdiction in child custody matters, see ORS 109.700 et seq. and 110.175. The rules do not provide for service of process on state officials, but, for the time being, the Council has not attempted to eliminate the separate statutes providing for service of process on state officials. The Council intends to study possible ways to integrate these bases of jurisdiction and service methods with ORCP 4 and 7. See: 57.075, 57.485, 57.630, 57.700, 57.721, 57.822, 59.155, 61.086, 61.471, 69.450, 69.500, 69.520, 91.578, 91.611, 92.375, 345.060, 486.521, 509.910, 648.061, 650.070, 650.075, 673.695, 696.250, 697.640, 703.120, 722.102, 731.324, 731.370, 731.434, 744.055, 746.320, 746.330, 746.340, 746.350, 746.360, 746.370, 767.495.

Sections 4 C. through L. all require that the cause of action arise out of a described contact with this state.

4 C. and D. These sections apply in all tort and contractual claims for injury when either the acts giving rise to the injury occurred in Oregon or the injury took place in Oregon. The limits of the application of section 4 D. are the generally accepted limit of due process in this area. See Hanson v. Denckla, 357 U.S. 235 (1958). These sections also eliminate any need for a separate Nonresident Motor Vehicle Act, ORS 15.190 and 15.200.

4 E. This section is designed to provide maximum flexibility for minimum contacts arising in situations of contractual activity and provision of goods and services.