

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:

Hollis memo  
p 2  
intro

OR other applicable statute on Rule.

Hollis memo  
p 2  
Property description

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~~ <sup>also</sup> 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

p4  
Nov  
1/3 memo  
only  
unknown

5  
RULE ~~4B~~.

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 ~~4~~<sup>7</sup> (~~Oregon Rule of Civil Procedure 4~~). Jurisdiction in rem may be invoked in any of the following cases:

A. When the subject of the action <sup>is</sup> ~~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 is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real <sup>property</sup> ~~estate~~ within this state.

C. When the action <sup>is</sup> ~~is~~ to declare property within this state a public nuisance.

Rule 5  
Jurisdiction Or Rem

Background.

ORS Chapter Keyword: 29.040

Comment

Rule 6.

Pen & W/O Summary.

Comment.

Rule 5.

COMMENT:

~~This is a more specific description of In Rem Jurisdiction than that~~  
~~in Ors 14.010 and 14.020.~~ With the comprehensive personal jurisdiction provided  
by rule 4 ~~XXXXXXX~~ this rule probably will <sup>needed in most cases</sup> not be frequently used. No provision  
is made for ~~Quasi-in-rem~~ Jurisdiction. Shaffer v Heitner 97 S. Ct. 2569 (1977)

Rule 6

COMMENT:

<sup>describes the</sup>  
This ~~covers the type of~~ voluntary submission to jurisdiction presently  
covered <sup>in</sup> by Ors 14.010 and 14.020 by reference to jurisdiction when a defendant  
X "appears". The last sentence ~~XXXXXX~~ provides for a limited appearance  
~~XXXXXXXX~~ by a defendant when the ~~only basis for~~ jurisdiction is in rem.

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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 ~~sub~~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 Rule 4, this rule probably will not be needed in most cases. No provision is made for quasi-in-rem jurisdiction. Shaffer v. Heitner, ~~97 S.Ct. 2569~~ (1977).

433 U.S. 186

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 Rule 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). *Case to serve of Property -*

RULE 6

PERSONAL JURISDICTION  
WITHOUT SERVICE OF SUMMONS

A court of this state having jurisdiction of the subject matter may, without a summons having been served upon a person, exercise jurisdiction in an action or proceeding over a person with respect to any counterclaim asserted against that person in an action or proceeding which the person has commenced in this state and also over any person who appears in the action or proceeding and waives the defense of lack of jurisdiction over the person, insufficiency of summons or process, or insufficiency of service of summons or process, as provided in Rule 21 G. Where jurisdiction is exercised under Rule 5, a defendant may appear in an action or proceeding and defend on the merits, without being subject to personal jurisdiction by virtue of this rule.

P 12  
new  
13 memo  
person.

Halk's  
memo  
p 2  
Subsection  
0724.

COMMENT

This describes the voluntary submission to jurisdiction presently covered in ORS 14.010 and 14.020 by reference to jurisdiction when a defendant "appears." The last sentence provides for a limited appearance by a defendant when the jurisdiction is in rem.

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A. When the subject of the action 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 is to foreclose, redeem from, or satisfy a mortgage, claim, or lien upon real property within this state.

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 based solely upon the seizure of defendant's property. Shaffer v. Heitner, 433 U.S. 186 (1977).

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COMMENT

This describes the voluntary submission to jurisdiction presently covered in ORS 14.010 and 14.020 by reference to jurisdiction when a defendant "appears." The last sentence provides for a limited appearance by a defendant when the jurisdiction is in rem.

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.

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

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based solely upon the seizure of defendant's property

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