Chapter 121

Actions and Suits Affecting Decedents' Estates and Administration

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ACTIONS

121.010 What causes of action do not survive. A cause of action arising out of an injury to the person dies with the person of either party, except as provided in ORS 30.020 and 30.080; but the provisions of ORS 30.020 and 121.010 to 121.100 shall not abate the action mentioned in ORS 13.090, or defeat or prejudice the right of action given by ORS 30.010.

121.020 What causes of action do survive; parties. All other causes of action, by one person against another, whether arising on contract or otherwise, survive to the personal representatives of the former and against the personal representatives of the latter. When the cause of action survives, the executors or administrators may maintain an action thereon against the party against whom the cause of action accrued, or after his death against his personal representatives.

121.030 Several representatives regarded as one person. In an action against several executors or administrators, they shall all be considered as one person representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action, although the summons is served only on part of them, in the same manner and with like effect as if served on all, except as provided in ORS 121.040.

121.040 Judgment against representative on failure to answer as evidence of assets in his hands. When a judgment is given against an executor or administrator for want of answer, such judgment is not to be deemed evidence of assets in his hands, unless it appears that the complaint alleged assets, and that the summons was served upon him.

121.050 Contradiction or avoidance of inventory as evidence. (1) In an action against executors or administrators, in which the fact of their having administered the estate of their testator or intestate, or any part therof, is put in issue, and the inventory of the property of the deceased returned by them is given in evidence, the same may be contradicted or avoided by evidence:

(a) That any property has been omitted in the inventory, or was not returned therein at its full value or that since the return thereof has increased in value;

(b) That such property has perished or been lost, without the fault of the executors or administrators; or that it has been fairly and duly sold by them at a less price than the value so returned; or that, since the return of the inventory, such property has deteriorated in value.

(2) In such action the defendant can not be charged for any things in action, specified in their inventory, unless it appears that they have been collected or with due diligence might have been.

121.060 Executor of his own wrong. No person is liable to an action as executor of his own wrong, for having taken, received or interfered with the property of a deceased person; but is responsible to the executors or administrators of such deceased person for the value of all property so taken or received and for all injury caused by his interference with the estate of the deceased.

121.070 Authority of executor of executor. An executor of an executor has no authority as such to commence or maintain an action or proceeding relating to the estate of the testator of the first executor or to take any charge or control thereof.

121.080 Time within which actions against representative may be commenced. Except as otherwise specially prescribed by law, an action may be commenced against an executor or administrator at any time after the expiration of 120 days from the granting of letters testamentary or of administration, and until the final settlement of the estate and discharge of such executor or administrator from his trust, and not otherwise.

121.090 Action against representative not to be commenced until claim is presented and rejected; liability on claim presented after six months from appointment of representative. An action against an executor or administrator shall not be commenced until the claim of the plaintiff has been duly presented to the executor or administrator, and by him rejected. If the claim is presented after the expiration of the period of six months from and after the date of the published notice of his appointment, the executor or administrator, in an action therefor, is liable only to the extent of the assets in his hands at the time the summons is served upon him and allocable to the payment of

such claim under and pursuant to the provisions of ORS 116.510.

121.100 Provisional remedies against executors or administrators. In an action against an executor or administrator, as such, the provisional remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate; but for his own acts as such executor or administrator such remedies shall be allowed for the same causes, in like manner and with like effect as in actions at law generally.

121.110 to 121.200 [Reserved for expansion]

SUITS

121.210 Application of ORS 121.030 to 121.100 to suits; "debt" defined. (1) The provisions of ORS 121.030 to 121.100 apply to suits by and against executors and administrators, except as in ORS 121.210 to 121.370 otherwise or specially provided.

(2) The word "debt," as used in ORS 121.210 to 121.370 includes all claims for the payment of money, whether liquidated or otherwise, which survive against the personal representatives of the deceased, as provided in ORS 121.220.

121.220 Causes of suit surviving; parties; extent of liability of heirs, legatees, devisees and next of kin. (1) All causes of suit by one person against another, however arising, survive to the personal representative of the former and against the personal representatives of the latter. When the cause of suit survives, the executors or administrators may maintain a suit thereon against the party against whom the cause of suit accrued, or after his death against his personal representatives.

(2) In cases where the next of kin, legatees, heirs, and devisees are liable for the debts of their ancestors, as provided in ORS 121.210 to 121.370, they are liable therefor without other priority of preference than such ancestors would be.

121.230 Liability of distributees for debts of intestate; joinder. The next of kin of a deceased person are liable to a suit by a creditor of the estate to recover the distributive shares received out of such estate, or to so much thereof as may be necessary to satisfy his debt. The suit may be against all the next of kin jointly, or against any one or more of them severally.

121.240 Amount of recovery; apportionment. In a suit pursuant to ORS 121.230 the plaintiff may recover the value of all the assets received by all the defendants in the suit if necessary to satisfy his debt. The amount of the recovery shall be apportioned among the defendants, in proportion to the value of the assets received by each; and no allowance or deduction shall be made from such amount on account of their being other next of kin to whom assets have also been delivered.

121.250 Suits for contribution among next of kin. Any one of the next of kin against whom a recovery is had pursuant to ORS 121.240 may maintain a suit against all the other next of kin of the deceased person, to whom any such assets have been delivered jointly, or against any of them separately, for a just and equal contribution, and may recover of each defendant such amount as shall be in the same proportion to the whole sum collected of the plaintiff as the value of the assets delivered to such defendant bore to the value of all the assets delivered to all the next of kin of the deceased.

121.260 Liability of legatee for debts of testator; joinder; proof required; apportionment. (1) Legatees are liable to a suit by a creditor of the testator to recover the value of any legacy received by them. The suit may be maintained against all the legatees jointly, or against any one or more of them severally. In such suit the plaintiff shall not recover unless he shows:

(a) That no assets were delivered by the executor or administrator of the testator to his next of kin; or,

(b) That the value of such assets has been recovered by some other creditor; or,

(c) That such assets are not sufficient to satisfy the demand of the plaintiff.

(2) In the last case he shall recover only the deficiency. The whole amount which the plaintiff recovers shall be apportioned among all the legatees of the testator, in proportion to the value of their legacies respectively, and only such proportion shall be recovered of each legatee.

121.270 Apportionment of costs among next of kin or legatees. In a suit against several next of kin or legatees jointly for assets delivered to them, if a recovery is had against such next of kin or legatees, the cost of such suit shall be apportioned among the

several defendants in proportion to the amount recovered against each of them.

121.280 Satisfaction of decree against several next of kin or legatees. A decree against several next of kin or legatees shall be satisfied as to any one of them by the payment or satisfaction of the amount recovered against such defendant.

121.290 Liability of heirs and devisees for debts of decedent; parties. Heirs and devisees are liable to a suit by a creditor of a deceased person to recover the debt of their ancestor or testator to the extent of the value of any real property inherited by or devised to them. If such suit is against the heirs, all the heirs who are liable shall be made parties to the suit.

121.300 Liability of heirs qualified and limited. The heirs are not liable for the debt, unless it appears that the personal assets of the deceased were insufficient to discharge it, or that after due proceedings the creditor has been unable to collect the debt from the personal representatives of the deceased, or from his next of kin or legatees. If the personal assets were sufficient to pay a part of the debt, or in case a part thereof has been collected, the heirs of such deceased person are liable for the residue.

121.310 Heirs' liability when will charges realty with debt. ORS 121.300 shall not affect the liability of heirs for a debt of their ancestor where such debt was by his will expressly charged exclusively on the real property descended to such heirs, or where such debt is by the will expressly directed to be paid out of the real property descended before resorting to the personal property.

121.320 Liability of devisee qualified. A devisee is not liable to the creditor of his testator unless it appears that the personal assets of the testator and the real property descended to his heirs were insufficient to discharge the debt, or unless it appears that after due proceedings the creditor has been unable to recover the debt or any part thereof from the personal representatives of the testator, or from his next of kin, legatees, or heirs.

121.330 Liability of devisee limited to value of property devised. In either of the cases specified in ORS 121.320 the amount of the deficiency of the personal assets and of the real property descended, to satisfy the debt of the plaintiff or the amount which the plaintiff may have failed to recover from the personal representatives of the testator, his next of kin, legatees and heirs, may be recovered of the devisees of the testator, to the extent of the value of the real property devised to them respectively.

121.340 Liability of devisee when will charges realty with debt. ORS 121.320 and 121.330 shall not affect the liability of devisees for a debt of their testator when such debt was by his will expressly charged exclusively upon the real property devised, or by the terms of the will made payable by the devisee or out of the real property devised, before resorting to the personal property or to any other real property descended or devised.

121.350 Enforcement of decree against heir or devisee; preference as lien. A decree against an heir or devisee on account of the debt of his ancestor or testator may be enforced by execution against the real property shown to have descended to the heir or devisee, and not otherwise. Such decree shall have preference as a lien on such real property to any judgment or decree obtained against the heir or devisee on account of a debt or demand due in his own right.

121.360 Personal liability of heirs or devisees where property is aliened; liability of property aliened. When it appears in the suit, that before the commencement thereof the heir or devisee has aliened the real property descended to him, or any part thereof, he is personally liable for the value of the property so aliened, and a decree may be given against him therefor, to be enforced by execution, as if the decree were for his own debt. No real property aliened in good faith and for a valuable consideration by an heir or devisee before suit commenced against him is liable to an execution for the debt of his ancestor or testator, or in any manner affected by a decree therefor against such heir or devisee.

121.370 Apportionment of recovery against heirs and devisees. In a suit against several heirs jointly or several devisees jointly, the amount which the plaintiff recovers must be apportioned among all the heirs of the ancestor or devisees of the tes-

tator in proportion to the value of the real property descended or devised, and only such proportion can be recovered of each heir or devisee.

CHAPTERS 122 TO 125

[Reserved for expansion]