

## Chapter 33

### Special Proceedings

#### 33.010

##### NOTES OF DECISIONS

###### 1. In general

The right of trial by jury is not binding on the states in all cases of criminal contempt. *Nelson v. Holzman*, (1969) 300 F Supp 201.

Criminal contempt is a crime in the ordinary sense and in every fundamental respect. *Id.*

The summary procedure, long permissible in a narrow class of contempts in open court, is permissible in state courts in cases of petty contempt. *Id.*

There is no right of counsel requirement in a case of a petty contempt committed in the presence of the court. *Id.*

Inability without fault to obey a court order is a complete defense to a charge of contempt for failure to obey. *State v. O'Malley*, (1970) 255 Or 544, 469 P2d 36, rev'g 1 Or App 239, 461 P2d 832. Overruling *State v. O'Malley*, (1969) 248 Or 601, 435 P2d 812.

###### 2. Disobedience of judgment or decree

Acts and omissions deemed to be contempts are only those which are specified under this section and other sections hereof, and they can be punished only in the mode therein prescribed. *State v. Kaiser*, (1890) 20 Or 50, 23 P 964, 8 LRA 584; *Statter v. United States*, (1933) 66 F2d 819, 822.

If a stranger to an injunction has notice or knowledge of its terms, he is bound thereby and may be punished for contempt if he violates its provisions. *State v. Lavery*, (1897) 31 Or 77, 49 P 852.

A criminal contempt consists in disrespect of the court or disobedience of its process whereby the administration of justice is obstructed, or in any act or language of a person which tends to bring the court into disrespect. *State v. Downing*, (1901) 40 Or 309, 58 P 863, 66 P 917.

A civil contempt is a disobedience by a party of the order of a court or judge made for the benefit or advantage of another party to the proceedings. *Id.*

The fact that the court is without jurisdiction to entertain a pending case is no defense to a charge of contempt arising out of a publication tending to affect the court's judgment. *United States v. Toledo Newspaper Co.*, (1915) 220 Fed 458.

The taking of an appeal from the decree and the giving of supersedeas bond does not render the party immune, while the appeal is pending, from prosecution for contempt for a violation of the decree. *Treadgold v. Willard*, (1916) 81 Or 658, 160 P 803.

To constitute contempt, the act complained of must have been committed in relation to a judicial proceeding. *Statter v. United States*, (1933) 66 F2d 819.

Disobedience of circuit court order that defendant cause the State Game Commission to remove beavers from a creek within his premises was not contempt. *State v. Stewart*, (1940) 163 Or 585, 96 P2d 220.

The decree was for specific performance not an order to pay money. *Milwaukie Const. Co. v. Glens Falls Ins. Co.*, (1968) 389 F2d 364.

###### 3. Validity of judgment

One who has been enjoined by a decree from diverting waters is guilty of contempt when he directs others to divert the waters although he believes that the decree is invalid. *State v. Lavery*, (1897) 31 Or 77, 49 P 852.

While one cannot properly be punished for disobeying a void order, one can be punished for disobeying a voidable order. *State v. Downing*, (1901) 40 Or 309, 59 P 863, 66 P 917.

Orders which are uncertain and indefinite in their terms will not sustain a judgment of guilty in contempt proceedings. *State v. Bailey*, (1930) 132 Or 350, 285 P 809.

**FURTHER CITATIONS:** *State v. Brownell*, (1916) 79 Or 123, 154 P 428; *State v. Rogers*, (1928) 124 Or 656, 265 P 784; *State v. Hubble*, (1929) 128 Or 46, 273 P 395; *De Meyer v. Hurlburt*, (1932) 139 Or 507, 11 P2d 286; *Taylor v. Gladden*, (1962) 232 Or 599, 377 P2d 14; *State v. Anderson*, (1964) 239 Or 362, 397 P2d 838; *State ex rel. Oregon State Bar v. Lenske*, (1965) 243 Or 477, 405 P2d 510, 407 P2d 250; *State v. Edwards*, (1969) 252 Or 325, 446 P2d 659, 449 P2d 448.

**LAW REVIEW CITATIONS:** 15 OLR 79; 40 OLR 52; 43 OLR 110.

#### 33.020

##### NOTES OF DECISIONS

###### 1. In general

A civil contempt may be prosecuted in the cause out of which it arose. *State v. La Follett*, (1930) 132 Or 556, 287 P 82; *State v. Mart*, (1931) 135 Or 603, 283 P 23, 295 P 459.

The exclusive jurisdiction over contempts belongs to the court whose judgments or orders have been disobeyed, and can only be exercised during the term. *State v. McKinnon*, (1880) 8 Or 487.

The right to punish persons found guilty of contempt is a power which is incident to every court of record, and which may be exercised in the manner prescribed for the purpose of maintaining order and enforcing judgments and decrees. *State v. Sieber*, (1907) 49 Or 1, 88 P 313.

A court which has no criminal jurisdiction is authorized to punish contemnors for a violation of its orders, or for acts or conduct which tend to degrade such tribunal and to bring the administration of justice into reproach. *Id.*

The power to punish for contempt of court is inherent in all courts. *Rust v. Pratt*, (1937) 157 Or 505, 72 P2d 533.

###### 2. Penalties

Contempt proceedings are not proper where an attorney causes matter to be printed in a newspaper which criticizes or ridicules a court upon issues which have been decided and judgment passed upon. *State v. Kaiser*, (1890) 20 Or 50, 23 P 964.

Disobedience of process constitutes a criminal contempt, a conviction of which may be punished by fine or imprisonment or both. *State v. Sieber*, (1907) 49 Or 1, 88 P 313.

The provisions of subsection (1) limiting the court's power to punish for indirect contempt to \$100 in certain cases is an unreasonable limitation upon the court's inherent powers. *State ex rel. Oregon State Bar v. Lenske*, (1965) 243 Or 477, 405 P2d 510, 407 P2d 250, cert. denied, 384 US 943. *Contra*, *State v. Brownell*, (1916) 79 Or 123, 154 P 428.

Punishment for procuring witnesses to leave the state, fixed at three months in jail and a fine of \$250, was held to be excessive. *State v. Brownell*, (1916) 79 Or 123, 154 P 428.

An affidavit stating the facts is sufficient to authorize the imposition of a jail sentence for violation of a decree although there is no direct averment that the rights of the relator were defeated or prejudiced. *State v. Rogers*, (1928) 124 Or 656, 265 P 784.

Defendant prejudiced plaintiff's right by depriving her of her right to custody of the child. *State ex rel. Lemon v. Lemon*, (1964) 238 Or 446, 395 P2d 161.

The court had authority to substitute a valid sentence for the one that was void. *State v. Nelson*, (1967) 246 Or 321, 424 P2d 223, cert. denied, 389 US 1061.

A jail sentence was not authorized under subsection (1). *State v. Edwards*, (1968) 252 Or 325, 446 P2d 659, 449 P2d 448.

**FURTHER CITATIONS:** *State v. Rider*, (1915) 78 Or 318, 145 P 1056, 152 P 497; *Lenske v. Sercombe*, (1967) 266 F Supp 609.

**ATTY. GEN. OPINIONS:** Punishment for contempt in a justice of the peace court, 1944-46, p 320; enforcement of criminal judgment when defendant not in county, 1954-56, p 90.

**LAW REVIEW CITATIONS:** 40 OLR 61.

### 33.030

#### NOTES OF DECISIONS

A court may act summarily in a contempt proceeding when the acts constituting the contempt take place in the immediate view and presence of the court. *State v. Driscoll*, (1935) 151 Or 363, 50 P2d 581; *Rust v. Pratt*, (1937) 157 Or 505, 72 P2d 533.

Judgments of conviction for contempt should be based upon clear and specific findings of fact which should appear either in separate findings or in the judgment itself. *Oregon v. Yates*, (1956) 208 Or 491, 302 P2d 719; *State v. O'Malley*, (1967) 248 Or 601, 435 P2d 812.

The accused may be punished without trial and without other proof than the actual knowledge of the court of what occurred. *Taylor v. Gladden*, (1962) 232 Or 599, 377 P2d 14; *State v. Newton*, (1970) 2 Or App 417, 469 P2d 978, Sup Ct review denied.

The power of the court to punish for direct contempt is not derived from statute but is inherent in all courts. *Id.*

A defendant in a contempt proceeding is not entitled to a trial by jury. *Rust v. Pratt*, (1937) 157 Or 505, 72 P2d 533.

A direct contempt of court is the committing of some improper act in the presence of the court while in session. *Id.*

No pleadings are required in direct contempt for jurisdiction attaches immediately upon the contempt being committed. *Taylor v. Gladden*, (1962) 232 Or 599, 377 P2d 14.

Contempt proceedings in the presence of the jury may be unduly injurious to the rights of the accused. *State v. Howell*, (1964) 237 Or 382, 388 P2d 282.

**FURTHER CITATIONS:** *State v. Kaiser*, (1890) 20 Or 50, 23 P 964; *State v. Sieber*, (1907) 49 Or 1, 88 P 313; *State*

*v. Mart*, (1931) 135 Or 603, 293 P 23, 295 P 459; *Hixson v. Hixson*, (1953) 199 Or 574, 263 P2d 603; *State ex rel. Oregon State Bar v. Lenske*, (1965) 243 Or 477, 405 P2d 510, 407 P2d 250; *State v. O'Malley*, (1969) 1 Or App 239, 461 P2d 832, rev'd, 255 Or 544, 469 P2d 36.

**ATTY. GEN. OPINIONS:** Direct contempt, 1954-56, p 10; failure to appear as contempt, (1968) Vol 34, p 290.

### 33.040

#### NOTES OF DECISIONS

1. In general
2. The affidavit
  - (1) In general
  - (2) Content

#### 1. In general

Proceedings for the punishment of those accused of the violation of a decree are quasi criminal and the statutory provision relating thereto must be strictly complied with. *Trullinger v. Howe*, (1911) 58 Or 73, 113 P 4; *State v. Mount*, (1932) 139 Or 694, 10 P2d 606.

A proceeding for criminal contempt is not a criminal prosecution within the meaning of the Ore. Const. Art. I, §12 which protects a prisoner from testifying against himself. *State v. Sieber*, (1907) 49 Or 1, 88 P 313; *State ex rel. Oregon State Bar v. Lenske*, (1965) 243 Or 477, 405 P2d 510, 407 P2d 250, cert. denied, 384 US 943.

The court may make an order on the person charged to show cause why he should not be arrested to answer, or it may issue a warrant of arrest to bring such person before the court in the first instance. *State v. Sieber*, (1907) 49 Or 1, 88 P 313.

A contempt proceeding is civil in character when it is predicated upon disobedience to an order requiring a party to do something for the benefit of the adverse party, and the punishment imposed is intended only to secure to the adverse party the right which the court awarded to him. *State v. Mart*, (1931) 135 Or 603, 283 P 23, 295 P 459.

Disobedience of a writ of mandate by officials of an improvement district constitutes indirect contempt. *State v. McClain*, (1931) 136 Or 60, 298 P 213.

Objections that the court did not issue a warrant for defendant's arrest or by the citation issued order him to show cause why he should not be arrested ought not be raised for the first time on appeal. *State v. Bassett*, (1941) 166 Or 628, 113 P2d 432, 114 P2d 546.

The trial court must make findings of fact upon which to base a judgment for contempt. *State v. Hixson*, (1953) 199 Or 574, 263 P2d 603.

A proceeding for violation of a Supreme Court order which suspended defendant from the practice of law is for criminal contempt. *State ex rel. Oregon State Bar v. Lenske*, (1965) 243 Or 477, 405 P2d 510, 407 P2d 250, cert. denied, 384 US 943.

A proceeding for criminal contempt is not a criminal prosecution within the meaning of Ore. Const. Art. I, §12. *Id.*

#### 2. The affidavit

(1) **In general.** The amendment of the affidavit must be verified. *State v. Lavery*, (1897) 31 Or 77, 85, 49 P 852; *State v. Sieber*, (1907) 49 Or 1, 88 P 313.

The affidavit is essential to the jurisdiction of the court and it must state facts which, if established, will constitute the offense. *State v. Conn*, (1900) 37 Or 596, 62 P 289.

The affidavit must be positive in its statements. *State v. Conn*, (1900) 37 Or 596, 62 P 289; *State v. Sieber*, (1907) 49 Or 1, 88 P 313.

An affidavit which does not name the state as a party is demurrable. *Trullinger v. Howe*, (1911) 58 Or 73, 113 P

4. **Distinguished in** Taylor v. Gladden, (1962) 232 Or 599, 377 P2d 14.

If the party had actual knowledge of the order, the affidavit need not aver service of a copy thereof. State v. Hambrecht, (1929) 128 Or 305, 274 P 507.

The district attorney need not sign the affidavit. State v. Mount, (1932) 139 Or 694, 10 P2d 606.

Where the contempt consists of disobedience by one party of an order for the benefit of the adverse party and is committed out of court, an affidavit charging such disobedience is a necessary prerequisite to an arrest. Rust v. Pratt, (1937) 157 Or 505, 72 P2d 533.

By appearing and filing an affidavit in defense, defendant waived objection to technical defects of the affidavit and could not contest the court's jurisdiction. State v. Bassett, (1941) 166 Or 628, 113 P2d 432, 114 P2d 546.

(2) **Content.** In charging violation of a decree, the affidavit must allege that the decree was served upon the party or that he had personal knowledge thereof. Trullinger v. Howe, (1911) 58 Or 73, 79, 113 P 4; State v. Hewson, (1929) 129 Or 612, 277 P 1012, 63 ALR 1216.

A demand for compliance before instituting contempt proceedings for nonobedience to a court order may be eliminated when no immediate arrest is proposed and the affidavit is followed by service of a notice of an application for an order to show cause. State v. Hewson, (1929) 129 Or 612, 277 P 1012, 63 ALR 1216.

An affidavit charging failure to comply with an order in divorce action directing the payment of money need not state either a previous knowledge by the defendant of the order or a demand for payment where the record of the court shows that the defendant had knowledge of the order and wilfully refused to obey. State v. La Follett, (1930) 132 Or 257, 284 P 283.

No intendments or presumptions are indulged in aid of the affidavit. State v. Stewart, (1940) 163 Or 585, 96 P2d 220.

Where defendant had been personally served with process in a divorce suit, an affidavit setting forth the facts constituting the contempt sufficiently charged him with wilful disobedience of the court's decree. State v. Bassett, (1941) 166 Or 628, 113 P2d 432, 114 P2d 546.

The affidavit must allege that defendant was served with the order or that he had knowledge of it. State ex rel. Oregon State Bar v. Lenske, (1965) 243 Or 477, 405 P2d 510, 407 P2d 250, cert. denied, 384 US 943.

**FURTHER CITATIONS:** State v. Eastman, (1915) 77 Or 522, 151 P 967; State v. La Follette, (1921) 100 Or 1, 196 P 412; State v. Driscoll, (1935) 151 Or 363, 50 P2d 581; State v. Grover, (1938) 158 Or 635, 77 P2d 430; State v. Kiessenbeck, (1941) 167 Or 25, 114 P2d 147; Miller v. Miller, (1961) 228 Or 301, 365 P2d 86; State ex rel. Phillips v. Barker, (1967) 246 Or 461, 425 P2d 753.

**ATTY. GEN. OPINIONS:** Failure to appear as contempt, 1954-56, p 10; impoundment connected with traffic offenses, 1966-68, p 420; failure to appear as contempt, (1968) Vol 34, p 290.

**LAW REVIEW CITATIONS:** 43 OLR 110.

33.060

#### NOTES OF DECISIONS

Where the proceeding has not been properly entered, it is discretionary with the trial court to allow an amendment before trial. State v. Downing, (1901) 40 Or 309, 326, 58 P 863, 66 P 917.

An affidavit which does not name the state as a party is demurrable. Trullinger v. Howe, (1911) 58 Or 73, 113 P 4.

The act of the coplaintiff in signing stipulations was effective although the district attorney did not consent thereto. State v. Mart, (1931) 135 Or 603, 283 P 23, 295 P 459.

Where the order finding the person guilty of direct contempt complied with the statute, a defect in the title was a mere irregularity. Taylor v. Gladden, (1962) 232 Or 599, 377 P2d 14.

**FURTHER CITATIONS:** State v. Kaiser, (1890) 20 Or 50, 23 P 964; State ex rel. Oregon State Bar v. Lenske, (1966) 243 Or 477, 405 P2d 510, 407 P2d 250, cert. denied, 384 US 993.

33.070

#### NOTES OF DECISIONS

The warrant is not invalidated by an omission to direct whether the person charged may be let to bail, and if so, the amount necessary therefor. State v. Sieber, (1907) 49 Or 1, 88 P 313.

33.080

#### NOTES OF DECISIONS

Where the appellant, having given an undertaking to appear and answer, did not appear in person but appeared by counsel and paid the fine imposed only after his arrest, an action could not be maintained against him to recover the sum specified in the undertaking. State v. Crane, (1887) 15 Or 148, 13 P 773.

33.090

#### NOTES OF DECISIONS

The warrant of arrest should have a return day, and require the defendant to appear at a specified time. State v. Crane, (1887) 15 Or 148, 13 P 773.

A mere failure to deliver to defendant a copy of the charge is not available as ground for appeal. State v. Sieber, (1907) 49 Or 1, 88 P 313.

A hearing and opportunity to defend must be afforded to the party in case of disobedience of a court order not committed in the presence of the court. State v. Hubble, (1929) 128 Or 46, 273 P 395.

A defendant must be allowed to offer evidence and arguments in his defense. State v. La Follett, (1930) 132 Or 257, 284 P 283.

Inability without fault to obey a court order is a complete defense to a charge of contempt for failure to obey. State v. O'Malley, (1970) 255 Or 544, 469 P2d 36, rev'g 1 Or App 239, 461 P2d 832. Overruling State v. O'Malley, (1969) 248 Or 601, 435 P2d 812.

**FURTHER CITATIONS:** State v. Small, (1907) 49 Or 595, 90 P 1110.

33.110

#### NOTES OF DECISIONS

After the contemnor has paid his fine imposed by the court, the person injured cannot bring an action upon the undertaking for release from arrest in the contempt proceedings. State v. Crane, (1887) 15 Or 148, 153, 13 P 773.

**FURTHER CITATIONS:** State v. Bassett, (1941) 166 Or 628, 113 P2d 432, 114 P2d 546.

**ATTY. GEN. OPINIONS:** Failure to appear as contempt, (1968) Vol 34, p 290.

## 33.150

## NOTES OF DECISIONS

A reversal of an order for disobedience of which a person has been adjudged guilty of contempt relieves such person from the duty of obeying the order, but it does not remit any fine that may have been imposed. *State v. Downing*, (1901) 40 Or 309, 326, 58 P 863, 66 P 917.

The order is final and appealable where it adjudges the party to have been guilty of contempt and fixes his punishment, and this is true notwithstanding an additional clause that proceedings be stayed until the further order of the court and that defendant have a stated time to prepare a bill of exceptions. *Id.*

Execution of order of imprisonment is stayed by the service and filing of notice of appeal and an undertaking conditioned for satisfying the same if affirmed. *In re Vinton*, (1913) 65 Or 422, 132 P 1165.

An appeal brings up the order or decree which the defendant is alleged to have disobeyed and this is true although the order is not appealable. *State v. La Follette*, (1921) 100 Or 1, 196 P 412.

A right of appeal is accorded to a person who has been adjudged guilty of contempt for violation of a temporary mandatory injunction. *Id.*

The transcript on appeal from the judgment in the contempt proceeding properly includes the pleadings in a civil action out of which the contempt proceeding has arisen. *State v. Mart*, (1931) 135 Or 603, 283 P 23, 295 P 459.

The signing of a stipulation extending the time to file a transcript on appeal by attorneys of the relator in contempt proceedings is binding upon the state. *Id.*

A notice of appeal from a judgment in favor of the defendant need not be signed by the district attorney. *State v. Mount*, (1932) 139 Or 694, 10 P2d 606.

Where no exceptions were taken during the course of the trial and the defendant did not resort to any statutory measures to obtain a bill of exceptions, the proceedings cannot be reviewed. *State v. Bassett*, (1941) 166 Or 628, 113 P2d 432, 114 P2d 546.

The filing of an undertaking on appeal from an adjudication of contempt for failure to provide for wife pendente lite stayed proceedings in the trial court, except such as might aid the Supreme Court to understand and determine the proceedings on appeal. *State v. Manchester*, (1941) 167 Or 250, 115 P2d 181.

FURTHER CITATIONS: *State v. Gray*, (1902) 42 Or 261, 70 P 904, 71 P 978; *Trullinger v. Howe*, (1911) 58 Or 73, 113 P 4.

## 33.210 to 33.340

LAW REVIEW CITATIONS: 48 OLR 74-94.

## 33.210

## NOTES OF DECISIONS

OCLA 11-601 to 11-613 [ORS 33.210 to 33.340] do not apply to appraisals, and the question whether an agreement is an appraisal or an arbitration agreement must be determined in accordance with common law rules. *Shepard & Morse Lbr. Co. v. Collins*, (1953) 198 Or 290, 256 P2d 500.

An appraisal agreement may be pleaded in defense as a condition precedent to suit or action. *Id.*

An agreement in a contract to submit the questions of the termination of defendant's temporary total disability and the extent of his permanent disability, if any, to the decision of three licensed physicians and surgeons was not an arbitration agreement within the meaning of this Act. *Id.*

FURTHER CITATIONS: *Sands v. Union Pac. R.R.*, (1956) 148 F Supp 422; *Wagner v. Columbia Hosp. Dist.*, (1971) 259 Or 15, 485 P2d 421.

ATTY. GEN. OPINIONS: Validity of a provision in an instalment-certificate bond agreeing to arbitrate, 1930-32, p 219; authority to agree to arbitrate grievances, (1968) Vol 34, p 329.

LAW REVIEW CITATIONS: 19 OLR 299, 26 OLR 287.

## 33.220

## NOTES OF DECISIONS

Executory arbitration agreements, whether revocable or not, if fairly made are not illegal. *Rueda v. Union Pac. R. Co.*, (1946) 180 Or 133, 175 P2d 778.

Executed arbitration agreements are valid and the award thereon is conclusive. *Id.*

An award by an arbitrator, who occupied the position of engineer for one of the parties, was not against public policy where the arbitration agreement was voluntarily entered into. *Mayer v. East Side Logging Co.*, (1929) 130 Or 341, 278 P 957, 280 P 343.

An executory general arbitration agreement between a railroad and one of its employees to submit the question whether any injuries sustained by the employee resulted from a fight or brawl so as to preclude his participation in benefits of a hospital department was not against public policy and did not invalidate an award against the employee made after carrying out the agreed arbitral procedure. *Rueda v. Union Pac. R. Co.*, (1946) 180 Or 133, 175 P2d 778.

Although there was no written assignment of the lease to defendant, occupying the leasehold premises with cotenant to whom assignment had been made, there was a presumption that lease, including covenant to arbitrate, had been assigned to defendants in possession. *Abbott v. Bob's U-Drive*, (1960) 222 Or 147, 352 P2d 598, 81 ALR 2d 793.

FURTHER CITATIONS: *Shepard & Morse Lbr. Co. v. Collins*, (1953) 198 Or 290, 256 P2d 500.

ATTY. GEN. OPINIONS: Compulsory arbitration clause in uninsured motorist indorsements, 1960-62, p 190; authority to agree to arbitrate grievances, (1968) Vol 34, p 329.

## 33.230

## NOTES OF DECISIONS

Where arbitration provision of collective bargaining agreement covering railroad employe was not to be performed in Oregon, the agreement was governed by common law and its performance was not a condition precedent to court action. *Sands v. Union Pac. R.R.* (1956) 148 F Supp 422.

Although there was no written assignment of the lease to defendant, occupying the leasehold premises with cotenant to whom assignment had been made, there was a presumption that lease, including covenant to arbitrate, had been assigned to defendants in possession. *Abbott v. Bob's U-Drive*, (1960) 222 Or 147, 352 P2d 598, 81 ALR2d 793.

FURTHER CITATIONS: *Gamble v. Sukut*, (1956) 208 Or 480, 302 P2d 553.

ATTY. GEN. OPINIONS: Whether an agreement of arbitration could be enforced, 1930-32, p 219.

## 33.240

CASE CITATIONS: *Lewis v. Miller*, (1952) 197 Or 354, 251

P2d 876; Shepard & Morse Lbr. Co. v. Collins, (1953) 198 Or 290, 256 P2d 500.

**33.260**

**NOTES OF DECISIONS**

When the arbitrators' award recited that the required oath had been taken, in the absence of evidence to the contrary, the recital was presumed to be true. *Abbott v. Bob's U-Drive*, (1960) 222 Or 147, 352 P2d 598, 81 ALR2d 793.

**33.270**

CASE CITATIONS: *Gamble v. Sukut*, (1956) 208 Or 480, 302 P2d 553.

**33.280**

**NOTES OF DECISIONS**

The arbitrator acts within the bounds of his authority not only when he decides a question of law correctly according to judicial standards but also when he applies the law in a manner which a court would regard as erroneous. *Brewer v. Allstate Ins. Co.*, (1968) 248 Or 558, 433 P2d 547.

LAW REVIEW CITATIONS: 48 OLR 79.

**33.310**

**NOTES OF DECISIONS**

When the petition before the court included the lease which contained the arbitration agreement, the failure to deliver another such writing to the clerk of the court was not fatal. *Abbott v. Bob's U-Drive*, (1960) 222 Or 147, 352 P2d 598.

FURTHER CITATIONS: *Knox v. Hanson*, (1965) 242 Or 114, 408 P2d 76.

**33.320**

**NOTES OF DECISIONS**

The courts are authorized to interfere with an award only when statutory grounds for interference appear. *Harrell v. Dove Mfg. Co.*, (1963) 234 Or 321, 381 P2d 710; *Bostick v. White*, (1965) 240 Or 544, 402 P2d 528; *Mahaffy v. Gray*, (1966) 242 Or 522, 410 P2d 822; *Brewer v. Allstate Ins. Co.*, (1968) 248 Or 558, 436 P2d 547.

The arbitrator acts within the bounds of his authority not only when he decides a question of law correctly according to judicial standards but also when he applies the law in a manner which a court would regard as erroneous. *Brewer v. Allstate Ins. Co.*, (1968) 248 Or 558, 436 P2d 547.

FURTHER CITATIONS: *Knox v. Hanson*, (1965) 242 Or 114, 408 P2d 76.

LAW REVIEW CITATIONS: 48 OLR 79, 80, 82, 94.

**33.330**

**NOTES OF DECISIONS**

Judicial review should be confined to the strictest possible limits. *Brewer v. Allstate Ins. Co.*, (1968) 248 Or 558, 436 P2d 547.

ATTY. GEN. OPINIONS: Whether the right to suit can be waived in favor of arbitration, 1930-32, p 219.

**33.340**

CASE CITATIONS: *Knox v. Hanson*, (1965) 242 Or 114, 408 P2d 76.

**33.410 to 33.430**

ATTY. GEN. OPINIONS: Common-law right to change name, 1950-52, p 218, p 375.

**33.410**

CASE CITATIONS: *State v. Ford*, (1918) 89 Or 121, 172 P 802.

ATTY. GEN. OPINIONS: Whether the putative father's surname may be given to an illegitimate child, 1926-28, p 541; dropping of suffix, 1950-52, p 113.

**33.420**

ATTY. GEN. OPINIONS: Procedure for recordation of birth certificates, 1948-50, p 236.

**33.510**

**NOTES OF DECISIONS**

Where an executor fails to file reports required by statute, his surety may apply to the county court to have the executor file a substitute bond and thus be discharged from further liability upon its bond. *New Amsterdam Cas. Co. v. Terrall*, (1940) 165 Or 390, 107 P2d 843.

ATTY. GEN. OPINIONS: Whether a surety company can terminate its liability and cancel its undertaking, 1932-34, p 530.

**33.710**

**NOTES OF DECISIONS**

See also cases under ORS 548 105 and 548.110.

The court may enter a decree validating part of the bond proceedings of a district. *School Dist. 17 v. Powell*, (1955) 203 Or 168, 279 P2d 492.

Unless the decree is void on its face, it is not subject to collateral attack. *School Dist. 16-R v. McCormmach*, (1964) 238 Or 51, 392 P2d 1019.

FURTHER CITATIONS: *Aloha Sanitary Dist. v. Wilkens*, (1966) 245 Or 40, 420 P2d 74.

LAW REVIEW CITATIONS: 47 OLR 60.