

CWest's Oregon Revised Statutes Annotated [Currentness](#)

Title 1. Courts of Record; Court Officers; Juries

└─ Oregon Rules of Civil Procedure

➔ORCP 57. Jurors

A Challenging compliance with selection procedures.

A(1) **Motion.** Within 7 days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the jury is sworn to try the case, a party may move to stay the proceedings or for other appropriate relief, on the ground of substantial failure to comply with the applicable provisions of ORS chapter 10 in selecting the jury.

A(2) **Stay of proceedings.** Upon motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the applicable provisions of ORS chapter 10 in selecting the jury, the moving party is entitled to present in support of the motion: the testimony of the clerk or court administrator, any relevant records and papers not public or otherwise available used by the clerk or court administrator, and any other relevant evidence. If the court determines that in selecting the jury there has been a substantial failure to comply with the applicable provisions of ORS chapter 10, the court shall stay the proceedings pending the selection of the jury in conformity with the applicable provisions of ORS chapter 10, or grant other appropriate relief.

A(3) **Exclusive means of challenge.** The procedures prescribed by this section are the exclusive means by which a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with the applicable provisions of ORS chapter 10.

B Jury; how drawn. When the action is called for trial the clerk shall draw names at random from the names of jurors in attendance upon the court until the jury is completed or the names of jurors in attendance are exhausted. If the names of jurors in attendance become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or the body of the county, so many qualified persons as may be necessary to complete the jury. Whenever the sheriff shall summon more than one person at a time from the bystanders or the body of the county, the sheriff shall return a list of the persons so summoned to the clerk. The clerk shall draw names at random from the list until the jury is completed.

C Examination of jurors. When the full number of jurors has been called, they shall be examined as to their qualifications, first by the court, then by the plaintiff, and then by the defendant. The court shall regulate the examination in such a way as to avoid unnecessary delay.

D Challenges.

D(1) **Challenges for cause; grounds.** Challenges for cause may be taken on any one or more of the following grounds:

D(1)(a) The want of any qualifications prescribed by ORS 10.030 for a person eligible to act as a juror.

D(1)(b) The existence of a mental or physical defect which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

D(1)(c) Consanguinity or affinity within the fourth degree to any party.

D(1)(d) Standing in the relation of guardian and ward, physician and patient, master and servant, landlord and tenant, or debtor and creditor, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of, or being an attorney for or a client of, the adverse party; or being surety in the action called for trial, or otherwise, for the adverse party.

D(1)(e) Having served as a **juror** on a previous trial in the same action, or in another action between the same parties for the same **cause** of action, upon substantially the same facts or transaction.

D(1)(f) Interest on the part of the juror in the outcome of the action, or the principal question involved therein.

D(1)(g) **Actual bias on the part of a juror.** Actual bias is the existence of a state of mind on the part of a juror that satisfies the court, in the exercise of sound discretion, that the juror cannot try the issue impartially and without prejudice to the substantial rights of the party challenging the juror. Actual bias may be in reference to: (i) the action; (ii) either party to the action; (iii) the sex of the party, the party's attorney, a victim or a witness; or (iv) a racial or ethnic group that the party, the party's attorney, a victim or a witness is a member of, or is perceived to be a member of. A challenge for actual bias may be taken for the **cause** mentioned in this paragraph, but on the trial of such challenge, although it should appear that the **juror** challenged has formed or expressed an opinion upon the merits of the **cause** from what the **juror** may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the **juror** cannot disregard such opinion and try the issue impartially.

D(2) **Peremptory challenges; number.** A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude such juror. Either party is entitled to no more than three peremptory challenges if the jury consists of more than six jurors, and no more than two peremptory challenges if the jury consists of six jurors. Where there are multiple parties plaintiff or defendant in the case or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to the number of peremptory challenges specified in this subsection, except the court, in its discretion and in the interest of justice, may allow any of the parties, single or multiple, additional peremptory challenges and permit them to be

exercised separately or jointly.

D(3) **Conduct of peremptory challenges.** After the full number of **jurors** have been passed for **cause**, peremptory challenges shall be conducted by written ballot or outside the presence of the jury as follows: the plaintiff may challenge one and then the defendant may challenge one, and so alternating until the peremptory challenges shall be exhausted. After each challenge, the panel shall be filled and the additional **juror** passed for **cause** before another peremptory challenge shall be exercised, and neither party is required to exercise a peremptory challenge unless the full number of **jurors** are in the jury box at the time. The refusal to challenge by either party in the order of alternation shall not defeat the adverse party of such adverse party's full number of challenges, and such refusal by a party to exercise a challenge in proper turn shall conclude that party as to the jurors once accepted by that party, and if that party's right of peremptory challenge be not exhausted, that party's further challenges shall be confined, in that party's proper turn, to such additional jurors as may be called. The court may, for good **cause** shown, permit a challenge to be taken to any **juror** before the jury is completed and sworn, notwithstanding the **juror** challenged may have been theretofore accepted, but nothing in this subsection shall be construed to increase the number of peremptory challenges allowed.

D(4) **Challenge of peremptory challenge exercised on basis of race, ethnicity or sex.**

D(4)(a) A party may not exercise a peremptory challenge on the basis of race, ethnicity or sex. Courts shall presume that a peremptory challenge does not violate this paragraph, but the presumption may be rebutted in the manner provided by this section.

D(4)(b) If a party believes that the adverse party is exercising a peremptory challenge on a basis prohibited under paragraph (a) of this subsection, the party may object to the exercise of the challenge. The objection must be made before the court excuses the juror. The objection must be made outside of the presence of potential jurors. The party making the objection has the burden of establishing a prima facie case that the adverse party challenged the potential juror on the basis of race, ethnicity or sex.

D(4)(c) If the court finds that the party making the objection has established a prima facie case that the adverse party challenged a prospective juror on the basis of race, ethnicity or sex, the burden shifts to the adverse party to show that the peremptory challenge was not exercised on the basis of race, ethnicity or sex. If the adverse party fails to meet the burden of justification as to the questioned challenge, the presumption that the challenge does not violate paragraph (a) of this subsection is rebutted.

D(4)(d) If the court finds that the adverse party challenged a prospective juror on the basis of race, ethnicity or sex, the court shall disallow the peremptory challenge.

E Oath of jury. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them will well and truly try the matter in issue between the plaintiff and

defendant, and a true verdict give according to the law and evidence as given them on the trial.

F Alternate jurors. The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retired to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged as the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by these rules or other rule or statute if one or two alternate jurors are to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by these rules or other rule or statute shall not be used against an alternate juror.

CCP Dec. 2, 1978; §§ C, F amended by Laws 1979, c. 284, §§ 36, 37; § C amended by CCP Dec. 8, 1984; Laws 1985, c. 703, § 20; § C amended by CCP Dec. 10, 1994; § D amended by [Laws 1995, c. 530, § 1](#) and [Laws 1995, c. 707, § 1](#); § D amended by [Laws 1997, c. 801, § 69](#).

CROSS REFERENCES

Public records, see [ORS 192.001](#) et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

[Voter Registration Status as a Jury Service Employment Test: Oregon's Retracted Endorsement Following Buckley v. American Constitutional Law Foundation, Inc. Rose Jade, 39 Willamette L. Rev. 557 \(2003\).](#)

LIBRARY REFERENCES

2003 Main Volume

Key Numbers

Jury  30, 66, 78 to 82, 124 to 142, 148.

Westlaw Key Number Searches: 230k30; 230k66; 230k78 to 230k82; 230k124 to 230k142; 230k148.

Encyclopedias

[C.J.S. Juries §§ 223 to 224, 228 to 229, 244 to 247, 255, 258, 271 to 272, 312, 340 to 344, 348, 355 to 357, 360, 362 to 363, 367, 369 to 372, 398 to 399, 411 to 413, 415 to 434, 436 to 442, 447, 462 to 489, 496 to 497.](#)

UNITED STATES SUPREME COURT

Examination of jury,

Voir dire,

Closure, protection of privacy interests, voir dire, see [Press-Enterprise Co. v. Superior Court of California, Riverside County, U.S. Cal.1984, 104 S.Ct. 819, 464 U.S. 501, 78 L.Ed.2d 629.](#)

Race discrimination,

Civil cases, equal protection, peremptory challenges, see [Edmonson v. Leesville Concrete Co., Inc., U.S.La.1991, 111 S.Ct. 2077, 500 U.S. 614, 114 L.Ed.2d 660,](#) on remand [943 F.2d 551,](#) rehearing denied.

Equal protection, purposeful discrimination in jury selection, state prisoners, denial of habeas corpus relief, certificate of appealability, debatable question among reasonable jurists, see [Miller-El v. Cockrell \(2003\) 123 S.Ct. 1029, 537 U.S. 322, 154 L.Ed.2d 931,](#) on remand [361 F.3d 849.](#)

Selection and composition of jury,

In general,

Fair cross section requirement applied to petit juries, retroactivity, see [Teague v. Lane, U.S.Ill.1989, 109 S.Ct. 1060, 489 U.S. 288, 103 L.Ed.2d 334,](#) rehearing denied [109 S.Ct. 1771, 490 U.S. 1031, 104 L.Ed.2d 206.](#)

Voir dire, closure, protection of privacy interests, see [Press-Enterprise Co. v. Superior Court of California, Riverside County, U.S. Cal.1984, 104 S.Ct. 819, 464 U.S. 501, 78 L.Ed.2d 629.](#)

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[1.](#) In general

Test of a juror's disqualification is the probability of interest, prejudice or bias, as determined by court's application of his judicial knowledge to the facts. [ORS 17.135\(2\), 17.145.](#) [Lane County v. Walker, 1977, 30 Or.App. 715, 568 P.2d 676,](#)

review denied. Jury 83(1)

Impartial **juror** is one whose state of mind is such at commencement of trial that he favors none of litigants more than others, and that he will decide **cause** only by conviction based upon evidence and law of case. ORS 17.033; Const. art. 7, § 3. Lambert v. Sisters of St. Joseph of Peace, 1977, 277 Or. 223, 560 P.2d 262. Jury 83(1)

Right to trial by fair and impartial jurors is matter which should be guarded zealously by the courts, which should guarantee that juries consist of impartial persons. Lambert v. Sisters of St. Joseph of Peace, 1977, 277 Or. 223, 560 P.2d 262. Jury 83(1)

Purpose of voir dire is to determine possibility of juror prejudice. McElwain v. Kabatoff, 1976, 275 Or. 393, 551 P.2d 105. Jury 131(6)

Trial judge properly sustained defendant's objection to State's questioning of venireman in condemnation action, as to his opinion of fairness of State Highway Department's right-of-way policies which were not issue in case. State By and Through State Highway Commission v. Hewitt, 1962, 229 Or. 582, 368 P.2d 346. Eminent Domain 198(1); Jury 131(7)

The right to trial by fair and impartial jurors is a matter which is, and should be, jealously guarded by courts and juries should consist of impartial men. Walker v. Griffin, 1959, 218 Or. 613, 346 P.2d 110. Jury 97(1)

Parties to an action are entitled to try their issues before impartial jurors. Lilley v. Gifford Phillips Wood Products, Inc., 1957, 210 Or. 278, 310 P.2d 337. Jury 97(1)

An "impartial **juror**" is one whose state of mind is such at the commencement of the trial that he favors none of the litigants more than the other and will be influenced to favor the **cause** of one over the other only by a conviction of the right of a party's position, based upon competent evidence and the law of the case. Lilley v. Gifford Phillips Wood Products, Inc., 1957, 210 Or. 278, 310 P.2d 337. Jury 97(1)

Examination of **juror** is nothing more than taking of testimony on issues to be raised as to his qualifications to sit in **cause** on trial. Leishman v. Taylor, 1953, 199 Or. 546, 263 P.2d 605. Jury 131(1)

Scope of allowable examination on issue of qualifications of juror is subject to discretion of court. Leishman v. Taylor, 1953, 199 Or. 546, 263 P.2d 605. Jury 131(2)

The purpose of voir dire examination is to ascertain **jurors** who may be disqualified by virtue of knowing witness or knowing of witness, and purpose of statute allowing challenges for **cause** is to enable adverse party to remove such **jurors** from the jury box. ORS 136.230, 136.240. State v. Nagel, 1949, 185 Or. 486, 202 P.2d 640, certiorari denied 70 S.Ct. 60, 338 U.S. 818, 94 L.Ed. 495. Jury 125; Jury 131(1)

The examination of a **juror** on voir dire has a two-fold purpose, namely, to ascertain whether a **cause** for challenge exists, and to ascertain whether it is expedient to exercise right of peremptory challenge. [Jones v. Imperial Garages, 1944, 174 Or. 49, 145 P.2d 469.](#) Jury ☞ 131(1)

"Competent **juror**" is one who is impartial and indifferent as to parties and **cause**. [Mount v. Welsh, 1926, 118 Or. 568, 247 P. 815.](#) Jury ☞ 97(1)

An objection that a juror is drawn from a particular panel is a challenge to the panel, and not to his qualifications. [State v. Dale, 1880, 8 Or. 229,](#) Unreported. Jury ☞ 125

The theory of a trial by jury is that the juror shall stand absolutely indifferent between the parties litigant and that juror shall be as free from interest or prejudice as it is possible for humanity to be. [Garrison v. City of Portland, 1865, 2 Or. 123,](#) Unreported. Jury ☞ 83(1)

2. Challenge for cause, generally

Evidence supported trial court's refusal to excuse prospective **juror** for **cause**, in capital murder prosecution, despite **juror's** initial statements that she had formed opinions relating to defendant and to his guilt from pretrial publicity about case; after prosecutor explained legal duties of **juror** to her, **juror** was unequivocal that she was willing and would be able to require state to prove defendant's guilt and to base her decision upon only evidence presented at trial, and, although she expressed support for death penalty in general, she consistently denied that she automatically would vote for death penalty in all circumstances or in this particular case. [State v. Fanus \(2003\) 79 P.3d 847, 336 Or. 63,](#) certiorari denied [124 S.Ct. 2416, 541 U.S. 1075, 158 L.Ed.2d 987.](#) Jury ☞ 103(14); Jury ☞ 108

Until a defendant's peremptory challenges are exhausted, he cannot complain of the overruling of his challenge for cause. [Mount v. Welsh, 1926, 118 Or. 568, 247 P. 815.](#) Jury ☞ 110(14)

Test of juror's disqualification is probability of interest, prejudice, or bias, as determined by application of court's judicial knowledge to facts. [Mount v. Welsh, 1926, 118 Or. 568, 247 P. 815.](#) Jury ☞ 83(1)

That statute provides certain grounds for challenge does not preclude challenge and exclusion of juror on other grounds. [Mount v. Welsh, 1926, 118 Or. 568, 247 P. 815.](#) Jury ☞ 83(1)

Where the court wrongfully overrules a challenge to a **juror** for **cause**, but the objecting party peremptorily challenges such **juror**, the error was cured. [Twitchell v. Thompson, 1915, 78 Or. 285, 153 P. 45.](#) Appeal And Error ☞ 1045(3); Jury ☞ 140

Until a defendant's peremptory challenges are exhausted, he cannot complain of the overruling of his challenge for cause. [State v. Humphrey, 1912, 63 Or. 540, 128 P. 824.](#) Jury ☞ 110(14)

Where a defendant asked certain questions of a **juror** which the court struck out as

improper, defendant should have challenged the **juror** for **cause**, specifying his grounds for challenge, and, failing to do so, he waived the defect. [Ford v. Umatilla County, 1887, 15 Or. 313, 16 P. 33.](#) Jury 🗝️ 110(9)

Where a party challenges a juror for implied bias, and his challenge is wrongfully overruled, the error so far as the particular juror is concerned is waived by a subsequent peremptory challenge to him. [Ford v. Umatilla County, 1887, 15 Or. 313, 16 P. 33.](#) Appeal And Error 🗝️ 1045(3); Jury 🗝️ 110(9); Jury 🗝️ 110(13)

Any objection to a juror on the ground of incompetency for not being a citizen was waived by failing to challenge at the trial. [State v. McDonald, 1879, 8 Or. 113,](#) Unreported. Jury 🗝️ 110(2)

3. Timeliness of challenge

Generally, once jury has been sworn, counsel can make no subsequent inquiry into whether extraneous events in a juror's life during course of trial have affected his objectivity. [ORS 17.155, 17.160, 17.220, 17.225, 136.230.](#) [State v. Miller, 1972, 10 Or.App. 636, 501 P.2d 326.](#) Jury 🗝️ 127

Challenge to juror by plaintiff after jury was sworn and following a noon recess was not timely where no such challenge was made by the plaintiff before jury was sworn, plaintiff had been invited by trial judge to make challenge and facts providing basis for the challenge were then known to plaintiff. [Holmgren v. Westport Towboat Co., 1971, 260 Or. 445, 490 P.2d 739.](#) Jury 🗝️ 127


If accused seriously believes that his defense will be prejudiced because of composition of jury, he should seek correction before, rather than after, testing panel by its verdict. [Anderson v. Gladden, 1963, 234 Or. 614, 383 P.2d 986,](#) certiorari denied [84 S.Ct. 485, 375 U.S. 975, 11 L.Ed.2d 420.](#) Jury 🗝️ 110(9)


4. Actual bias



Whether a prospective juror is actually biased is a factual question to be determined by the trial court as an exercise of its discretion. [State v. Fanus \(2003\) 79 P.3d 847, 336 Or. 63,](#) certiorari denied [124 S.Ct. 2416, 541 U.S. 1075, 158 L.Ed.2d 987.](#) Jury 🗝️ 133


Whether a prospective **juror** actually is biased, and should therefore be removed for **cause**, is a factual question to be determined by the trial court in the exercise of its discretion. Rules Civ.Proc., Rule 57, subd. D(1)(g). [State v. Compton \(2002\) 39 P.3d 833, 333 Or. 274,](#) reconsideration denied, certiorari denied [123 S.Ct. 165, 537 U.S. 841, 154 L.Ed.2d 64,](#) rehearing denied [123 S.Ct. 653, 537 U.S. 1068, 154 L.Ed.2d 559.](#) Jury 🗝️ 85; Jury 🗝️ 133



Test to decide if a prospective **juror** should be excused for **cause** due to actual bias is whether the **juror's** ideas or opinions would impair substantially his performance of the duties of a **juror** to decide the case fairly and impartially on the evidence presented in court. Rules Civ.Proc., Rule 57, subd. D(1)(g). [State v. Compton \(2002\) 39 P.3d 833, 333 Or. 274,](#) reconsideration denied, certiorari denied [123 S.Ct. 165, 537 U.S. 841, 154 L.Ed.2d 64,](#) rehearing denied [123 S.Ct. 653, 537 U.S. 1068, 154 L.Ed.2d 559.](#) Jury 🗝️ 97(1)


In deciding whether a prospective juror should be excused for **cause** due to actual bias, the test is whether the prospective juror's ideas or opinions would impair substantially his performance of the duties of a juror to decide the case fairly and impartially on the evidence presented in court. Rules Civ.Proc., Rule 57, subd. D(1)(g). [State v. Compton \(2002\) 39 P.3d 833, 333 Or. 274](#), reconsideration denied, certiorari denied [123 S.Ct. 165, 537 U.S. 841, 154 L.Ed.2d 64](#), rehearing denied [123 S.Ct. 653, 537 U.S. 1068, 154 L.Ed.2d 559](#). Jury  97(1)


Trial court in capital case determines whether prospective juror's views on death penalty could prevent or substantially impair the performance of his or her duties by looking at the totality of the potential juror's voir dire testimony to discern whether it suggests the probability of bias. [ORS 136.210\(1\)](#); Rules Civ.Proc., Rule 57, subd. D(1)(g). [State v. Lotches \(2000\) 17 P.3d 1045, 331 Or. 455](#), certiorari denied [122 S.Ct. 82, 534 U.S. 833, 151 L.Ed.2d 45](#). Jury  108


Whether juror actually is biased is question of fact to be determined by trial court in exercise of its discretion; trial court's determination that jurors will be impartial is entitled to great weight and court's decision will not be disturbed unless it was abuse of discretion. [ORS 136.220](#); Rules Civ.Proc., Rule 57, subd. D(1)(g). [State v. Tucker, 1993, 315 Or. 321, 845 P.2d 904](#). Criminal Law  1152(2); Jury  85

It is not enough that a prospective juror believes that he can be fair and impartial; trial court must find from all the facts that the juror will be impartial and fair and not be consciously or unconsciously biased. [State v. Montez, 1990, 309 Or. 564, 789 P.2d 1352](#). Jury  97(1)


Court properly excluded for **cause** prospective juror who expressed biases concerning minorities and the criminal justice system and who said he thought he could vote to impose the death penalty if he were convinced that the defendant had received a fair trial. [ORS 136.210\(1\)](#); Rules Civ.Proc., Rule 57, subd. D(1)(g). [State v. Nefstad, 1990, 309 Or. 523, 789 P.2d 1326](#), denial of habeas corpus affirmed [66 F.3d 335](#), certiorari denied [116 S.Ct. 793, 516 U.S. 1081, 133 L.Ed.2d 742](#). Jury  97(1); Jury  108



Trial judge's exercise of discretion in determining whether there was actual bias on part of juror must be according to legal principles. [ORS 17.135\(2\)](#), [17.145](#). [Lane County v. Walker, 1977, 30 Or.App. 715, 568 P.2d 676](#), review denied. Jury  85


Probability which will require excuse of a juror for actual bias is the probability that his knowledge or attitude will affect the process by which he finds the facts. [ORS 17.135\(2\)](#), [17.145](#). [Lane County v. Walker, 1977, 30 Or.App. 715, 568 P.2d 676](#), review denied. Jury  97(4)


It is not enough if juror believes that he can be impartial and fair but rather court, in exercising its discretion under statute relating to challenges for actual bias, must find from all the facts that juror will be impartial and fair and not be biased consciously or subconsciously. [ORS 17.135\(2\)](#). [Lambert v. Sisters of St. Joseph of Peace, 1977, 277 Or. 223, 560 P.2d 262](#). Jury  85


Court, in exercising its discretion under statute relating to challenges for actual


bias, must be convinced that probability of bias of juror does not exist since test for juror's disqualification is probability of bias or prejudice as determined by the court. [ORS 17.135\(2\)](#). [Lambert v. Sisters of St. Joseph of Peace, 1977, 277 Or. 223, 560 P.2d 262](#). Jury  85


Voir dire examination in consolidated actions based on negligence of hospital, physician and registered nurse in providing medical treatment, taken as a whole, demonstrated substantial probability of actual bias on part of **juror**, who stated that he thought physician was a very good doctor and that plaintiffs might have harder time convincing him because of his prior association with physician, and thus plaintiffs, who were deprived of right to have issues determined by impartial **juror**, were entitled to new trial since failure to allow **juror** to be excused for **cause** is presumed to be prejudicial. [ORS 17.135\(2\)](#). [Lambert v. Sisters of St. Joseph of Peace, 1977, 277 Or. 223, 560 P.2d 262](#). Jury  97(2); New Trial 
56


Mere statement by **juror** who had been challenged for **cause** that he will be fair and afford parties fair trial becomes less meaningful in light of other testimony and facts which at least suggest probability of bias. [ORS 17.135](#). [Lambert v. Sisters of St. Joseph of Peace, 1977, 277 Or. 223, 560 P.2d 262](#). Jury  97(4)

Even though trial judge is not disqualified he should not excuse jurors for actual bias before the trial. [ORS 17.155, 17.160](#). [Creel v. Shadley, 1973, 266 Or. 494, 513 P.2d 755](#). Jury  109

Jurors in condemnation cases instituted by housing authorities have same immunity from challenge for bias because of their taxpayer status as taxpayer-jurors in condemnation suits brought by cities. [ORS 223.125, 456.005-456.230, 456.145](#). [City of Portland By and Through Portland Development Commission v. Holmes, 1962, 232 Or. 505, 376 P.2d 120](#). Jury  89


Order on question of actual bias of prospective juror is discretionary. [Vale v. Campbell, 1928, 123 Or. 632, 263 P. 400](#). Jury  97(1)



Under Or.L. § 123, [ORS 17.145](#), challenge of a juror on account of actual bias is addressed to the discretion of the court. [State v. Brumfield, 1922, 104 Or. 506, 209 P. 120](#). Jury  85


In an action by a hop merchant against a farmer, a juror stated on his voir dire examination that he did not know either of the parties and knew nothing about the case; that it would be hard to say whether in such a litigation he had any sympathy for one as against the other, but that he guessed he was in sympathy with the farmer, because he had had more dealings with farmers. He, however, stated that his verdict would depend on the evidence. Held, that no bias was shown rendering the juror incompetent. [Schwarz v. Lee Gon, 1905, 46 Or. 219, 80 P. 110](#). Jury  97(4)


5. Relationship with party


Trial court acted within its discretion, during capital murder prosecution, in refusing to exclude for **cause** a potential **juror** who was acquainted with state witness, where **juror** denied that her past relationship with witness would have any


effect on her ability to judge case fairly, and the past relationship had related to business and had not been renewed in 35 years. [ORS 136.210\(1\)](#); Rules Civ.Proc., Rule 57, subd. D(1)(g). [State v. Barone \(1998\) 969 P.2d 1013, 328 Or. 68](#), certiorari denied [120 S.Ct. 977, 528 U.S. 1135, 145 L.Ed.2d 928](#). Jury  90


Defendant was not entitled to excuse for **cause juror** whose wife was a nurse at jail where defendant was held and had given him medication or **juror** who was acquainted with police officer who testified at trial, absent showing of actual bias. [ORS 136.220](#); Rules Civ.Proc., Rule 57, subd. D(1)(g). [State v. Tucker, 1993, 315 Or. 321, 845 P.2d 904](#). Jury  90; Jury  99.2

In medical malpractice action against hospital and clinic of doctors, trial court did not err in excluding from jury members of clinic and hospital's group health plan. [Wagner v. Kaiser Foundation Hospitals, 1979, 285 Or. 81, 589 P.2d 1106](#). Jury  92



Improper excusing by disqualified trial judge of two jurors from jury panel required reversal where such action constituted a taking part by the judge in the qualifications of the two jurors to try the case, and where fact that jurors were members of Indian tribe of which defendants were members, and fact that jurors lived in the vicinity or knew the parties involved, did not authorize trial judge to excuse them. [Creel v. Shadley, 1973, 266 Or. 494, 513 P.2d 755](#). Appeal And Error  1045(2)

Bias cannot be implied from mere relationship of physician and patient. [ORS 17.140](#). [Mount v. Welsh, 1926, 118 Or. 568, 247 P. 815](#). Jury  92

Retention of jurors in personal injury action against president of bank, to which two of the jurors owed considerable sums, while one of them was a depositor therein, held not erroneous as matter of law. [Twitchell v. Thompson, 1915, 78 Or. 285, 153 P. 45](#). Jury  92

The challenge of a juror whose wife was a sister of the defendant's wife as a person related by affinity to the defendant within the second degree would be correct. [Burston v. Jackson, 1881, 9 Or. 275](#), Unreported. Jury  90

6. Employment

Generally, in absence of statutory disqualification, police officer is not disqualified from jury service on that ground alone, but his employment may well serve in a particular case as proper basis for challenge on the ground of implied bias. [Const. art. 1, § 11](#); [ORS 136.220\(2\) \(c\)](#); [U.S.C.A.Const. Amend. 6](#). [Parks v. Cupp, 1971, 5 Or.App. 51, 481 P.2d 372](#). Jury  83(3); Jury  97(1)

7. Juror in previous trial of same cause

Under statute providing for challenge of a **juror** for implied bias where such **juror** served on a previous trial in the same action, or in another action between the same parties for the same **cause** of action, a **juror** may be challenged thereunder only where **cause** of action in the case at bar is exactly the same as **cause** of action previously tried before such **juror**, but does not include all **causes** between the same parties where a fact or a combination of facts offered to support a **cause**

of action may be the same or similar, even though the **cause** of action is different. ORS 17.140. Lilley v. Gifford Phillips Wood Products, Inc., 1957, 210 Or. 278, 310 P.2d 337. Jury ☞ 95

8. Interest in outcome of action

County residents are not disqualified from serving as jurors in a lawsuit solely because county has a pecuniary interest in the outcome; overruling prior decisions. ORS 14.110(1)(d). State ex rel. Douglas County v. Sanders, 1982, 294 Or. 195, 655 P.2d 175. Jury ☞ 87

Plaintiff has right to inquire during juror's examination about interest of juror which may affect his verdict, but plaintiff has no right to abuse that privilege, or make it stratagem by which he can prejudice jury with irrelevant matter. Leishman v. Taylor, 1953, 199 Or. 546, 263 P.2d 605. Jury ☞ 131(5)

Taxpayers held disqualified to serve as jurors in individual's action against corporation sued by county for damages caused by same act. ORS 17.140. Wheeler v. Cobbs & Mitchell Co., 1927, 121 Or. 422, 253 P. 5. Jury ☞ 89

A party, within reasonable limits, and in good faith, may ascertain occupation of a juror and extent of his possible interest in trial. Lidfors v. Pflaum, 1925, 115 Or. 142, 236 P. 1059. Jury ☞ 131(5)

Where corporate bonding company was proper party defendant, it was not error to permit persons called as jurors to state, over objection and exceptions, upon their voir dire, that they were not, and never had been, interested in indemnity security companies. Askay v. Maloney, 1917, 85 Or. 333, 166 P. 29. Jury ☞ 131(5)

In action by county, for use of party employed on highway work, against contractor and its surety, condition that costs under L.O.L. § 575, ORS 20.150, might be awarded against county, in case of bad faith, if defendants were successful, did not disqualify taxpayers of county as jurors. Columbia County v. Consolidated Contract Co., 1917, 83 Or. 251, 163 P. 438. Jury ☞ 89

Under L.O.L. § 122, subd. 4, ORS 17.140, making the interest of a juror in the event of an action a good ground of challenge for implied bias, a juror who is a stockholder or interested in an insurance company warranting against loss by the injury forming the basis of pending litigation would be subject to challenge. Putnam v. Pacific Monthly Co., 1913, 68 Or. 36, 130 P. 986, 0 Am. Ann. Cas. 1915C, 256, modified on rehearing 68 Or. 36, 136 P. 835, 0 Am. Ann. Cas. 1915C, 256. Jury ☞ 88

A taxpayer is not a qualified juror in any case wherein the county is liable to pay the judgment. Elliott v. Wallowa County, 1910, 57 Or. 236, 109 P. 130, 0 Am. Ann. Cas. 1913A, 117. Jury ☞ 89

In a suit against a county, a challenge of a juror who is a taxpayer for implied bias will not be allowed where it will result in a failure of justice, as in cases where no change of venue can be had. Elliott v. Wallowa County, 1910, 57 Or. 236, 109 P. 130, 0 Am. Ann. Cas. 1913A, 117. Jury ☞ 89

In impaneling a jury in an action by a county to recover for injury to a bridge, a

taxpayer of the county may be challenged for implied bias by either of the parties. Multnomah County v. Willamette Towing Co., 1907, 49 Or. 204, 89 P. 389. Jury 89

In an action against a county to recover damages, it is sufficient ground of challenge for implied bias that the juror called is a taxpayer. Ford v. Umatilla County, 1887, 15 Or. 313, 16 P. 33. Jury 89

Under Code, § 184, subd. 4, ORS 17.140, an interest in the event of a suit, though small and remote, disqualifies prospective juror. City of Portland v. Kamm, 1874, 5 Or. 362, Unreported. Jury 87

A taxpayer of a municipal corporation is not a competent juror in an action against the municipality. City of Portland v. Kamm, 1874, 5 Or. 362, Unreported. Jury 89

In action for damages under Act December 19, 1865, authorizing City of Portland to lay out streets, etc., resident taxpayer of such city was not a competent juror when challenged for implied bias, under Code, § 184, subd. 4, ORS 17.140. City of Portland v. Kamm, 1874, 5 Or. 362, Unreported. Jury 89

Any interest in the event of the suit, though small and remote, disqualifies one as juror. Garrison v. City of Portland, 1865, 2 Or. 123, Unreported. Jury 96

Under Code, § 184, subd. 4, residents and taxpayers of a city are incompetent jurors in an action against the city for personal injury, and where a verdict against the city would impose additional burdens upon all the taxpaying residents thereof. Garrison v. City of Portland, 1865, 2 Or. 123, Unreported. Jury 89


9. Personal opinion



In deciding whether a juror should be excluded for actual bias, the fact that he or she has preconceived ideas about a matter relevant to the case is not determinative; rather, the test is whether the prospective juror's ideas or opinions would impair substantially his or her performance of the duties of a juror to decide the case fairly and impartially on the evidence presented in court. ORS 136.210(1); Rules Civ.Proc., Rule 57, subd. D(1)(g). State v. Barone (1998) 969 P.2d 1013, 328 Or. 68, certiorari denied 120 S.Ct. 977, 528 U.S. 1135, 145 L.Ed.2d 928. Jury 97(1)



Purpose of rehabilitative questioning of juror is investigation, not persuasion; it is to determine whether the juror is able and likely to set aside his views, not to persuade him to do so or to elicit pro forma answers to leading questions. ORS 17.135(2), 17.145. Lane County v. Walker, 1977, 30 Or.App. 715, 568 P.2d 676, review denied. Jury 131(1)


It is only when it is such a fixed attitude of mind that it would control juror's actions in some appreciable degree when he assumes the new relation of a trier of the fact involved in litigation that a mental state will disqualify juror. ORS 17.135(2), 17.145. Lane County v. Walker, 1977, 30 Or.App. 715, 568 P.2d 676, review denied. Jury 83(1)


In condemnation proceeding, denial of county's challenge of juror for actual bias


was an abuse of discretion, in light of high probability that deliberations of such juror, who indicated a strongly held opinion against proposition that a condemnee is not entitled to additional compensation merely because he does not want to sell his property and who maintained his "tilt" toward condemnees through an extensive attempted rehabilitation of juror, would be affected by his strongly held opinion. [ORS 17.135\(2\), 17.145. Lane County v. Walker, 1977, 30 Or.App. 715, 568 P.2d 676, review denied.](#) Jury  85


Denial of State's challenge for cause of venire woman who had stated that she had heard discussion of Highway Department's right-of-way buying policies and might have had an opinion but would try to be fair, was not error. [ORS 17.135, 17.145. State By and Through State Highway Commission v. Hewitt, 1962, 229 Or. 582, 368 P.2d 346.](#) Eminent Domain  198(1); Jury  103(9)

Overruling of State's challenge for **cause** to venireman who stated that he had not considered that State's initial offerings in certain other condemnation proceedings had been fair but that he would not have any trouble acting as a fair **juror** in present condemnation case, was not error. [ORS 17.135, 17.145. State By and Through State Highway Commission v. Hewitt, 1962, 229 Or. 582, 368 P.2d 346.](#) Eminent Domain  198(1); Jury  103(9)

Opinion of strong-minded juror that his family physician should prevail in case involving his learning and skill generally disqualifies. [Mount v. Welsh, 1926, 118 Or. 568, 247 P. 815.](#) Jury  99

B. & C.Comp. § 123, ORS [17.145](#), providing that, on the trial of a challenge for actual bias, although it appears that the juror challenged has formed or expressed an opinion from what he has heard or read, such opinion shall not be sufficient to sustain the challenge, but the court must be satisfied that the juror cannot try the issue impartially, does not conflict with [Const. art. 1, § 11](#), giving accused the right to trial by an impartial jury. [State v. Megorden, 1907, 49 Or. 259, 88 P. 306, 14 Am. Ann. Cas. 130.](#) Jury  84

On his voir dire a juror testified that he had an opinion on the matter in controversy which he could disregard, and try the case on the law and the evidence. His opinion was a loose, hesitating one, formed from reading the newspapers and from hearing persons talk about the matter. Held, that the challenge to such **juror** was properly overruled; Hill's Code, § 187, ORS [17.145](#), providing that on the trial of a challenge for actual bias, where the **juror** has formed an opinion on the merits of the **cause**, "such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied from all the circumstances that the **juror** cannot disregard such opinion, and try the issue impartially." [Kumli v. Southern Pac. Co., 1892, 21 Or. 505, 28 P. 637.](#) Jury  103(11.1)

A **juror** who has formed an opinion from hearsay, but can try the **cause** impartially, and uninfluenced by his previously formed impressions, is competent. [Kumli v. Southern Pac. Co., 1892, 21 Or. 505, 28 P. 637.](#) Jury  103(11.1)

If a person called as a juror have a fixed and definite opinion in the case on the merits, and nothing further be shown, he should, as a matter of law, be rejected as incompetent; but otherwise his competency is a question for the trial court in the exercise of a sound discretion; and before its decision can be set aside on

appeal, it must be made clearly to appear that upon the evidence the court ought to have found that the juror had formed such an opinion that he could not in law be deemed impartial. [Kumli v. Southern Pac. Co., 1892, 21 Or. 505, 28 P. 637.](#) Jury

🔑 99

10. Peremptory challenges

There was no error in manner in which peremptory challenges were exercised in medical malpractice action involving numerous defendants; pattern of plaintiff challenging one juror and then defendant until peremptory challenges were exhausted was followed, however, because the greater number of defendants enabled them, as a group, to exercise last three challenges consecutively, trial court specified that plaintiffs could pass and reserve their last challenge until defendants had exhausted theirs and although plaintiffs were allowed final challenge, they neither exercised it nor made record of any dissatisfaction with jury that was impaneled.

Rules Civ.Proc., Rule 57, subd. D(3). [Bremner By and Through Bremner v. Charles, 1993, 123 Or.App. 95, 859 P.2d 1148,](#) review denied [318 Or. 381, 870 P.2d 221.](#) Jury

🔑 138(2)

Party whose peremptory challenges have not been exhausted is not in position to complain of overruling of his challenge for **cause of juror** who afterwards serves on panel. [Lambert v. Sisters of St. Joseph of Peace, 1977, 277 Or. 223, 560 P.2d 262.](#) Jury

🔑 110(14)

Error in refusing to permit state, as plaintiff in condemnation case, to exercise its third peremptory challenge was prejudicial and required reversal. [ORS 17.155, 17.160, 19.125\(2\).](#) [State By and Through State Highway Commission v. Walker, 1962, 232 Or. 478, 376 P.2d 96.](#) Eminent Domain 🔑 262(5); Jury 🔑 136(2)

In a suit against a county for damages defendant challenged one of the jurors because he was a taxpayer in the county. The court overruled the challenge, and defendant then challenged peremptorily. Held, that it was insufficient ground of challenge for implied bias by either party; but the defendant, by his peremptory challenge, waived his challenge for cause. [Ford v. Umatilla County, 1887, 15 Or. 313, 16 P. 33.](#) Jury 🔑 110(13)

After juror was called and challenged peremptorily, it was not prejudicial error for the court to allow the challenge to be withdrawn before another juror had been called, under Code, § 189, ORS 17.165. [Garrison v. City of Portland, 1865, 2 Or. 123,](#) Unreported. Jury 🔑 135

It is not error for the court to allow a peremptory challenge of one juror to be withdrawn before another has been called. [Garrison v. City of Portland, 1865, 2 Or. 123,](#) Unreported. Jury 🔑 140

11. Alternate jurors

In negligence and strict liability actions brought against automobile manufacturer and seller, seeking damages for personal injuries sustained by family members in accident allegedly caused by defective braking system, trial court erred by permitting two alternate jurors to accompany jury to jury room and to deliberate and vote on issue of liability. [ORS 17.105, 17.190\(3\), 17.305.](#) [Vander Veer v. Toyota Motor Distributors, Inc., 1978, 282 Or. 135, 577 P.2d 1343.](#) Trial 🔑 304

12. Review

Under L.O.L. § 117, ORS 17.115, where no **juror** was challenged, complaint that **cause** was tried by special **jurors** cannot be considered on appeal. Stricker v. Portland Ry., Light & Power Co., 1916, 79 Or. 526, 155 P. 1195. Jury Ⓜ 110(1); Appeal And Error Ⓜ 200

It is proper in such case to submit a challenge for actual bias, and if excepted to by the opposing party and overruled by the court, the decision could be reviewed on appeal. Ford v. Umatilla County, 1887, 15 Or. 313, 16 P. 33. Jury Ⓜ 129

Rules Civ. Proc., ORCP 57, OR R RCP ORCP 57

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