

TITLE 2

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Chapter 11

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11.010 Distinction abolished; but one form of action. The distinction heretofore existing between forms of actions at law is abolished, and hereafter there shall be but one form of action at law, for the enforcement of private rights or the redress of private wrongs.

11.020 Cases when suits are maintainable. The enforcement or protection of a private right, or the prevention of or redress for an injury thereto, shall be obtained by a suit in equity in all cases where there is not a plain, adequate and complete remedy at law, and may be obtained thereby in all cases where courts of equity have been used to exercise concurrent jurisdiction with courts of law, unless otherwise specially provided by statute.

11.030 Successive actions or suits. Successive actions or suits may be maintained upon the same contract or transaction, whenever, after the former action or suit, a new cause of action or suit arises therefrom.

11.040 Consolidation of actions or suits; when deemed pending. Whenever two or more actions or suits are pending at one time, between the same parties and in the same court, upon causes which might have been joined, the court may, upon the motion of the defendant, order the same to be consolidated. An action or suit is deemed to be pending from the commencement thereof until its final determination upon appeal, or until the expiration of the period allowed to take an appeal.

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12.010 Time of commencing actions; objection by answer. Actions at law shall only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued, except where a different limitation is prescribed by statute. The objection that the action was not commenced within the time limited shall only be taken by answer, except as provided in ORS 16.260.

12.020 When action deemed begun. For the purpose of determining whether an action has been commenced within the time limited, an action shall be deemed commenced as to each defendant, when the complaint is filed, and the summons served on him, or on a codefendant who is a joint contractor, or otherwise united in interest with him.

12.030 Attempt to begin action. An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of this chapter, when the complaint is filed, and the summons delivered, with the intent that it be actually served, to the sheriff or other officer of the county in which the defendants or one of them usually or last resided; or if a corporation be defendant, to the sheriff or other officer of the county in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business. But such an attempt shall be followed by the first publication of the summons, or the service thereof, within sixty days.

12.040 Limitations of suits generally; land patent suits; defense of possession by equitable title; suit on new promise, fraud or mistake. (1) A suit shall only be commenced within the time limited to commence an action as provided in this chapter; and a suit for the determination of any right or claim to or interest in real property shall be deemed within the limitations provided for actions for the recovery of the possession of real property.

(2) No suit shall be maintained to set aside, cancel, annul or otherwise affect a patent to lands issued by the United States or this state, or to compel any person claiming or holding under such patent to convey the lands described therein, or any portion of them, to the plaintiff in such suit, or to hold the same in trust for, or to the use and bene-

fit of such plaintiff, or on account of any matter, thing or transaction which was had, done, suffered or transpired prior to the date of such patent, unless such suit is commenced within ten years from the date of such patent.

(3) This section shall not bar an equitable owner in possession of real property from defending his possession by means of his equitable title; and in any action for the recovery of any real property, or the possession thereof, by any person or persons claiming or holding the legal title to the same under such patent against any person or persons in possession of such real property under any equitable title, or having in equity the right to the possession thereof as against the plaintiff in such action, such equitable right of possession may be pleaded by answer in such action, or set up by bill in equity to enjoin such action or execution upon any judgment rendered therein; and the right of such equitable owner to defend his possession in such action, or by bill for injunction, shall not be barred by lapse of time while an action for the possession of such real property is not barred.

(4) In a suit upon a new promise, fraud or mistake, the limitation shall only be deemed to commence from the making of the new promise or the discovery of the fraud or mistake.

12.050 Within 10 years; recovery of real property. An action for the recovery of real property, or for the recovery of the possession thereof, shall be commenced within 10 years. No action shall be maintained for such recovery unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seised or possessed of the premises in question within 10 years before the commencement of the action.

12.060 Land contracts; time when they cease to affect the property. (1) Unless suit or action to enforce a contract for the sale of real property is instituted in the county in which the real property is situated within five years from the date of maturity of the final payment provided for in the contract, or from the date to which the final payment shall have been extended by agreement of record, the contract shall not thereafter be a lien, encumbrance, or cloud on the title of the property.

(2) When the purchase price fixed in the contract is payable in instalments, the con-

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tract shall be deemed to mature on the date upon which the final payment would be payable if the minimum amount of the principal due on each instalment had been paid as provided in the terms of the contract.

12.070 Within 10 years; action on judgment, decree or sealed instrument. (1) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States; or

(2) An action upon a sealed instrument shall be commenced within 10 years.

12.080 Within six years. (1) An action upon a contract or liability, express or implied, excepting those mentioned in ORS 12.070 and 12.110;

(2) An action upon a liability created by statute, other than a penalty or forfeiture, excepting those mentioned in ORS 12.110;

(3) An action for waste or trespass upon real property; or

(4) An action for taking, detaining or injuring personal property, including an action for the specific recovery thereof; shall be commenced within six years. [Amended by 1957 c.374 §3]

12.090 Mutual accounts; accrual of cause of action. In an action to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side; but whenever a period of more than one year shall elapse between any of a series of items or demands, they are not to be deemed such an account.

12.100 Within three years. (1) An action against a sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office; or by the omission of an official duty, including the nonpayment of money collected upon an execution, but not including an action for an escape; or

(2) An action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the state, excepting those actions mentioned in ORS 12.110, shall be commenced within three years. [Amended by 1957 c.374 §4]

12.110 Within two years; determination of period in action for fraud or deceit. (1) An action for assault, battery, false impris-

onment, for criminal conversation, or for any injury to the person or rights of another, not arising on contract, and not especially enumerated in this chapter, shall be commenced within two years; provided, that in an action at law based upon fraud or deceit, the limitation shall be deemed to commence only from the discovery of the fraud or deceit.

(2) An action upon a statute for a forfeiture or penalty to the state or county shall be commenced within two years.

(3) An action for overtime or premium pay or for penalties or liquidated damages for failure to pay overtime or premium pay shall be commenced within two years. [Amended by 1957 c.374 §1]

12.120 Within one year. (1) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process; or

(2) An action for libel or slander shall be commenced within one year. [Amended by 1957 c.374 §2]

12.130 Within one or two years; action for penalty. An action upon a statute for a penalty given in whole or in part to the person who will prosecute for the same, shall be commenced within one year after the commission of the offense; and if the action is not commenced within one year by a private party, it may be commenced within two years thereafter, in behalf of the state, by the district attorney of the county where the offense was committed or is triable.

12.140 Within 10 years; causes not otherwise provided for. An action for any cause not otherwise provided for shall be commenced within 10 years.

12.150 Suspension of running of statute by absence or concealment. If, when a cause of action accrues against any person, he is out of the state or concealed therein, such action may be commenced within the applicable period of limitation in this chapter after his return into the state, or the time of his concealment; and if, after a cause of action has accrued against a person, he shall depart from and reside out of this state, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

12.160 Suspension as to persons under disability. If, at the time the cause of action

accrues, any person entitled to bring an action mentioned in ORS 12.010 to 12.050 or 12.070 to 12.260 is:

- (1) Within the age of 21 years,
- (2) Insane, or

(3) Imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life, the time of such disability shall not be a part of the time limited for the commencement of the action; but the period within which the action shall be brought shall not be extended more than five years by any such disability, nor shall it be extended in any case longer than one year after such disability ceases.

12.170 Disability must exist when right of action accrues. No person shall avail himself of a disability unless it existed when his right of action accrued.

12.180 Coexisting disabilities must all be removed. When two or more disabilities coexist at the time the right of action accrues, the limitation shall not attach until all are removed.

12.190 Suspension by death; revival; maximum limitation on claim against decedent's estate. If a person entitled to bring an action dies before the expiration of the time limited for its commencement, and the cause of action survives, an action may be commenced by his personal representatives after the expiration of the time, and within one year from his death. If a person against whom an action may be brought dies before the expiration of the time limited for its commencement, and the cause of action survives, an action may be commenced against his personal representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration; but no suit or action for collection of any claim against the estate of a decedent may be maintained, when no letters testamentary or of administration shall have been issued before the expiration of six years after the death of the decedent.

12.200 Suspension by war as to alien. When a person is an alien subject or citizen of a country at war with the United States, the time of the continuance of the war shall not

be a part of the period limited for the commencement of the action.

12.210 Suspension by injunction or prohibition of statute. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

12.220 Commencement of new action within one year after dismissal or reversal. If an action is commenced within the time prescribed therefor and the action is dismissed upon the trial thereof, or upon appeal, after the time limited for bringing a new action, the plaintiff, or if he dies and any cause of action in his favor survives, his heirs or personal representatives, may commence a new action upon such cause of action within one year after the dismissal or reversal on appeal; however, all defenses that would have been available against the action, if brought within the time limited for the bringing of the action, shall be available against the new action when brought under this section.

12.230 Acknowledgment or promise taking case out of statute; effect of payment. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

12.240 Effect of payment after obligation becomes due. Whenever any payment of principal or interest is made after it has become due, upon an existing contract, whether it is a bill of exchange, promissory note, bond, or other evidence of indebtedness, the limitation shall commence from the time the last payment was made.

12.250 Actions by state, county, or public corporations. Unless otherwise made applicable thereto, the limitations prescribed in this chapter shall not apply to actions brought in the name of the state, or any county, or other public corporation therein, or for its benefit.

12.260 Action barred, when barred in another jurisdiction. When the cause of action has arisen in another state, territory or country, between nonresidents of this state, and by the laws of the state, territory or country where the cause of action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this state.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on December 2, 1957.

Sam R. Haley
Legislative Counsel

Chapter 13

Parties

DESIGNATION

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DESIGNATION

13.010 Parties, how designated. In an action, suit or special proceeding the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

13.020 Designating defendant by fictitious name; substitution of true name. In an action or suit when the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name is discovered, the pleading or proceeding may be amended accordingly.

13.030 Real party in interest; except fiduciary. Every action or suit shall be prosecuted in the name of the real party in interest, except that an executor or an administrator, a trustee of an express trust, or a person expressly authorized to sue by statute, may sue without joining with him the person for whose benefit the action or suit is prosecuted. A person with whom, or in whose name a contract is made for the benefit of another, is a trustee of an express trust within the meaning of this section. This section does not authorize the assignment of a thing in action not arising out of contract.

13.040 Infant shall appear by guardian. When an infant is a party, he shall appear by guardian, who may be appointed by the court in which the action or suit is brought, or by a judge thereof, or a judge having guardianship jurisdiction. The guardian shall be appointed as follows:

(1) When the infant is plaintiff, upon the application of the infant, if he be of the age of 14 years; or if under that age, upon the application of a relative or friend of the infant.

(2) When the infant is defendant, upon an application of the infant, if he be of the age of 14 years, and apply within 15 days after the service of the summons; if he be under the age of 14, or neglect so to apply, then upon the application of any other party to the action or suit, or of a relative or friend of the infant.

13.050 Insane or idiotic person shall appear by guardian. When an insane or idiotic person is a party to any action, suit or proceeding he shall appear by guardian; if he has no guardian, or in the opinion of the court the guardian is an improper or incom-

petent person, the court shall appoint some suitable person to act as guardian ad litem, such appointment to be made as follows:

(1) When the insane or idiotic person is plaintiff, upon application of a relative or friend of such person.

(2) When the insane or idiotic person is defendant, upon the application of a relative or friend of such person. Such application shall be made within 20 days after the service of summons, if served within the state, and if served out of the state, or service is made by publication, then such application shall be made within 60 days after the first publication of summons, or within 60 days after service out of the state. If no such application is made within the time limited, application may be made by any party.

13.060 Designation of unknown heirs in actions and suits relating to real property. When the heirs of any deceased person are proper parties defendant to any suit or action relating to real property in this state, and the names and residences of such heirs are unknown, they may be proceeded against under the name and title of "the unknown heirs" of the deceased.

13.070 When unknown claimants are proper parties. In any suit or action to determine any adverse claim, estate, lien or interest in real property, or to quiet title to real property, the plaintiff may include as a defendant in such suit or action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien or interest in the real property in controversy, the following: "Also all other persons or parties unknown claiming any right, title, estate, lien or interest in the real property described in the complaint herein."

13.080 Nonabatement of action or suit by death, disability or transfer; continuing proceedings. No action or suit shall abate by the death or disability of a party, or by the transfer of any interest therein, if the cause of action survives or continues. In case of the death or disability of a party, the court may, at any time within one year thereafter, on motion, allow the action or suit to be continued by or against his personal representatives or successors in interest.

13.090 Death of party after verdict does not abate action for wrong. An action for a wrong shall not abate by the death of any party, after a verdict has been given therein, but the action shall proceed thereafter in the same manner as in cases where the cause of action survives.

13.100 [Reserved for expansion]

JOINDER

13.110 When new parties must be brought in. In actions or suits the court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy can not be had without the presence of other parties, the court shall cause them to be brought in.

13.120 Interpleader. In any action or suit for the recovery of specific personal property, if a third person demands of the defendant the same property, the court in its discretion, on motion of the defendant, and notice to such person and the adverse party, may, before answer, make an order discharging the defendant from liability to either party, and substitute such person in his place as defendant. The order shall not be made except on the condition that the defendant deliver the property or its value to such person as the court may direct, and unless it appears from the affidavit of the defendant, filed with the clerk by the day he is otherwise required to answer, that such person makes such demand without collusion with the defendant. The affidavit of such third person as to whether he makes such demand of the defendant may be read on the hearing of the motion.

13.130 Intervention. At any time before trial any person who has an interest in the matter in litigation may, by leave of court, intervene. Intervention takes place when a third person is permitted to become a party to a suit, action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant. Intervention is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court and served upon the parties who have

not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it within 10 days from the service thereof, if served within the county wherein the suit, action or proceeding is pending, or within 20 days if served elsewhere.

13.140 Joinder of persons severally liable. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action or suit, at the option of the plaintiff.

13.150 Joinder of owners in actions or suits relating to real property; owners of separate parcels. In suits and actions relating to the title to real property or the right to the possession thereof, owners in common taking their titles directly by the same written instrument or by inheritance directly from the same common ancestor may be joined as plaintiff or defendant, as the case may be. In case a defect in, or cloud on, the title to real property affects more than one parcel thereof separately owned, the owners may be joined as parties plaintiff or defendant in any suit to quiet title to the parcel owned by each. This section shall not cut off any right of joinder of parties which otherwise existed heretofore.

13.160 Permissive joinder as plaintiffs or defendants. All persons having an interest in the subject of a suit, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided by statute. Any person may be made a defendant to a suit who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved.

13.170 Compulsory joinder; representative suits. Parties to a suit who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined as plaintiff can not be obtained, he may be made a defendant, the reason being stated in the complaint. When the question is one of a common or general interest of many persons, or when the parties are very numerous, and it may be impractical to bring them all before the court, one or more may sue or defend for the benefit of the whole.