

Chapter 18

1975 REPLACEMENT PART

Judgments and Decrees

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ENTRY OF JUDGMENTS AND DECREES, GENERALLY

18.010 Judgment, decree and order defined. (1) A judgment is the final determination of the rights of the parties in an action or special proceeding.

(2) The final determination of the rights of the parties to a suit is called a decree, and any intermediate determination is called an order.

18.020 Application to suits. ORS 18.030, 18.050, subsection (3) of 18.060, ORS 18.070 to 18.100, 18.120 and 18.130 shall apply to suits and the decrees therein.

18.030 Form of entry of judgment, generally; duties and powers of clerk. All judgments shall be entered by the clerk in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action. The clerk shall, on the date judgment is entered, mail a copy of the judgment and notice of the date of entry of the judgment to each party who is not in default for failure to appear. The clerk also shall make a note in the docket of the mailing. In the entry of all judgments, except judgments by default for want of an answer, the clerk shall be subject to the direction of the court.

[Amended by 1973 c.207 s.1]

18.040 Time of entry of judgment; conformity to findings or verdict. When judgment is given in any of the cases mentioned in ORS 18.070 or 18.090, it shall be entered within the day it is given. When a trial has been had before the court without a jury, judgment shall be entered by the clerk in conformity with the findings within the day the findings are filed. If the trial is by jury, judgment shall be given by the court in conformity with the verdict and so entered by the clerk within the day on which the verdict is returned.

18.050 Entry of judgment after time prescribed. When the clerk is unable or omits to enter judgment within the time prescribed in this chapter, it may be entered at any time thereafter.

[Amended by 1959 c.638 s.6]

18.060 Vacation, judgment or decree in; written decision; form and time of entry. (1) When a motion for new trial, for a particular judgment, or for a judgment notwithstanding the verdict, is decided in

vacation, the decision shall be in writing, and filed with the clerk. Within the day of such filing, judgment shall be entered by the clerk in conformity with the decision.

(2) When upon the submission of a suit the court is undecided as to what decree ought to be given therein, it may reserve the case for further consideration, and may decide the same and give such decree in vacation by filing it with the clerk. When a decree is given, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given.

(3) If a judgment or decree is entered in vacation, the clerk shall entitle and date the entry substantially as follows:

“State of Oregon, County of _____,
_____ Court for the County of _____.
In vacation, after the _____ term, 19—,
_____ the —, 19—,” as the fact may be,
and such entry shall have the same effect as
if entered in term time.

18.070 Judgment on confession, on referee's report, or on controversy submitted without action; form of. When judgment is given on confession, with or without action, on the report of referees, or on a controversy submitted without action, the entry shall state substantially the confession and assent thereto, the report of the referees, or agreed case, as the case may be.

18.080 Default judgment. (1) Judgment may be had upon failure to answer, as prescribed in this section. When it appears that the defendant, or one or more of several defendants in the cases mentioned in ORS 15.100, has been duly served with the summons, and has failed to file an answer with the clerk of the court within the time specified in the summons, or such further time as may have been granted by the court or judge thereof, the plaintiff shall be entitled to have judgment against such defendant or defendants, as follows:

(a) In an action arising upon contract for the recovery of money or damages only, the clerk, upon the written application of the plaintiff filed with the clerk, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount prayed for in the complaint, against the defendant, or against one or more of several defendants in cases provided for in ORS 15.100.

(b) In other actions, the clerk, upon written motion of the plaintiff being filed, shall enter the default of the defendant, and

thereafter the plaintiff may apply to the court for the relief demanded in the complaint. The court shall, upon such application, give judgment for the amount prayed for in the complaint, or the relief demanded in the complaint, unless it is necessary, to enable the court to give judgment or carry the same into effect, to take proof of any matter of fact, in which case the court may order the entry of judgment to be delayed until such proof is taken. The court may hear the proof itself, or make an order of reference, or that a jury be called to inquire thereof. Thereupon the court shall enter judgment in accordance with its own findings, or the verdict of the jury; provided, however, that in all cases where the cause of action is for unliquidated damages, if a jury is demanded by either party to assess the damage, the court must grant such jury trial. If neither party demands a jury the damage may be assessed by the court.

(2) When the defendant has answered, and admits the plaintiff's claim, but sets up a counterclaim amounting to less than the plaintiff's claim, the plaintiff, on motion, shall have judgment for the excess of his claim over such counterclaim, as for want of answer thereto.

(3) When in any action the service of the summons appears to have been made by publication, the court may order the entry of judgment to be delayed until the plaintiff files with the clerk an undertaking, with one or more sureties, to be approved by the clerk, in an amount equal to the sum for which judgment may be given, upon the condition that the plaintiff will abide by and perform any order of the court requiring restitution to be made to the defendant or his representative in case either of them shall afterwards be admitted to defend the action. The sureties in the undertaking shall have the qualifications of bail, and justify before the clerk as provided in ORS 29.610.

(4) When judgment is given for want of answer, the entry shall state substantially that the defendant was duly served with the summons, and failed to answer the complaint.

[Amended by 1971 c.365 s.1]

18.090 Judgment on demurrer.

When a decision has been made sustaining or overruling a demurrer, unless the party against whom the decision is made is allowed to amend or plead over, judgment shall be given for the prevailing party, for such amount, or relief, or to such effect, as it appears from the pleadings he is entitled;

but, if the cause is otherwise at issue upon a question of fact, the court may order the entry of judgment to be delayed until such issue is tried or otherwise disposed of.

18.100 Judgment for defendant on counterclaim or otherwise. If a counterclaim established at the trial exceeds the plaintiff's demand so established, judgment for the defendant shall be given for the excess; or if it appears that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

18.105 Summary judgment. (1) A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move, with or without supporting affidavits, for a summary judgment in his favor upon all or any part thereof.

(2) A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory judgment is sought may, at any time, move, with or without supporting affidavits, for a summary judgment in his favor as to all or any part thereof.

(3) The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(4) Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or

denials of his pleading, but his response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue as to any material fact for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(5) Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment, or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had, or may make such other order as is just.

(6) Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

[1975 c.106 s.1]

18.110 Judgment in action for recovery of personal property. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention thereof. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

18.115 Judgment in action or suit on contract. Judgment may be had upon failure to reply against a party joined under ORS 13.180. When it appears that such a party has been duly served with the summons, and has failed to file a reply with the clerk of the court within the time specified in the summons, or such further time as may have been granted by the court or judge thereof, the defendant filing a claim against that party shall have judgment against him as follows:

(1) In a claim under subsection (1) of ORS 13.180, as provided for complaints under subsections (1), (3) and (4) of ORS 18.080.

(2) In a claim arising under subsection (2) of ORS 13.180, upon written application of defendant filed with the clerk, and upon the event of defendant's prevailing in the action or suit, the clerk shall enter judgment against the party joined under subsection (2) of ORS 13.180 and in favor of defendant for the amount of reasonable attorney fees as determined under ORS 20.096. The provisions of subsections (3) and (4) of ORS 18.080 shall apply to judgments under this subsection as if judgment were rendered on a complaint.

[1975 c.623 s.12]

18.120 Judgment for or against any of several parties. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

18.130 Judgment against one or more defendants. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

18.140 Judgment notwithstanding verdict; alternative motion for new trial.

(1) When it appears from the pleadings that the court has not jurisdiction of the subject of the action or the person of the defendant, or that the facts stated in the pleadings of the plaintiff or defendant, as the case may be, do not constitute a cause of action or defense thereto, or when a motion for a directed verdict which should have been granted has been refused and a verdict is rendered against the applicant, the court may, on motion, render a judgment notwithstanding the verdict, or set aside any judgment which may have been entered and render another judgment, as the case may require.

(2) In any case where, in the opinion of the court, a motion for a directed verdict ought to be granted, it may nevertheless, at the request of the adverse party, submit the case to the jury with leave to the moving party to move for judgment in his favor if the verdict is otherwise than as would have been directed.

(3) A motion in the alternative for a new trial may be joined with a motion for judgment notwithstanding the verdict, and unless so joined shall, in the event that a motion

for judgment notwithstanding the verdict is filed, be deemed waived. When both motions are filed, the motion for judgment notwithstanding the verdict shall have precedence over the motion for a new trial, and if granted the court shall, nevertheless, rule on the motion for a new trial and assign such reasons therefor as would apply had the motion for judgment notwithstanding the verdict been denied, and shall make and file an order in accordance with said ruling.

(4) Any motion or motions provided for in this section, together with the supporting affidavits and counter affidavits, if any, shall be filed, heard and determined as provided in ORS 17.615.

(5) The clerk shall, on the date an order made pursuant to this section is entered or on the date a motion is deemed denied pursuant to ORS 17.615, whichever is earlier, mail a copy of the order and notice of the date of entry of the order or denial of the motion to each party who is not in default for failure to appear. The clerk also shall make a note in the docket of the mailing.

[Amended by 1957 c.348 s.1; 1973 c.207 s.2]

RELIEF FROM JUDGMENT, DECREE, ETC.

18.160 Relief from judgment, decree, order or other proceeding. The court may, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, decree, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect.

DISMISSAL OR NONSUIT

18.210 Decree of dismissal before trial. A decree dismissing a suit may be given against the plaintiff in any of the cases specified in subsections (1), (2) and (3) of ORS 18.230, except the last clause of such subsection (3). Such decree is a determination of the suit, but shall not have the effect to bar another suit for the same cause, or any part thereof.

18.220 Decree of dismissal after trial. Whenever upon the trial of a suit it is determined that the plaintiff is not entitled to the relief claimed or any part thereof, a decree shall be given dismissing the suit, and such decree shall have the effect to bar another suit for the same cause or any part

thereof, unless such determination is on account of a failure of proof on the part of the plaintiff, in which case the court may, on motion of the plaintiff, give such decree without prejudice to another suit by the plaintiff for the same cause or any part thereof.

18.230 When judgment of nonsuit given. (1) A judgment of nonsuit may be given:

(a) As a matter of right, on motion of the plaintiff filed with the court and served on the defendant not less than five days prior to the day of trial if no counterclaim has been pleaded; if a counterclaim has been pleaded or if it is less than five days prior to the day of trial, the allowance of the motion shall be subject to the discretion of the court.

(b) On motion of either party, upon the written consent of the other filed with the clerk.

(c) On motion of the defendant, when the action is called for trial, and the plaintiff fails to appear, or when after the trial has begun, and before the final submission of the cause, the plaintiff abandons it, or when upon the trial the plaintiff fails to prove a cause sufficient to be submitted to the jury, or upon a trial without a jury when the evidence is not sufficient to establish a prima facie case for plaintiff.

(2) A judgment of nonsuit may be given against a defendant asserting a counterclaim or cross-claim in the same manner and upon the same grounds set forth in paragraph (c) of subsection (1) of this section.

(3) A motion for judgment of nonsuit is not a waiver of the right of the moving party to present evidence if the motion is denied.

[Amended by 1967 c.466 s.1; 1975 c.134 s.1]

18.240 Cause not sufficient to be submitted to jury, defined. A cause not sufficient to be submitted to the jury is one which, if the jury were to find a verdict for the plaintiff, upon any or all of the issues to be tried, the court ought, if required, to set aside for want of evidence to support it.

18.250 Effect of judgment of nonsuit. When a judgment of nonsuit is given, the action is dismissed; but such judgment shall not have the effect to bar another action for the same cause.

18.260 Dismissal for want of prosecution; notice. Not less than 60 days prior

to the first regular motion day in each calendar year, unless the court has sent an earlier notice on its own motion, the clerk of the court shall mail notice to the attorneys of record in each pending case in which no action has been taken for one year immediately prior to the mailing of such notice, that each such case will be dismissed by the court for want of prosecution, unless on or before such first regular motion day application, either oral or written, is made to the court and good cause shown why it should be continued as a pending case. If such application is not made or good cause shown, the court shall dismiss each such case. Nothing contained in this section shall prevent the dismissing at any time, for want of prosecution, of any suit, action or proceeding upon motion of any party thereto.

[Amended by 1971 c.224 s.1]

DOCKETING; RECORD; LIEN; SATISFACTION

18.310 Application to suits. ORS 18.320 to 18.370 and 18.400 shall apply to decrees and the record thereof, as defined in ORS 19.005. ORS 18.430 shall apply to the enforcement of decrees, so far as the nature of the decree may require or admit of it.

[Amended by 1967 c.471 s.1]

18.320 Docketing of judgment or transcript. Immediately after the entry of judgment in any action the clerk shall docket the same in the judgment docket, noting thereon the day, hour and minute of such docketing. At any time thereafter, so long as the original judgment remains in force under ORS 18.360, and is unsatisfied in whole or in part, the plaintiff, or in case of his death, his representative, may file a certified transcript of the original docket in the office of the county clerk of any county in this state. Upon the filing of such transcript the clerk shall docket the same in the judgment docket of his office, noting thereon the day, hour and minute of such docketing. A certified transcript of the new docket entry of a judgment renewed under ORS 18.360 may likewise be filed in another county.

[Amended by 1961 c.151 s.1]

18.330[Repealed by 1959 c.558 s.29 (18.335 enacted in lieu of 18.330)]

18.335 Trial court file. In every proceeding, the clerk shall attach together and file in his office, in the order of their filing, all the original papers filed in the court, whether before or after judgment, including

but not limited to the summons and proof of service, pleadings, demurrers, motions, affidavits, depositions, stipulations, orders, the judgment and the notice of appeal and the undertaking on appeal, if any.

[1959 c.558 s.30 (enacted in lieu of 18.330)]

18.340[Repealed by 1959 c.558 s.51]

18.350 Lien of judgment; superseas. (1) From the time of docketing an original or renewed judgment or the transcript thereof, as provided in ORS 18.320, such judgment shall be a lien upon all the real property of the defendant within the county or counties where the same is docketed, or which he may afterwards acquire therein, during the time prescribed in ORS 18.360.

(2) When an appeal is taken from any judgment and an undertaking on appeal is filed, with a surety corporation licensed to do business in Oregon as surety on such undertaking, to the effect that if the judgment or any part thereof shall be affirmed the appellant will satisfy it so far as affirmed, the lien of the judgment shall cease and be annulled upon the expiration of the time allowed to except to the surety in the undertaking or upon the justification thereof, if excepted to, and that fact shall be noted upon the judgment lien docket over the signature of the officer having custody of such docket.

(3) When the lien of a judgment ceases in the county in which the judgment was originally entered, it shall cease in every county in which a transcript thereof has been filed.

[Amended by 1961 c.151 s.2]

18.360 Period during which judgment remains valid, and a lien; renewal. Whenever, after the entry of a judgment, a period of 10 years shall elapse, the judgment and the lien thereof shall expire. However, before the expiration of 10 years the circuit court in which such judgment was docketed, on motion, may renew such judgment and cause a new entry of the same to be made in the judgment docket, after which entry the lien of the judgment shall continue for another 10 years unless sooner satisfied, and after which entry execution may issue upon such judgment for another 10 years.

18.370 Priority of lien over unrecorded conveyance. A conveyance of real property, or any portion thereof, or interest therein, shall be void as against the lien of a judgment, unless such conveyance be record-

ed at the time of docketing such judgment, or the transcript thereof, as the case may be.

18.380 Liens of judgments or decrees of federal district courts. Any judgment or decree rendered by a district court of the United States, within the State of Oregon, shall be a lien on property throughout the state, in the same manner, to the same extent and under the same conditions as if the judgment or decree had been rendered by a court of general jurisdiction of this state, upon a compliance with the requirements of ORS 18.390, and not otherwise.

18.390 Docketing of transcript of federal court judgment or decree; when lien effective. Any judgment or decree rendered by a district court of the United States may be docketed by the clerk of the court which renders it, in like manner and with the same effect as judgments or decrees rendered by a court of general jurisdiction in this state are docketed. At any time after the entry and docketing of such judgment or decree in the judgment docket of the court, so long as the original judgment remains in force under ORS 18.360, and is unsatisfied in whole or in part, the plaintiff, or in case of his death, his representative, may file a certified transcript of the original docket in the office of the county clerk or other custodian of the records of any county in this state. A certified transcript of the new docket entry of a judgment renewed as provided in ORS 18.360 may likewise be filed in any county. Upon the filing of such transcript, the clerk, or other custodian of the records, shall docket the same in a judgment docket of his office. From the time of docketing the transcript, the judgment or decree shall be a lien upon all the real property of the defendant within the county where the same is docketed, or which he may afterwards acquire therein, during the time prescribed in ORS 18.360.

[Amended by 1961 c.151 s.3]

18.400 Satisfaction or assignment of judgment, record of. (1) When any judgment is paid or satisfied, that fact may be noted upon the judgment docket of original entry over the signature of the officer having the official custody of such docket, or of the party entitled to receive and receiving payment or satisfaction, or of the attorney or attorneys representing the judgment creditor in the suit, action or proceeding in which the judgment was rendered; provided, such satis-

faction shall not be made by an attorney whose authority over the judgment has expired. Upon annulment or payment or satisfaction and entry thereof being so made, the officer having the official custody of the judgment docket of original entry shall, upon request of any person and payment of a fee of 60 cents for the benefit of the county, issue a certificate showing the fact of satisfaction of such judgment, or annulment of the lien thereof, describing the same sufficiently for identification; and such certificate shall, upon presentation to the officer having official custody of the judgment docket in any county in which a transcript of such judgment may have been docketed, be entered upon such docket for the purpose of making the satisfaction of judgment a matter of record in such county.

(2) Evidence of the satisfaction of any judgment may also be perpetuated by the execution and acknowledgment by the judgment creditor, his assignee or personal representative, of a certificate describing the judgment with convenient certainty, and specifying that the judgment has been paid or otherwise satisfied or discharged. Such certificate shall be acknowledged or proved and certified in the manner provided by law for conveyances of real property, and may be recorded in the record of deeds of any county or counties, upon payment of the same fees as for recording a deed. In case such judgment has been entered in the judgment lien docket of any such county the official custodian of such lien docket shall, upon presentation and recording of such certificate of annulment or satisfaction, make notation of the recording thereof, with reference to the book and page of the record.

(3) An assignment of any judgment, executed in like manner, shall be entitled to record in the deed records of any county, and upon recording the same fact thereof, with like reference to book and page, shall be noted opposite the judgment on the judgment lien docket of such county. In counties where the deed records and the judgment lien docket are in the custody of different officers, the officer recording a certificate of satisfaction or assignment in the deed record shall exhibit the same to the officer having the custody of the judgment lien docket, who shall thereupon make proper entry upon said docket, opposite the entry of such judgment, showing the book and page where assignment or satisfaction of the judgment is recorded.

[Amended by 1965 c.619 s.7]

18.410 Who may satisfy judgment for payment of money; proceedings where judgment docketed in another county; disposition of money. Any person, against whom exists a judgment for the payment of money or who is interested in any property upon which any such judgment is a lien, may pay the amount due on such judgment to the clerk of the court in which the judgment was rendered, and the clerk shall thereupon satisfy the judgment upon the records of the court. If such judgment has been entered in the records or docketed in the judgment lien docket of any other county than the county in which it was rendered, then a certified copy of the satisfaction may be recorded in the journal of the circuit court of such other county and the clerk of that court shall thereupon satisfy the judgment upon the records of that court. Unless the clerk of the court in which the judgment was rendered sooner turns over the money paid to him on the judgment to the person determined by such court to be entitled thereto, he shall turn the money over to the county treasurer of his county, who shall give the clerk duplicate receipts therefor. One of the receipts shall be filed with the papers in the case in which such judgment was rendered, and the other shall be retained by the clerk. The county treasurer shall at any time pay the money over to the person who shall be determined to be entitled thereto by the order of the court in which the judgment was rendered.

18.420 Proceedings after discharge in bankruptcy. (1) Any person discharged from his debts pursuant to the federal bankruptcy laws may file in any court or tribunal in which a judgment has at any time been rendered or a transcript thereof filed against him, either before or after such discharge, a motion in the suit, action or proceeding for the discharge of the judgment from the record. If it appears to the court that he has been discharged from the payment of the judgment or the claim upon which the judgment was based, the court shall order that the judgment be discharged and satisfied of record, and thereupon the clerk of the court shall enter a satisfaction thereof; however, no such order shall be granted except upon such notice to the parties interested as the court or judge thereof may by order prescribe.

(2) For the purposes of this section, where notice was given in connection with bankruptcy proceedings to a creditor retaining a beneficial interest in an assigned

judgment or claim, such notice shall provide the basis for the satisfaction of that portion of said judgment in which the creditor retains a beneficial interest. Where the bankrupt received notice prior to the adjudication of bankruptcy of the assignment of a judgment or claim, notice to the assignor retaining a beneficial interest shall not provide the basis for satisfaction for that portion of the judgment which represents the amount actually paid by the assignee of said judgment for said claim and actual court costs incurred by said assignee in prosecuting said claim.

[Amended by 1961 c.538 s.1]

CONTRIBUTION

18.430 Contribution among judgment debtors; subrogation of surety. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such cases, the person so paying or contributing shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within 30 days after his payment he files with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment; upon filing such notice, the clerk shall make an entry thereof in the margin of the docket where the judgment is entered.

18.440 Right of contribution among joint tortfeasors; limitations; subrogation of insurer; effect on indemnity right. (1) Except as otherwise provided in this section, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them. There is no right of contribution from a person who is not liable in tort to the claimant.

(2) The right of contribution exists only in favor of a tortfeasor who has paid more than his proportional share of the common

liability, and his total recovery is limited to the amount paid by him in excess of his proportional share. No tortfeasor is compelled to make contribution beyond his own proportional share of the entire liability.

(3) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what is reasonable.

(4) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's proportional share of the common liability. This subsection does not limit or impair any right of subrogation arising from any other relationship.

(5) This section does not impair any right of indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

(6) This section shall not apply to breaches of trust or of other fiduciary obligation.
[1971 c.665 s.1; 1975 c.269 s.1]

18.445 Basis for proportional shares of tortfeasors. (1) The proportional shares of tortfeasors in the entire liability shall be based upon their relative degrees of fault or responsibility. In contribution actions arising out of liability under ORS 18.470, the proportional share of a tortfeasor in the entire liability shall be based upon his percentage of the common negligence of all tortfeasors.

(2) If equity requires, the collective liability of some as a group shall constitute a single share. Principles of equity applicable to contribution generally shall apply.
[1975 c.269 s.2]

18.450 Enforcement of right of contribution; commencement of separate action; barring right of contribution; effect of satisfaction of judgment. (1) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(2) Where a judgment has been entered in an action against two or more tortfeasors

for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(3) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by him to enforce contribution must be commenced within two years after the judgment has become final by lapse of time for appeal or after appellate review.

(4) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, his right of contribution is barred unless he has either:

(a) Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him and has commenced his action for contribution within two years after payment; or

(b) Agreed while action is pending against him to discharge the common liability and has within two years after the agreement paid the liability and commenced his action for contribution.

(5) The running of the statute of limitations applicable to a claimant's right of recovery against a tortfeasor shall not operate to bar recovery of contribution against the tortfeasor.

(6) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(7) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.
[1975 c.269 s.3]

18.455 Covenant not to sue; effect; notice. (1) When a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death or claimed to be liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the covenant, or in the amount of the considera-

tion paid for it, whichever is the greater; and

(b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

(2) When a covenant described in subsection (1) of this section is given, the claimant shall give notice of all of the terms of the covenant to all persons against whom he makes claims.

[1975 c.269 s.4]

18.460 Severability. If any provision of ORS 18.440 to 18.460 or the application thereof to any person is held invalid, the invalidity shall not affect other provisions or applications of ORS 18.440 to 18.460 which can be given effect without the invalid provision or application and to this end the provisions of ORS 18.440 to 18.460 are severable.

[1975 c.269 s.5]

COMPARATIVE NEGLIGENCE

18.470 Contributory negligence not bar to recovery; comparative negligence standard. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for death or injury to person or property if the fault attributable to the person seeking recovery was not greater than the combined fault of the person or persons against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the percentage of fault attributable to the person recovering. This section is not intended to create or abolish any defense.

[1971 c.668 s.1; 1975 c.599 s.1]

18.475 Doctrines of last clear chance and implied assumption of risk abolished. (1) The doctrine of last clear chance is abolished.

(2) The doctrine of implied assumption of the risk is abolished.

[1975 c.599 s.4]

18.480 Special questions to trier of fact; effect. (1) When requested by any party the trier of fact shall answer special questions indicating:

(a) The amount of damages to which a party seeking recovery would be entitled, assuming that party not to be at fault;

(b) The degree of each party's fault expressed as a percentage of the total fault attributable to all parties represented in the action.

(2) A jury shall be informed of the legal

effect of its answer to the questions listed in subsection (1) of this section.

[1975 c.599 s.2]

18.485 Liability of joint tortfeasors; exception. Each joint tortfeasor defendant is jointly and severally liable for the entire amount of the judgment awarded a plaintiff, except that a defendant whose percentage of fault is less than that allocated to the plaintiff is liable to the plaintiff only for that percentage of the recoverable damages.

[1975 c.599 s.3]

18.490 Setoff of damages not allowed. Setoff of damages shall not be granted in actions subject to ORS 18.470 to 18.490.

[1975 c.599 s.5]

ADVANCE PAYMENTS

18.510 Effect of advance payment; payment as satisfaction of judgment. (1) If judgment is entered against a party on whose behalf an advance payment referred to in ORS 41.960 or 41.970 has been made and in favor of a party for whose benefit any such advance payment has been received, the amount of the judgment shall be reduced by the amount of any such payments in the manner provided in subsection (3) of this section. However, nothing in ORS 12.155, 41.950 to 41.980 and this section authorizes the person making such payments to recover such advance payment if no damages are awarded or to recover any amount by which the advance payment exceeds the award of damages.

(2) If judgment is entered against a party who is insured under a policy of liability insurance against such judgment and in favor of a party who has received benefits that have been the basis for a reimbursement payment by such insurer under ORS 743.825, the amount of the judgment shall be reduced by reason of such benefits in the manner provided in subsection (3) of this section.

(3) (a) The amount of any advance payment referred to in subsection (1) of this section may be submitted by the party making the payment, in the manner provided in ORS 20.210 and 20.220 for the submission of disbursements.

(b) The amount of any benefits referred to in subsection (2) of this section, diminished in proportion to the amount of negligence attributable to the party in favor of whom the judgment was entered and dimin-

ished to an amount no greater than the reimbursement payment made by the insurer under ORS 743.825, may be submitted by the insurer which has made the reimbursement payment, in the manner provided in ORS 20.210 and 20.220 for the submission of disbursements.

(c) Unless timely objections are filed as provided in ORS 20.210, the court clerk shall

apply the amounts claimed pursuant to this subsection in partial satisfaction of the judgment. Such partial satisfaction shall be allowed without regard to whether the party claiming the reduction is otherwise entitled to costs and disbursements in the action.

[1971 c.331 s.6; 1975 c.784 s.14]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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,
October 1, 1975.

Thomas G. Clifford
Legislative Counsel