

Chapter 18

1979 REPLACEMENT PART

Judgments and Decrees

- ENTRY OF JUDGMENTS AND DECREES**
- 18.010 Final judgment and order defined
18.030 Form of entry of judgment, generally; duties and powers of clerk
18.040 Time of entry of judgment; conformity to findings or verdict
18.050 Entry of judgment after time prescribed
18.060 Vacation of judgment; written decision; time of entry
18.070 Judgment on confession, on referee's report, or on controversy submitted without action; form of
18.080 Default judgment
18.090 Judgment on motion to dismiss
18.100 Judgment for defendant on counterclaim or otherwise
18.110 Judgment in action for recovery of personal property
18.115 Judgment for defendant when party served does not answer; attorney fees
18.120 Judgment for or against any of several parties
18.125 Judgment for less than all causes or parties in suit or action; stay of enforcement
18.135 Procedure where part of defendants are served; judgment against one or more of several defendants
- RELIEF FROM JUDGMENT, DECREE, ETC.**
- 18.160 Relief from judgment, decree, order or other proceeding
- DOCKETING; RECORD; LIEN; SATISFACTION**
- 18.320 Docketing of judgment or transcript
18.335 Trial court file
18.350 Lien of judgment; supersedeas
18.360 Period during which judgment remains valid, and a lien; renewal
18.370 Priority of lien over unrecorded conveyance
18.380 Liens of judgments or decrees of federal district courts
- 18.390 Docketing of transcript of federal court judgment or decree; when lien effective
18.400 Record of satisfaction or assignment of judgment; support orders
18.405 Notice of satisfaction of support judgment
18.410 Who may satisfy judgment for payment of money; proceedings where judgment docketed in another county; disposition of money
18.420 Proceedings after discharge in bankruptcy
- CONTRIBUTION**
- 18.430 Contribution among judgment debtors; subrogation of surety
18.440 Right of contribution among joint tortfeasors; limitations; subrogation of insurer; effect on indemnity right
18.445 Basis for proportional shares of tortfeasors
18.450 Enforcement of right of contribution; commencement of separate action; barring right of contribution; effect of satisfaction of judgment
18.455 Covenant not to sue; effect; notice
18.460 Severability
- COMPARATIVE NEGLIGENCE**
- 18.470 Contributory negligence not bar to recovery; comparative negligence standard
18.475 Doctrines of last clear chance and implied assumption of risk abolished
18.480 Special questions to trier of fact; effect
18.485 Liability of joint tortfeasors; exception
18.490 Setoff of damages not allowed
- ADVANCE PAYMENTS**
- 18.510 Effect of advance payment; payment as satisfaction of judgment

CROSS REFERENCES

- Confession, judgments and decrees by, Ch. 26
Declaratory judgments, Ch. 28
Enforcement by mandamus, of performance of duties relating to entry and docketing of judgments, 1 025
Enforcement of judgments and decrees, Ch 23
Enforcement of support orders or decrees, 23.760 to 23.789
Foreign judgments, effect, 43 180; enforcement, Ch. 24, faith and credit to, U.S Const Art. IV, §1
Judgment in small claims division of tax court not a precedent, 305 555
Submitting controversy without action, Ch. 27
Welfare recipient, lien on judgment in favor, 416.540
- 18.010**
Conclusiveness of judgment, 41.350, 43.130
Former judgments, evidentiary effect, 43.160
Impeachment of judgment, 43.220
Partition decree, conclusiveness, 105.275
Proof of judgments, 43.110, 43.120
Publication against unknown parties, conclusiveness of judgment, 128.140, 128.150
Trial court file, judgment as part of, 19.005

PROCEDURE IN CIVIL PROCEEDINGS

18.030
Appeal, judgment or decree following, 19.160, 19.190
Class actions, judgment, 13.380
Judgments in.
Bonds, actions on, 30.250
Forcible entry and detainer proceedings, 105.145
Quo warranto proceedings, 30.560, 30.590

18.040
Chambers, power of judge to grant and sign judgments,
3.070

18.050
Chambers, power of judge to grant and sign judgments,
3.070

18.060
Chambers, power of judge to grant and sign judgments,
3.070

18.070
Confession, judgments, Ch. 26
Referee's report as basis for judgment, 17.765
Submission of controversy without action, Ch. 27

18.080
Appeal from default judgment, when allowed, 19.020
Clerk's duties, mailing of judgment and notice of entry to
nondefaulting parties, 18.030

18.110
Judgment in action for recovery of realty, 105.055

18.135
Judgment against one or more of several defendants,
18.080, 18.120

18.160
Adoption, effect of decree, 109.381
Unknown parties, relief from judgment against, 15.180,
128.140, 128.150

18.320
District court judgment, docketing in circuit court, 46.274
Judgment docket defined, 7.040
Justice court judgment, docketing in circuit court, 52.630
Recording of judgment or decree affecting lands, in
another county, 93.730

18.335
Files of court, 7.090
Oath and report of commissioners in boundary disputes
are part of judgment roll, 105.720

18.350
Appeal, effect upon lien of judgment, 19.190
Marriage dissolution or separation suits, limitation on
existence of liens arising out of decrees or orders,
107.126

18.360
Marriage dissolution or separation suits, limitation on
existence of liens arising out of decrees or orders,
107.126

18.420
Effect of assignment on a defense, 80.020

18.510
Evidence, 41.950 to 41.980
Limitations, 12.155

ENTRY OF JUDGMENTS AND DECREES

18.010 Final judgment and order defined. (1) A final judgment shall include both the final determination of the rights of the parties in an action or special proceeding as well as a final judgment entered pursuant to ORS 18.125.

(2) Other determinations in an action that are intermediate in nature are called orders.

[Amended by 1977 c.208 §1; 1979 c.284 §50]

18.020 [Repealed by 1979 c.284 §199]

18.030 Form of entry of judgment, generally; duties and powers of clerk. All judgments shall be entered by the clerk in the journal. All judgments shall specify clearly the judgment debtor, judgment creditor, 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 §1; 1977 c.616 §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 §6]

18.060 Vacation of judgment; written decision; 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 an action tried without a jury the court is undecided as to what judgment ought to be given therein, it may reserve the case for further consideration, and may decide the same and give such judgment in vacation by filing it with the clerk. When a judgment is given, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given.

[Amended by 1979 c.284 §51]

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 18.135, 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 18.135.

(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 §1]

18.090 Judgment on motion to dismiss. When a decision has been made sustaining or overruling a motion to dismiss, 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 the prevailing party 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. [Amended by 1979 c 284 §52]

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 [1975 c.106 §1; 1977 c.208 §2; repealed by 1979 c.284 §199]

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 for defendant when party served does not answer; attorney fees. (1) When it appears that a party joined under ORCP 22 D.(2) 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 that party.

(2) 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 ORCP 22 D.(2) 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 section as if judgment were rendered on a complaint. [1975 c.623 §12; 1979 c 284 §53]

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.

18.125 Judgment for less than all causes or parties in suit or action; stay of enforcement. (1) When more than one demand for relief is presented in a suit or action, whether as multiple causes of suit or action, counterclaims, cross-claims, or third-party actions or suits, or when multiple parties are involved, the court may direct the entry of a final judgment or decree as to one or more but fewer than all of the causes of suit or action or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment or decree. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the causes of suit or action or the rights and liabilities of fewer than all the parties shall not terminate the proceeding as to any of the causes of suit or action or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment or decree adjudicating all the causes of suit or action and the rights and liabilities of all the parties.

(2) When the court has ordered a final judgment or decree under the conditions stated in subsection (1) of this section, the court may stay enforcement of that judgment or decree until the entering of a subsequent judgment or judgments or decree or decrees and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment or decree is entered. [1977 c.208 §3]

18.130 [Repealed by 1977 c.208 §5]

18.135 Procedure where part of defendants are served; judgment against one or more of several defendants. (1) When an action is against two or more defendants, and the summons is served on one or more, but not all of them:

(a) If the action is against defendants jointly indebted upon a contract, the plaintiff may proceed against the defendants served, unless the court otherwise directs; and if he recovers judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all and the separate property of the defendant served, and if they are subject to arrest, against the persons of the defendants served; or,

(b) If the action is against defendants severally liable, the plaintiff may proceed

against the defendants served in the same manner as if they were the only defendants.

(2) If all the defendants have been served, judgment may be taken against any of them severally, when the plaintiff would be entitled to judgment against such defendant, or defendants, if the action had been against them, or any of them alone. [Formerly 15.100]

18.140 [Amended by 1957 c.348 §1; 1973 c.207 §2; repealed by 1979 c.284 §199]

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.

18.210 [Repealed by 1979 c.284 §199]

18.220 [Repealed by 1979 c.284 §199]

18.230 [Amended by 1967 c.466 §1; 1975 c.134 §1; repealed by 1979 c.284 §199]

18.240 [Repealed by 1979 c.284 §199]

18.250 [Repealed by 1979 c.284 §199]

18.260 [Amended by 1971 c.224 §1; repealed by 1979 c.284 §199]

DOCKETING; RECORD; LIEN; SATISFACTION

18.310 [Amended by 1967 c.471 §1; repealed by 1979 c.284 §199]

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 §1]

18.330 [Repealed by 1959 c.558 §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 the office of the clerk, 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, motions, affidavits, depositions, stipulations, orders, the judgment and the notice of appeal and the undertaking on appeal, if any. [1959 c.558 §30 (enacted in lieu of 18.330); 1979 c.284 §54]

18.340 [Repealed by 1959 c.558 §51]

**18.350 Lien of judgment; superse-
deas.** (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 §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 recorded 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 §3]

18.400 Record of satisfaction or assignment of judgment; support orders.

(1) Subject to subsection (4) of this section,

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 satisfaction 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, or the assignee or personal representative of the judgment creditor, 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. The procedures authorized by this subsection may be used only when the judgment does not arise pursuant to a support order entered under ORS chapter 107, 108, 109, 110 or 419 which directs that payments are to be made to the Department of Human Resources.

(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.

(4) In cases where support payments ordered under ORS chapter 107, 108, 109, 110 or 419 are to be paid to the Department of Human Resources, any full or partial satisfaction of a support payment judgment signed by an obligee or an attorney representing the obligee must be mailed to or delivered to the Department of Human Resources, and not to the clerk of the court. The Department of Human Resources may provide support satisfaction forms, along with specific instructions. No credit shall be given for such support satisfaction except as provided by this subsection. The department shall credit such support satisfaction to the support judgment pay records maintained by the department, except to the extent that the judgment is assigned to the Department of Human Resources or its divisions. The department shall then promptly forward the satisfaction instrument to the appropriate clerk of the court together with a Department of Human Resources certificate stating the amount of support satisfaction entered on the pay records of the department. The clerk of the court shall enter on the judgment docket only the amount of the support satisfaction shown on the Department of Human Resources certificate, and not the amount shown on the satisfaction instrument. Nothing in this subsection shall prevent the Department of Human Resources or its attorney, in their discretion, from signing and mailing or delivering to the department a full or partial satisfaction of a support payment judgment to the extent that such judgment is assigned to the department. All other satisfactions of judgments shall be mailed or delivered to the clerk of the court, and not to the Department of Human Resources. [Amended by 1965 c.619 §7; 1979 c.694 §1]

18.405 Notice of satisfaction of support judgment. At least five days prior to any application to the circuit court for an order fully or partially satisfying a support judgment, if aid, as defined in subsection (2) of ORS 418.035, is or has been granted to or on behalf of any person who is entitled to support pursuant to the support order, then a true copy of all papers to be submitted as part of such application shall be served by personal delivery or first-class mail on the Administrator of the Support Enforcement Division or on the branch office of the division which provides service to the county in which the application will be made. [1979 c.694 §3]

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 §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 §1; 1975 c.269 §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 §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 §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 consideration 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 §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 §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 §1; 1975 c.599 §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 §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 §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 §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 §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 attri-

butable to the party in favor of whom the judgment was entered and diminished 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 §6; 1975 c.784 §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, 1979.

Thomas G. Clifford
Legislative Counsel

