

## H. RESPONSIVE PLEADINGS

H(1) Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall specify so much of it as is true and material and shall deny only the remainder. unless the pleader intends in good faith to controvert all the allegations of the preceding pleading, the denials may be made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all the allegations except such designated allegations or paragraphs as he expressly admits; but, when the pleader does so intend to controvert all its allegations, the pleader may do so by general denial subject to the obligations set forth in Rule J.

H(2) Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative or contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, unconstitutionality, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim

as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

H(3) Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

#### I. SPECIAL PLEADING RULES

I(1) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

I(2) Judgment or other determination of court or officer, how pleaded. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation is controverted, the party pleading is bound to establish on the trial the facts conferring jurisdiction.

I(3) Private statute, how pleaded. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

pleading and joinder area and the balance of these rules use the word, claim, rather than cause of action: retaining cause of action here would be confusing and is unnecessary. It is the reference to pleading ultimate facts that will retain the present level of specificity in pleading.

Of the jurisdictions with modern pleading rules, only three do not utilize to the federal description of pleading (Texas, Michigan and Florida). Texas and Michigan retain the use of cause of action. The language of this rule is adapted from Florida Rule 1.110 (b) (2), "A short and plain statement of the ultimate facts showing that the pleader is entitled to relief". The Oregon courts have developed the required level of pleading specificity through a series of cases distinguishing ultimate facts from evidentiary facts and conclusions of law, and this rule would retain the existing court-defined level of specificity.

Subsection (2) is based on existing ORS 16.210 (c). The last sentence was added. The word, plaintiff, will be changed to party to conform to the broader scope of the rule.

#### RULE H

This rule governs all responsive pleadings. The language is that of Federal Rule 8 (b) through (d), slightly modified to fit Oregon practice. Except as pointed out below, it is consistent with existing Oregon practice.

(1) The only substantial change here would be the last clause of the last sentence which authorizes a general denial only when a pleader truly intends to controvert all allegations in an opponent's pleading. Since few cases would arise when a pleader would truly be able to deny absolutely all

allegations in a pleading, the general denial would be rarely used. (Note there is a typographical error in the draft -- it should read obligations in Rule F instead of Rule J). Existing Oregon practice sanctions use of the general denial, but this is inconsistent with the fact pleading objective of sharpening issues through pleading.

(2) This does not change any existing burden of pleading in Oregon but spells out some common situations of affirmative defenses. ORS 16.290 simply requires affirmative statement of new matter without any specific illustrations. The list of items is not exclusive; for any potential defense not listed, the pleader must decide if this is "any other matter constituting an avoidance or affirmative defense". The defenses listed under the federal rule were modified by addition of "comparative negligence" and "unconstitutionality" which are the subject of existing Oregon cases. There also are Oregon cases on estoppel, failure of consideration, release, res judicata and statute of limitations. Assumption of risk, contributory negligence and fellow servant have generally been replaced in Oregon, but could arise in an occasional case and were not deleted.

(3) Except for the situation where no reply is required, this is the existing rule.

#### RULE I

Most of these special pleading rules are taken directly from the Oregon statutes; with the exceptions of Sections (6) and (9), similar provisions exist in most other states.

(1) This is Utah Rule 9(c). It is identical to ORS 16.480 except that

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recovery of money or damages is demanded, the amount thereof shall be stated; relief in the alternative or of several different types may be demanded; (3) a statement specifying whether the party asserts that the claim, or any part thereof, is triable of right by a jury.

#### H. RESPONSIVE PLEADINGS

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H(2) Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative or contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, unconstitutionality, waiver, and any other matter constituting an

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avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

H(3) Assertion of right to jury trial. The party filing the responsive pleading shall, in that pleading, admit or deny the assertions of right to jury trial and affirmatively assert whether the defenses, or any part thereof, asserted in the responsive pleading are triable of right by a jury.

H(4) Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which a reply is permitted but not required shall be taken as denied or avoided unless a permissive reply is filed admitting or denying such allegations. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

#### I. SPECIAL PLEADING RULES

I(1) Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

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19  
A. RESPONSIVE PLEADINGS

19 A  
~~19 A~~ Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall admit so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the allegations of the preceding pleading, the denials may be made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all the allegations except such designated allegations or paragraphs as he expressly admits; but, when the pleader does so intend to controvert all its allegations, the pleader may do so by general denial subject to the obligations set forth in Rule 17

19 B  
~~19 B~~ Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative or contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute

of limitations, unconstitutionality, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

<sup>19.C</sup>  
~~H.3~~) Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied.

<sup>20</sup>  
4. SPECIAL PLEADING RULES

<sup>20A</sup>  
~~I(1)~~ Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

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be stated; relief in the alternative or of several different types may be demanded.

BACKGROUND NOTE

ORS section superseded: 16.210.

COMMENT

The Council decided to retain fact pleading as opposed to notice pleading, i.e., to retain a requirement of fairly specific description of facts as opposed to adopting the less specific fact description allowable in federal courts. This rule is a rewording of ORS 16.210 to fit any form in which a claim for affirmative relief is asserted and to refer to pleading a claim for relief rather than a cause of action. The necessity of pleading ultimate facts retains the present Oregon requirements of pleading facts at a fairly specific level. For a comparable rule, see Florida Rules of Civil Procedure, 1.110(b)(2).

RULE 19

RESPONSIVE PLEADINGS

A. Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall admit so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the allegations of the preceding pleading, the denials may be made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all the allegations<sup>s</sup> except such designated allegations or

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OR in opposite  
pleading

paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all ~~the~~ <sup>the</sup> ~~allegations~~ <sup>allegations</sup>, the pleader may do so by general denial ~~subject to the obligations set forth~~ <sup>OR all on the allegations set on</sup> in Rule 17. ~~OR in opposite pleading~~

B. Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative or contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, unconstitutionality, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

C. Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required (or permitted) shall be taken as denied, except allegations in a reply to a counterclaim which shall be taken as denied or avoided.

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neg OR to  
den - avoid  
or denied =  
or avoided =

BACKGROUND NOTE

ORS sections superseded: 16.290, 16.620.

## COMMENT

This rule governs all responsive pleadings. The language comes from Federal Rule 8(b) through (d) modified to fit Oregon practice. The rule is consistent with Oregon practice in most cases. In section 19 A. a general denial could only be used where the pleader intends to controvert absolutely every allegation in the opposing pleading; this is more consistent with specific pleading. Section 19 B. does not change the existing burden of pleading. Several specific affirmative defenses which do not appear in the federal rule but which are the subject of Oregon cases are included. Assumption of risk, ~~contributory negligence~~ and fellow servant are not defenses of much currency under existing Oregon law but were left in the rule for an unusual case or where an Oregon court might be applying foreign law.

## RULE 20

### SPECIAL PLEADING RULES

A. Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

B. Judgment or other determination of court or officer; how pleaded. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation is controverted, the party pleading is bound to establish on the trial the facts conferring jurisdiction.

C. Private statute; how pleaded. In pleading a private

## RULE 19

### RESPONSIVE PLEADINGS

A. Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall admit so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the allegations of the preceding pleading, the denials may be made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all the allegations except such designated allegations or paragraphs as he expressly admits; but, when the pleader does so intend to controvert all its allegations, the pleader may do so by general denial subject to the obligations set forth in Rule 17.

B. Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative or contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, unconstitutionality, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a

defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

C. Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied. ~~and allegations in a reply filed by a person summoned ~~and~~ under the provisions of Rule 22D shall be taken as denied or avoided.~~

BACKGROUND NOTE

ORS sections superseded: 16.290, 16.620. *except allegations in a reply to a counterclaim which shall be taken as denied or avoided*

COMMENT

This rule governs all responsive pleadings. The language comes from Federal Rule 8(b) through (d) modified to fit Oregon practice. The rule is consistent with Oregon practice in most cases. In section 19 A. a general denial could only be used where the pleader intends to controvert absolutely every allegation in the opposing pleading; this is more consistent with specific pleading. Section 19 B. does not change the existing burden of pleading. Several specific affirmative defenses which do not appear in the federal rule but which are the subject of Oregon cases are included. Assumption of risk, contributory negligence and fellow servant are not defenses of much currency under existing Oregon law but were left in the rule for an unusual case or where an Oregon court might be applying foreign law.

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Rule 19.

Responsive Pleadings.

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16.290, 16.620.

COMMENT:

This rule governs all responsive pleadings. The language comes from Federal Rule 8(b) through (d) modified to fit Oregon Practice. The rule is consistent with Oregon practice in most cases. In Section 19A a general denial could only be used where the pleader intends to controvert absolutely every allegation in the opposing pleading; this is more consistent with specific pleading. Section 19B does not change the existing burden of pleading. Several specific affirmative defenses <sup>which do not appear in the federal rule</sup> ~~which~~ are the subject of <sup>but which</sup> Oregon cases are included. Assumption of risk, contributory negligence and fellow servant ~~XXXXX~~ are not defenses of much currency under existing Oregon law but were left in the rule for an unusual case or where an Oregon court might be applying foreign law.

Rule 20.

Special Pleading Rules.

Background note.

one sections superseded.

13.060  
13.020, 13.070, 16.480, 16.490, 16.500, 16.510, 16.520

16.540.

## RULE 19

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B. Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative or contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, unconstitutionality, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a

defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

C. Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied, except allegations in a reply to a counterclaim which shall be taken as denied or avoided.

#### BACKGROUND NOTE

ORS sections superseded: 16.290, 16.620.

#### COMMENT

This rule governs all responsive pleadings. The language comes from Federal Rule 8(b) through (d) modified to fit Oregon practice. The rule is consistent with Oregon practice in most cases. In section 19 A. a general denial could only be used where the pleader intends to controvert absolutely every allegation in the opposing pleading; this is more consistent with specific pleading. Section 19 B. does not change the existing burden of pleading. Several specific affirmative defenses which do not appear in the federal rule but which are the subject of Oregon cases are included. Assumption of risk, contributory negligence and fellow servant are not defenses of much currency under existing Oregon law but were left in the rule for an unusual case or where an Oregon court might be applying foreign law.

be stated; relief in the alternative or of several different types may be demanded.

BACKGROUND NOTE

ORS section superseded: 16.210.

COMMENT

The Council decided to retain fact pleading as opposed to notice pleading, i.e., to retain a requirement of fairly specific description of facts as opposed to adopting the less specific fact description allowable in federal courts. This rule is a rewording of ORS 16.210 to fit any form in which a claim for affirmative relief is asserted and to refer to pleading a claim for relief rather than a cause of action. The necessity of pleading ultimate facts retains the present Oregon requirements of pleading facts at a fairly specific level. For a comparable rule, see Florida Rules of Civil Procedure, 1.110(b)(2).

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B. Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative or contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, unconstitutionality, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

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## RULE 20

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B. Judgment or other determination of court or officer; how pleaded. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation is controverted, the party pleading is bound to establish on the trial the facts conferring jurisdiction.

C. Private statute; how pleaded. In pleading a private

RULE 18

COMPLAINT, COUNTERCLAIM, CROSS-CLAIM  
THIRD PARTY CLAIM

A pleading which asserts a claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim, shall contain:

A. A plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition;

B. A demand of the relief which the party claims; if recovery of money or damages is demanded, the amount thereof shall be stated; relief in the alternative or of several different types may be demanded.

COMMENT

The Council decided to retain fact pleading as opposed to notice pleading, i.e., to retain a requirement of fairly specific description of facts as opposed to adopting the less specific fact description allowable in federal courts. This rule is a rewording of ORS 16.210 to fit any form in which a claim for affirmative relief is asserted and to refer to pleading a claim for relief rather than a cause of action. The necessity of pleading ultimate facts retains the present Oregon requirements of pleading facts at a fairly specific level. For a comparable rule, see Florida Rules of Civil Procedure, 1.110(b)(2).

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B. Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative or contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, unconstitutionality, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

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This rule governs all responsive pleadings. The language comes from Federal Rule 8(b) through (d) modified to fit Oregon practice. The rule is consistent with Oregon practice in most cases. In section 19 A. a general denial could only be used where the pleader intends to controvert absolutely every allegation in the opposing pleading; this is more consistent with specific pleading. Section 19 B. does not change the existing burden of pleading. Several specific affirmative defenses which do not appear in the federal rule but which are the subject of Oregon cases are included. Assumption of risk, contributory negligence and fellow servant are not defenses of much currency under existing Oregon law but were left in the rule for an unusual case or where an Oregon court might be applying foreign law. To determine when pleadings are required or permitted under section 19 C., see ORCP 13 B.

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