

RULE 6

SEARCHED
07

MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT

NOTWITHSTANDING THE VERDICT

A. Motion for directed verdict; when made; effect. Any party may move for a directed verdict at the close of the evidence offered by an opponent or at the close of all the evidence. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

B. Judgment notwithstanding the verdict.

B.(1) Grounds. 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.

B.(2) Reserving ruling on directed verdict motion. 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.

B.(3) Alternative motion for new trial. 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.

B.(4) Time for motion and ruling. A motion for judgment notwithstanding the verdict shall be filed within ten (10) days after the filing of the judgment sought to be set aside, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days of the time of the entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

B.(5) Duties of the clerk. 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 subsection (4) of this section, 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.

9 B.(6) Motion for new trial after judgment notwithstanding the verdict. The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 63 not later than 10 days after entry of the judgment notwithstanding the verdict.

~~COMMENT: Section A. is the modified form of Federal Rule 50 (a)~~

Rule 61.

Background note.

ORS sections superseded

18.230, 18.240, 18.250, 18.140.

COMMENT:

Section ~~AX~~ 61 A is based upon Federal Rule 50(a). These rules eliminate the device of nonsuit completely. The proper motion to ~~test~~ sufficiency of the evidence ~~both at the close of the plaintiffs case~~ in a jury case, ~~XXXX~~ at the close of the plaintiffs case or any other time before submission to the jury, is for directed verdict. The major change from the nonsuit practice is that a directed verdict at the close of the plaintiffs case would be a dismissal with prejudice whereas the nonsuit was not. For a dismissal in a non jury case under rule 54 the judge may direct that dismissal be without prejudice. (If a judge feels that ~~XXXXXXXXXXXXXXXX~~ a plaintiff should be given a chance to refile when the evidence presented by the plaintiff was insufficient, the trial judge can grant the plaintiff leave to take a dismissal without prejudice under rule 54 A instead of directing a verdict. *For a non jury case*)

Section B is based upon ORS 18.140. The reference to failure to state a cause of action in a pleading as a ground for judgment NOV was eliminated as unnecessary and inconsistent with the pleading rules. Subsection B (6) ~~XXXXXXXXXXXXXXXX~~ is based upon Federal rule 50(c)(2)

RULE 61

MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT
NOTWITHSTANDING THE VERDICT

A. Motion for directed verdict; when made; effect. Any party may move for a directed verdict at the close of the evidence offered by an opponent or at the close of all the evidence. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

B. Judgment notwithstanding the verdict.

B.(1) Grounds. 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.

B.(2) Reserving ruling on directed verdict motion. 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.

B.(3) Alternative motion for new trial. 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.

B.(4) Time for motion and ruling. A motion for judgment notwithstanding the verdict shall be filed within ten (10) days after the filing of the judgment sought to be set aside, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days of the time of the entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

B.(5) Duties of the clerk. 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 subsection (4) of this section, 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.

B. (6) Motion for new trial after judgment notwithstanding the verdict. The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may seve a motion for a new trial pursuant to Rule ⁶⁴~~63~~ not later than 10 days after entry of the judgment notwithstanding the verdict.

BACKGROUND NOTE

ORS sections superseded: 18.230, 18.240, 18.250, 18.140,

COMMENT

Section 61 A. is based upon Federal Rule 50(a). These rules eliminate the device of nonsuit completely. The proper motion to test sufficiency of the evidence in a jury case, at the close of the plaintiff's case, or any other time before submission to the jury, is for directed verdict. The major change from the nonsuit practice is that a directed verdict at the close of the plaintiff's case would be a dismissal with prejudice, whereas the nonsuit was not. For a dismissal in a non-jury case under Rule 54, the judge may direct that dismissal be without prejudice. In either case, if a judge feels that a plaintiff should be given a chance to refile when the evidence presented by the plaintiff was insufficient, the trial judge can grant the plaintiff leave to take a dismissal without prejudice under Rule 54 A. instead of directing a verdict. *ORS 18.240 was eliminated at ORP.*

Section ⁶¹B. is based upon ORS 18.140. The reference to failure to state a cause of action in a pleading as a ground for judgment NOV was eliminated as unnecessary and inconsistent with the pleading rules. Subsection B. (6) is based upon Federal Rule 50(c) (2).

RULE 61

VERDICTS, GENERAL AND SPECIAL

A. General verdict. A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant.

B. Special verdict. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires such party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

C. General verdict accompanied by answer to interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more

P B
Oct 30 memo

lingone
llal

10/31
Hanson

issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and the answers shall be entered. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

P 14
Possible memo
Oct 30 memo

D. Action for specific personal property. *stat.* In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by answer claims a return thereof, the jury shall assess the value of the property, if their verdict is in favor of the plaintiff, or if they find in favor of the defendant, and that defendant is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer,

P30 oct
30 memo

add (original) cl. 1

language

P 4

Oct 31, 1948

memo

which the prevailing party has sustained by reason of the detention or taking and withholding of such property.

E. Assessment of amount of recovery. When a verdict is found for the plaintiff in an action for recovery of money, or for the defendant when a counterclaim for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the answer.

pb3
oct
30 memo
12/2/20
Chase

BACKGROUND NOTE

ORS sections superseded: 17.405, 17.410, 17.415, 17.420, 17.425.

COMMENT

Sections 61 B. and 61 C. are based upon Federal Rule 49 (a) and (b). Section 61 D. is based upon ORS 17.410, and Section 61 E. is based upon ORS 17.425.

RULE 62

FINDINGS OF FACT

A. Necessity. Whenever any party appearing in a civil action or proceeding tried by the court so demands prior to the commencement of the trial, the court shall make special findings of fact, and shall state separately its conclusions of law thereon. In the absence of such a demand for special findings, the court may make either general or special findings. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact or conclusions of law appear therein.

pg
new 13
memo
completing

RULE 61

MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT
NOTWITHSTANDING THE VERDICT

A. Motion for directed verdict; when made; effect. Any party may move for a directed verdict at the close of the evidence offered by an opponent or at the close of all the evidence. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

B. Judgment notwithstanding the verdict.

B.(1) Grounds. 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.

B.(2) Reserving ruling on directed verdict motion. 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.

B.(3) Alternative motion for new trial. 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.

B.(4) Time for motion and ruling. A motion for judgment notwithstanding the verdict shall be filed within ten (10) days after the filing of the judgment sought to be set aside, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days of the time of the entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

B.(5) Duties of the clerk. 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 subsection (4) of this section, 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.

B.(6) Motion for new trial after judgment notwithstanding the verdict. The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may seve a motion for a new trial pursuant to Rule 64 not later than 10 days after entry of the judgment notwithstanding the verdict.

BACKGROUND NOTE

ORS sections superseded: 18.140, 18.230, 18.240, 18.250, 18.140.

COMMENT

Section 61 A. is based upon Federal Rule 50(a). These rules eliminate the device of nonsuit completely. The proper motion to test sufficiency of the evidence in a jury case, at the close of the plaintiff's case, or any other time before submission to the jury, is for directed verdict. The major change from the nonsuit practice is that a directed verdict at the close of the plaintiff's case would be a dismissal with prejudice, whereas the nonsuit was not. For a dismissal in a non-jury case under Rule 54, the judge may direct that dismissal be without prejudice. In a jury case, if a judge feels that a plaintiff should be given a chance to refile when the evidence presented by the plaintiff was insufficient, the trial judge can grant the plaintiff leave to take a dismissal without prejudice under Rule 54 A. instead of directing a verdict. ORS 18.240 was eliminated.

Section 61 B. is based upon ORS 18.140. The reference to failure to state a cause of action in a pleading as a ground for judgment NOV was eliminated as unnecessary and inconsistent with the pleading rules. Subsection B.(6) is based upon Federal Rule 50(c)(2).

RULE 61

VERDICTS, GENERAL AND SPECIAL

A. General verdict. A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant.

B. Special verdict. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires such party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

C. General verdict accompanied by answer to interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more

issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and the answers shall be entered. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

D. Action for specific personal property. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by answer claims a return thereof, the jury shall assess the value of the property, if their verdict is in favor of the plaintiff, or if they find in favor of the defendant, and that defendant is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer,

which the prevailing party has sustained by reason of the detention or taking and withholding of such property.

E. Assessment of amount of recovery. When a verdict is found for the plaintiff in an action for recovery of money, or for the defendant when a counterclaim for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the answer.

BACKGROUND NOTE

ORS sections superseded: 17.405, 17.410, 17.415, 17.420, 17.425.

COMMENT

Sections 61 B. and 61 C. are based upon Federal Rule 49 (a) and (b). Section 61 D. is based upon ORS 17.410, and Section 61 E. is based upon ORS 17.425.

RULE 62

FINDINGS OF FACT

A. Necessity. Whenever any party appearing in a civil action or proceeding tried by the court so demands prior to the commencement of the trial, the court shall make special findings of fact, and shall state separately its conclusions of law thereon. In the absence of such a demand for special findings, the court may make either general or special findings. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact or conclusions of law appear therein.

RULE 61

VERDICTS, GENERAL AND SPECIAL

A. General verdict.

A.(1) A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant.

A.(2) When a general verdict is found in favor of a party asserting a claim for the recovery of money, the jury shall also assess the amount of recovery. A specific designation by a jury that no amount of recovery shall be had complies with this subsection.

B. Special verdict. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury

retires such party demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

C. General verdict accompanied by answer to interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and the answers shall be entered. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

D. Assessment of amount of recovery. In an action for

the recovery of specific personal property where any party who alleges a right to possession of such property is not in possession at the time of trial, in addition to any general verdict or other special verdict, the court shall require the jury to return a special verdict in the form of a special written finding on the issue of the right to possession of any parties alleging a right to possession and assessment of the value of the property.

COMMENT

Section 61 A. combines the definition of general verdict in ORS 17.405 with a redraft of ORS 17.425. The language of ORS 17.425 is very confusing, and subsection 61 A.(2) preserves the essential procedure. The last sentence of 61 A.(2) allows a jury properly to return a verdict in favor of a plaintiff asserting a right to recover damages in the amount of "zero" damages. See Fischer v. Howard, 201 Or 426 (1954).

Sections 61 B. and C. are based upon Federal Rule 49(a) and (b). Section 61 D. is based upon ORS 17.410.

RULE 61

VERDICTS, GENERAL AND SPECIAL

A. General verdict.

A.(1) A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant.

A.(2) When a general verdict is found in favor of a party asserting a claim for the recovery of money, the jury shall also assess the amount of recovery. A specific designation by a jury that no amount of recovery shall be had complies with this subsection.

B. Special verdict. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury

retires such party demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

C. General verdict accompanied by answer to interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and the answers shall be entered. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

D. Action for specific personal property. In an action for

the recovery of specific personal property, where any party who alleges a right to possession of such property is not in possession at the time of trial, in addition to any general verdict or other special verdict, the court shall require the jury to return a special verdict in the form of (1) a special written finding on the issue of the right to possession of any party alleging a right to possession, and (2) an assessment of the value of the property.

COMMENT

Section 61 A. combines the definition of general verdict in ORS 17.405 with a redraft of ORS 17.425. The language of ORS 17.425 is very confusing, and subsection 61 A.(2) preserves the essential procedure. The last sentence of 61 A.(2) allows a jury properly to return a verdict in favor of a plaintiff asserting a right to recover damages in the amount of "zero" damages. See Fischer v. Howard, 201 Or 426 (1954).

Sections 61 B. and C. are based upon Federal Rule 49(a) and (b) and replace ORS 17.415 and 17.420. Section 61 D. is based upon ORS 17.410. For a special provision relating to a verdict in an action to recover real property, see ORS 105.025.