

AMENDMENTS

TO ORCP 19

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

## 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 the pleader expressly admits; but, when the pleader does so intend to controvert all of the allegations of the preceding pleading, the pleader may do so by general denial of all allegations of the preceding pleading 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 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 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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13 so by general denial of all allegations of the preceding pleading subject to the obligations set forth in Rule  
14 17.

15 **B Affirmative defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively:  
16 accord and satisfaction[,] arbitration and award[,] assumption of risk[,] claim preclusion; comparative or  
17 contributory negligence[,] discharge in bankruptcy[,] duress[,] estoppel[,] failure of consideration[,]  
18 fraud[,] illegality[,] injury by fellow servant[,] issue preclusion; laches[,] license[,] payment[,] release[,]  
19 [res judicata,] statute of frauds[,] statute of limitations[,] unconstitutionality[,] waiver[,] and any other  
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21 as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the  
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24 other than those as to the amount of damages, are admitted when not denied in the responsive pleading.  
25 Allegations in a pleading to which no responsive pleading is required or permitted [*shall be*] are taken as  
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