

# Complaints, Answers, & Pre-Answer Motions

**Jovita T. Wang**

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**Allegiant Law**

# First Things First.....

## **Always consult local practices!!**

- Oregon Rules of Civil Procedure
- Uniform Trial Court Rules
- Supplemental Local Rules



# Complaints 101

To support a claim for relief, a complaint must include:

- A plain and concise statement of the ultimate facts constituting each claim for relief (ORCP 18) (FRCP 8(a))
- A demand for each type of relief which the party claims (ORCP 18) (FRCP 8(a))
- In federal court: include a short and plain statement of the grounds for the court's federal jurisdiction (FRCP 8(a))

# Complaints 101 – Continued

## When does an action commence?

- Commencement does not occur until the complaint is filed and the summons and complaint are served on a particular defendant.
  - ORS 12.010 and 12.020.

## Relation Back

- If complaint is filed within the time allowed by the applicable SOL, service of the summons and complaint within 60 days of the filing date allows the service to “relate back” to the date of filing. Thus, the action is deemed to have been commenced on the date of filing
  - Beware: The relation back only applies within 60 days of the filing date, not the SOL. (ORS 12.020(2))

# Code vs. Notice Pleading

## Code Pleading (Oregon)

- State “ultimate facts” to support each element of a claim
- Contains more specificity, in general

## Notice Pleading (Federal Court)

- Provide “fair notice” to support your claim
- Contains less specificity, in general

# Which is Code Pleading?

Defendant was negligently operating his vehicle when he struck Plaintiff and caused Plaintiff's injuries

VS.

Defendant was operating a vehicle on a public road at an excessive rate of speed under the circumstances when he struck Plaintiff.

# Strategic Considerations

- Federal or state court?
- Which venue?
- Statute of Limitations?
- Prerequisites to filing certain claims
  - Example: Real Estate (ORS 31.350) and Design Professionals (ORS 31.300)
- Attorney Fees?
  - ORCP 68
- Prejudgment Interest?
  - Prejudgment interest must be specifically pleaded, along with a factual basis for an award of prejudgment interest.

# Answers - 101

- State in short and plain terms the party's defenses to each claim asserted
  - ORCP 19; *See* FRCP 8
- Admit or deny the allegations
  - Allegations to which a response is required, other than the amount of damages, are deemed admitted if not denied.
  - Denials must fairly meet the substance of the allegations denied. A general denial is permissible only when the pleader intends in good faith to controvert every allegation of the pleading.
  - ORCP 19; *See* FRCP 8
- Cross-Claims; Counter Claims; Third Party Complaint
  - ORCP 22



# Answers – 101 Continued

- Timing

- State Court → 30 days from the date of service of the Complaint

- ORCP 7, 15

- Federal Court → A defendant must serve an Answer:

- (i) within 21 days after being served with the summons and complaint; or
    - (ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.



# Affirmative Defenses

- ORCP 19

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- claim preclusion;
- comparative or contributory negligence;
- discharge in bankruptcy;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- injury by fellow servant;
- issue preclusion;
- laches; license;
- payment; release;
- statute of frauds;
- statute of limitations;
- unconstitutionality;
- waiver;
- and any other matter constituting an avoidance or affirmative defense.

- FRCP 8

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- contributory negligence;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- injury by fellow servant;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

# Amending Pleadings



ORCP 23 → A pleading may be amended by a party once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the party may so amend it at any time within 20 days after it is served.

Otherwise, a party may amend the pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.



FRCP 15 → A party may amend its pleading once as a matter of course no later than:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

# Pre-Answer Motions

- ORCP 21
  - Motion to Dismiss
  - Motion to Make More Definite and Certain\*
  - Motion to Strike\*

## UTCRC 5.010

- The Court will deny any motion made pursuant to ORCP 21 and 23, except a motion to dismiss for failure to state a claim or for lack of jurisdiction unless the moving party makes a good faith effort to confer before filing the motion
- Certificate of compliance is required



# ORCP 21 A Motion to Dismiss

- A motion to dismiss that raises any defenses listed in ORCP 21 A(1)(a) to A(1)(i) must be filed before pleading.
  - A(1)(a) lack of jurisdiction over the subject matter;\*
  - A(1)(b) lack of jurisdiction over the person;
  - A(1)(c) that there is another action pending between the same parties for the same cause;\*
  - A(1)(d) that plaintiff has not the legal capacity to sue;
  - A(1)(e) insufficiency of summons or process or insufficiency of service of summons or process;\*
  - A(1)(f) that the party asserting the claim is not the real party in interest;
  - A(1)(g) failure to join a party under Rule 29;
  - A(1)(h) failure to state ultimate facts sufficient to constitute a claim; and
  - A(1)(i) that the pleading shows that the action has not been commenced within the time limited by statute.
- The grounds on which any of the enumerated defenses are based must be stated specifically and with particularity in the responsive pleading or motion.

# ORCP 21 D Motion to Make More Definite and Certain



**Standard** → Whether the pleading is “so indefinite or uncertain that the precise nature of the charge, defense, or reply is not apparent.”



**Timing** → before responding to a pleading or, if no responsive pleading is permitted by these rules, on motion by a party within 10 days after service of the pleading



If the motion is granted → you must amend within 10 days after service of the order granting the motion or such other time as the court allows, or the court may strike the pleading.

# ORCP 21 E Motion to Strike

- The Court may strike:
  - Any sham, frivolous, or irrelevant pleading or defense
  - Any pleading containing more than one claim or defense not separately stated
  - Any insufficient defense
  - Any sham, frivolous, irrelevant, or redundant matter inserted in a pleading
- Timing → Before responding to a pleading or, if no responsive pleading is permitted by these rules, on motion by a party within 10 days after service of the pleading
- UTCR 5.020(2) → If the wording of a pleading is moved against in more than two particulars under ORCP 21 D or ORCP 21 E, a copy of the pages of the pleading moved against must be attached to the motion, with the parts of the pleading to be struck in parentheses and the parts to be made more definite and certain underlined

# THANK YOU!

Jovita T. Wang  
Allegiant Law LLP  
[jovita@allegiantlaw.com](mailto:jovita@allegiantlaw.com)