Chapter 42

(1960 reprint)

Execution, Formalities and Interpretation of Writings

PRIVATE WRITINGS

42.010 Private writings
42.020 Execution of a writing
42.030 Subscribing witness
42.040 Proof of attested writing other than a will
42.050 When evidence of execution not necessary
42.060 Evidence of handwriting
42.070 Comparison of handwriting with writings admittedly genuine
42.080 Comparison of handwriting with writings purporting to be genuine

SEALS

42.110 Seal defined
42.120 Public and private seals; how made; writings executed in another jurisdiction
42.130 Effect of a seal
42.140 Authority to execute sealed instrument
42.150 Validity of compromise agreement without seal
42.160 Necessity of seal

INTERPRETATION OF WRITINGS

42.210 Effect of the place of execution
42.220 Consideration of circumstances
42.230 Office of judge in construing instruments
42.240 Intention of the parties; general and particular provisions and intents
42.250 Terms construed as generally accepted; evidence of other signification
42.260 Ambiguous terms
42.270 Written words control printed form
42.280 Deciphering characters and translating languages
42.290 Construction of notices

CROSS REFERENCES

42.020

Validation of instruments previously executed, 93.810(9)

42.060

Opinion evidence as to handwriting, 41.900(9)
Proof of signature in forgery prosecution, 165.140

42.070

Documents, admission as to genuineness of, 41.625
Opinion evidence as to handwriting, 41.900(9)

42.230

Court to construe writings, 17.245

PRIVATE WRITINGS

42.010 Private writings. All writings, other than public writings, are private and may be sealed or unsealed.

42.020 Execution of a writing. The execution of a writing is the subscribing and delivering it, with or without affixing a seal.

42.030 Subscribing witness. A subscribing witness is one who sees a writing executed, or hears it acknowledged, and at the request of the party thereupon signs his name as a witness.

42.040 Proof of attested writing other than a will. Any attested writing other than a will may be proved in the same manner as though it had not been attested.

42.050 When evidence of execution not necessary. When evidence is given that the party against whom the writing is offered has at any time admitted its execution, no other evidence of the execution need be given, if the instrument is one mentioned in ORS 42.080, or one produced from the custody of the adverse party and acted upon by him as genuine.

42.060 Evidence of handwriting. The handwriting of a person may be shown by anyone who believes it to be his, and who has seen him write, or has seen writing purporting to have been his, upon which he has acted or been charged, and who has acquired a knowledge of his handwriting.

42.070 Comparison of handwriting with writings admittedly genuine. Evidence respecting the handwriting may also be given by a comparison made by a witness skilled in those matters, or the jury, with writings admitted or treated as genuine by the party against whom the evidence is offered.

42.080 Comparison of handwriting with writings purporting to be genuine. When a writing is more than 20 years old, a comparison may be made with writings purporting to be genuine and generally respected and acted upon as such by persons having an interest in knowing that fact.

42.090 and 42.100 [Reserved for expansion]

SEALS

42.110 Seal defined. A seal is a particular sign made to attest in the most formal manner the execution of an instrument.

42.120 Public and private seals; how made; writings executed in another jurisdiction. A public seal is a stamp or impression made upon wax, wafer, paper or other like substance upon which a visible and permanent impression can be made. A private seal may be made in the same manner or it may be made without an impression, by a wafer or wax attached to the instrument, by a paper attached to it by an adhesive substance or by a scroll or other sign made with a pen or printed upon the paper. Any printed seal or scroll on the instrument at the time of signing will be presumed to have been adopted by the person signing his name before it. A scroll or other sign made in a sister state, territory of the United States, District of Columbia, or a foreign country, and there recognized as a seal, shall be so regarded in this state, and any instrument which is valid in the state where executed, without a seal, is valid in this state without a seal.

42.130 Effect of a seal. The seal affixed to a writing is primary evidence of a consideration. In other respects there is no difference between sealed and unsealed writings, except as to the time of commencing actions or suits thereon. A writing under seal may be modified or discharged by a writing not under seal or by a valid oral agreement.

42.140 Authority to execute sealed instrument. Authority to execute a sealed instrument for another shall be under seal, if the sealing of that instrument is essential to its validity.

42.150 Validity of compromise agreement without seal. An agreement in writing, without a seal, for the compromise or settlement of a debt or controversy, is as obligatory as if a seal were affixed.

42.160 Necessity of seal. ORS 42.020, 42.130 and 42.150 shall not be construed to dispense with a seal to a deed or other writing where a seal is required by statute.

42.170 to 42.200 [Reserved for expansion]

INTERPRETATION OF WRITINGS

42.210 Effect of the place of execution. The language of a writing is to be interpreted according to the meaning it bears in the place of execution, unless the parties have reference to a different place.

42.220 Consideration of circumstances. In construing an instrument, the circumstances under which it was made, including the situation of the subject and of the parties, may be shown so that the judge is placed in the position of those whose language he is interpreting.

42.230 Office of judge in construing instruments. In the construction of an instrument, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such construction is, if possible, to be adopted as will give effect to all.

42.240 Intention of the parties; general and particular provisions and intents. In the construction of an instrument the intention of the parties is to be pursued if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent shall control a general one that is inconsistent with it.

42.250 Terms construed as generally accepted; evidence of other signification. The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is admissable that they have a technical, local, or otherwise peculiar signification and were used and understood in the particular instance, in which case the agreement shall be construed accordingly.

42.260 Ambiguous terms. When the terms of an agreement have been intended in a different sense by the parties, that sense is to prevail, against either party, in which he supposed the other understood it. When different constructions of a provision are otherwise equally proper, that construction is to be taken which is most favorable to the party in whose favor the provision was made.

42.270 Written words control printed form. When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls.

42.280 Deciphering characters and translating languages. When the characters in which an instrument is written are difficult to be deciphered, or the language is not understood by the court, evidence of persons skilled in deciphering the characters, or who understand the language, is admissible to declare the characters or the meaning of the language.

42.290 Construction of notices. A written notice is to be construed according to the ordinary acceptation of its terms. Thus, a notice to the drawers or indorsers of a bill of exchange or promissory note, that it has been protested for want of acceptance or payment, shall be held to import that it has been duly presented for acceptance or payment and refused, and that the holder looks for payment to the person to whom the notice is given.