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1963 REPLACEMENT PART
(1969 reprint)

General Provisions for Uniform Commercial Code

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SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF UNIFORM COMMERCIAL CODE

71.1010 Short title. ORS 71.1010 to 71.2080, 72.1010 to 72.7250, 73.1010 to 73.8050, 74.1010 to 74.5050, 75.1010 to 75.1170, 76.1010 to 76.1110, 77.1010 to 77.6040, 78.1010 to 78.4060 and 79.1010 to 79.5070 may be cited as Uniform Commercial Code.
[1961 c.726 §71.1010]

71.102 [Repealed by 1961 c.726 §427]

71.1020 Purposes; rules of construction; variation by agreement. (1) The Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of the Uniform Commercial Code are:

(a) To simplify, clarify and modernize the law governing commercial transactions;

(b) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) To make uniform the law among the various jurisdictions.

(3) The effect of provisions of the Uniform Commercial Code may be varied by agreement, except as otherwise provided in the Uniform Commercial Code and except that the obligations of good faith, diligence, reasonableness and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of the Uniform Commercial Code of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3) of this section.

(5) In the Uniform Commercial Code, unless the context otherwise requires:

(a) Words in the singular number include the plural, and in the plural include the singular;

(b) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.
[1961 c.726 §71.1020]

71.103 [Repealed by 1961 c.726 §427]

71.1030 Supplementary general principles of law applicable. Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.
[1961 c.726 §71.1030]

Note: Subsection (2) of section 427, chapter 726, Oregon Laws 1961, reads as follows:

"(2) Transactions validly entered into before the effective date specified in section 428 [September 1, 1963] and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Act as though such repeal or amendment had not occurred."

71.104 [Repealed by 1961 c.726 §427]

71.1040 Construction against implicit repeal. The Uniform Commercial Code being a general law intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.
[1961 c.726 §71.1040]

71.105 [Repealed by 1961 c.726 §427]

71.1050 Territorial application of Uniform Commercial Code; parties' power to choose applicable law. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law

(including the conflict of laws rules) so specified:

(a) Rights of creditors against sold goods as specified in ORS 72.4020.

(b) Applicability of ORS 74.1010 to 74.5040 as specified in ORS 74.1020.

(c) Bulk transfers subject to ORS 76.1010 to 76.1110 as specified in ORS 76.1020.

(d) Applicability of ORS 78.1010 to 78.4060 as specified in ORS 78.1060.

(e) Policy and scope of ORS 79.1010 to 79.5070 as specified in ORS 79.1020 and 79.1030.

[1961 c.726 §71.1050]

71.106 [Repealed by 1961 c.726 §427]

71.1060 Remedies to be liberally administered. (1) The remedies provided by the Uniform Commercial Code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

(2) Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited effect.

[1961 c.726 §71.1060]

Definitional cross references:

"Action," ORS 71.2010.
"Aggrieved party," ORS 71.2010.
"Party," ORS 71.2010.
"Remedy," ORS 71.2010.
"Rights," ORS 71.2010.

71.107 [Repealed by 1961 c.726 §427]

71.1070 Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

[1961 c.726 §71.1070]

Definitional cross references:

"Aggrieved party," ORS 71.2010.
"Rights," ORS 71.2010.
"Signed," ORS 71.2010.
"Written," ORS 71.2010.

71.108 [Repealed by 1961 c.726 §427]

71.1080 Severability. If any provision or clause of the Uniform Commercial Code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Uniform Commercial Code which can be given effect without the invalid provision or application, and to this end the provisions of the Uniform Commercial Code are declared to be severable.

[1961 c.726 §71.1080]

Definitional cross reference:

"Person," ORS 71.2010.

71.109 [Repealed by 1961 c.726 §427]

71.1090 Captions. The unit and section captions, though set forth in the Uniform Commercial Code, are not part of the statutory law of Oregon.

[1961 c.726 §71.1090]

71.110, 71.111, 71.112, 71.113, 71.114, 71.115, 71.116, 71.117, 71.118, 71.119, 71.120, 71.121, 71.122, 71.123, 71.124, 71.125, 71.126, 71.127, 71.128, 71.129, 71.130, 71.131, 71.132, 71.133, 71.134, 71.135, 71.136, 71.137, 71.138, 71.139, 71.140, 71.141, 71.142, 71.143, 71.144, 71.145, 71.146, 71.147, 71.148, 71.149, 71.150, 71.151, 71.152, 71.153, 71.154, 71.155, 71.156, 71.157, 71.158, 71.159, 71.160, 71.161, 71.162, 71.163, 71.164, 71.165, 71.166, 71.167, 71.168, 71.169, 71.170, 71.171, 71.172, 71.173, 71.174, 71.175, 71.176, 71.177, 71.178, 71.179, 71.180, 71.181, 71.182, 71.183, 71.184, 71.185, 71.186, 71.187, 71.188, 71.189, 71.190, 71.191, 71.192, 71.193, 71.194, 71.195 [Repealed by 1961 c.726 §427]

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

71.2010 General definitions. Subject to additional definitions contained in other sections of the Uniform Commercial Code which are applicable to a specific series of sections, and unless the context otherwise requires, in the Uniform Commercial Code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in ORS 71.2050 and 72.2080. Whether an agreement has legal consequences is determined by the provisions of the Uniform Commercial Code, if applicable; otherwise by the law of contracts as specified in ORS 71.1030.

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by the Uniform Commercial Code and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of the Uniform Commercial Code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of fact when:

(a) He has actual knowledge of it; or

(b) He has received a notice or notification of it; or

(c) From all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by the Uniform Commercial Code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) It comes to his attention; or

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within the Uniform Commercial Code.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to ORS 79.1010 to 79.5070. The special property interest of a buyer of goods on identification of such goods to a contract for sale under ORS 72.4010 is not a "security interest," but a buyer may also acquire a "security interest" by complying with ORS 79.1010 to 79.5070. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales. Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections in ORS 73.3030, 74.2080 and 74.2090, a person gives "value" for rights if he acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection; or

(b) As security for or in total or partial satisfaction of a preexisting claim; or

(c) By accepting delivery pursuant to a preexisting contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

[1961 c.726 §71.2010]

71.2020 Prima facie evidence by third party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

[1961 c.726 §71.2020]

Definitional cross references:

"Bill of lading," ORS 71.2010.

"Contract," ORS 71.2010.

"Genuine," ORS 71.2010.

71.2030 Obligation of good faith. Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance or enforcement.

[1961 c.726 §71.2030]

Definitional cross references:

"Contract," ORS 71.2010.

"Good faith," ORS 71.2010 and 72.1030.

71.2040 Time; reasonable time; "seasonably." (1) Whenever the Uniform Commercial Code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

[1961 c.726 §71.2040]

Definitional cross reference:

"Agreement," ORS 71.2010.

71.2050 Course of dealing and usage of trade. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.
[1961 c.726 §71.2050]

Definitional cross references:

"Agreement," ORS 71.2010.
"Contract," ORS 71.2010.
"Party," ORS 71.2010.
"Term," ORS 71.2010.

71.2060 Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond $5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods nor of securities nor to security agreements.
[1961 c.726 §71.2060]

Definitional cross references:

"Action," ORS 71.2010.
"Agreement," ORS 71.2010.
"Contract," ORS 71.2010.
"Contract for sale," ORS 72.1060.
"Goods," ORS 72.1050.
"Party," ORS 71.2010.
"Sale," ORS 72.1060.
"Signed," ORS 71.2010.
"Writing," ORS 71.2010.

71.2070 Performance or acceptance under reservation of rights. A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest" or the like are sufficient.
[1961 c.726 §71.2070]

Definitional cross references:

"Party," ORS 71.2010.
"Rights," ORS 71.2010.

71.2080 Option to accelerate at will. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.
[1961 c.726 §71.2080]

Definitional cross references:

"Burden of establishing," ORS 71.2010.
"Good faith," ORS 71.2010.
"Party," ORS 71.2010.
"Term," ORS 71.2010.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1963.

Sam R. Haley
Legislative Counsel