Chapter 42

1965 REPLACEMENT PART

(1973 reprint)

Execution, Formalities and Interpretation of Writings

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CROSS REFERENCES

42.020

Validation of instruments previously executed, 93.810(9)

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Opinion evidence as to handwriting, 41.900(9)
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42.230

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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.

SEALS

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

42.115 Effect of presence or absence of seal. The presence or absence of a seal, corporate or otherwise, shall have no effect upon the validity, enforceability or character of any written instrument except where specifically otherwise provided by statute. A writing under seal may be modified or discharged by writing not under seal or by a valid oral agreement.
[1965 c.502 §2]

42.120 [Repealed by 1965 c.502 §6]

42.130 [Repealed by 1965 c.502 §6]

42.140 [Repealed by 1965 c.502 §6]

42.150 [Repealed by 1965 c.502 §6]

42.160 [Repealed by 1965 c.502 §6]

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 ac-

ceptation, but evidence is admissible 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.

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 November 15, 1965.

Sam R. Haley
Legislative Counsel