Chapter 73

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SHORT TITLE, FORM AND INTERPRETATION

73.1010 Short title. ORS 73.1010 to 73.8050 may be cited as Uniform Commercial Code-Commercial Paper. [1961 c 726 §73 1010]

73.1020 Definitions and index of definitions. (1) In ORS 73.1010 to 73.8050 unless the context otherwise requires:

(a) "Issue" means the first delivery of an instrument to a holder or a remitter.

(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(d) "Secondary party" means a drawer or indorser.

(e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to ORS 73.1010 to 73.8050 and the sections in which they appear are:

(a) "Acceptance," as defined in ORS 73.4100.

(b) "Accommodation party," as defined in ORS 73.4150

(c) "Alteration," as defined in ORS 73.4070.

(d) "Certificate of deposit," as defined in ORS 73.1040.

(e) "Certification," as defined in ORS 73.4110.

(f) "Check," as defined in ORS 73.1040.

(g) "Definite time," as defined in ORS 73.1090.

(h) "Dishonor," as defined in ORS 73.5070.

(i) "Draft," as defined in ORS 73.1040.

(j) "Holder in due course," as defined in ORS 73.3020.

(k) "Negotiation," as defined in ORS 73.2020.

(L) "Note," as defined in ORS 73.1040.

(m) "Notice of dishonor," as defined in ORS 73.5080.

(n) "On demand," as defined in ORS 73.1080.

(o) "Presentment," as defined in ORS 73.5040.

(p) "Protest," as defined in ORS 73.5090.

(q) "Restrictive indorsement," as defined in ORS 73.2050.

(r) "Signature," as defined in ORS 73.4010.

(3) The following definitions in other series of sections apply to ORS 73.1010 to 73.8050:

(a) "Account," as defined in ORS 74.1040.

(b) "Banking day," as defined in ORS 74.1040.

(c) "Clearing house," as defined in ORS 74.1040.

(d) "Collecting bank," as defined in ORS 74.1050.

(e) "Customer," as defined in ORS 74.1040.

(f) "Depositary bank," as defined in ORS 74.1050.

(g) "Documentary draft," as defined in ORS 74.1040.

(h) "Intermediary bank," as defined in ORS 74.1050.

(i) "Item," as defined in ORS 74.1040.

(j) "Midnight deadline," as defined in ORS 74.1040.

(k) "Payor bank," as defined in ORS 74.1050.

(4) In addition ORS 71.1010 to 71.2080 contain general definitions and principles of construction and interpretation applicable throughout ORS 73.1010 to 73.8050. [1961 c.726 §73 1020]

73.1030 Limitations on scope of ORS 73.1010 to 73.8050. (1) ORS 73.1010 to 73.8050 do not apply to money, documents of title or investment securities.

(2) The provisions of ORS 73.1010 to 73.8050 are subject to the provisions of ORS 74.1010 to 74.5040 on bank deposits and collections and ORS 79.1010 to 79.5070 on secured transactions. [1961 c.726 §73.1030]

73.1040 Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note." (1) Any writing to be a

negotiable instrument within ORS 73.1010 to 73.8050 must:

(a) Be signed by the maker or drawer; and

(b) Contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by ORS 73.1010 to 73.8050; and

(c) Be payable on demand or at a definite time; and

(d) Be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is:

(a) A "draft" ("bill of exchange") if it is an order.

(b) A "check" if it is a draft drawn on a bank and payable on demand.

(c) A "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it.

(d) A "note" if it is a promise other than a certificate of deposit.

(3) As used in other sections of the Uniform Commercial Code, and as the context may require, the terms "draft," "check," "certificate of deposit" and "note" may refer to instruments which are not negotiable within ORS 73.1010 to 73.8050 as well as to instruments which are so negotiable. [1961 c.726 §73 1040]

73.1050 When promise or order unconditional. (1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument:

(a) Is subject to implied or constructive conditions; or

(b) States its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(c) Refers to or states that it arises out of a separate agreement; or

(d) States that it is drawn under a letter of credit; or

(e) States that it is secured, whether by mortgage, reservation of title or otherwise; or

(f) Indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(g) Is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(h) Is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument:

(a) States that it is subject to or governed by any other agreement; or

(b) States that it is to be paid only out of a particular fund or source except as provided in this section. [1961 c 726 §73 1050]

73.1060 Sum certain. (1) The sum payable is a sum certain even though it is to be paid:

(a) With stated interest or by stated instalments; or

(b) With stated different rates of interest before and after default or a specified date; or

(c) With a stated discount or addition if paid before or after the date fixed for payment; or

(d) With exchange or less exchange, whether at a fixed rate or at the current rate; or

(e) With costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal. [1961 c.726 §73.1060]

73.1070 Money. (1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency. [1961 c.726 §73.1070]

73.1080 Payable on demand. Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated. [1961 c.726 §73 1080]

73.1090 Definite time. (1) An instrument is payable at a definite time if by its terms it is payable:

(a) On or before a stated date or at a fixed period after a stated date; or

(b) At a fixed period after sight; or

(c) At a definite time subject to any acceleration; or

(d) At a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred. [1961 c.726 §73.1090]

73.110 [Repealed by 1961 c.726 §427]

73.1100 Payable to order. (1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of:

(a) The maker or drawer; or

(b) The drawee; or

(c) A payee who is not maker, drawer or drawee; or

(d) Two or more payees together or in the alternative; or

(e) An estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(f) An office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

(g) A partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed."

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten. [1961 c.726 §73.1100]

73.1110 Payable to bearer. An instrument is payable to bearer when by its terms it is payable to:

(1) Bearer or the order of bearer; or

(2) A specified person or bearer; or

(3) "Cash" or the order of "cash," or any other indication which does not purport to designate a specific payee. [1961 c.726 §73.1110]

73.1120 Terms and omissions not affecting negotiability. (1) The negotiability of an instrument is not affected by:

(a) The omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(b) A statement that collateral has been given for the instrument or in case of default on the instrument the collateral may be sold; or

(c) A promise or power to maintain or protect collateral or to give additional collateral; or

(d) A term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) A term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) A term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) A statement in a draft drawn in a set of parts to the effect that the order is effective only if no other part has been honored.

(2) Nothing in this section shall validate any term which is otherwise illegal. [1961 c.726 §73.1120]

73.1130 Seal. An instrument otherwise negotiable is within ORS 73.1010 to 73.8050 even though it is under a seal. [1961 c 726 §73 1130]

73.1140 Date, antedating, postdating. (1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct. [1961 c.726 §73.1140]

73.1150 Incomplete instruments. (1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules set forth in ORS 73.4070 as to material alteration apply, even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting. [1961 c.726 §73.1150]

73.1160 Instruments payable to two or more persons. An instrument payable to the order of two or more persons:

(1) If in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(2) If not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them. [1961 c.726 §73 1160]

73.1170 Instruments payable with words of description. An instrument made payable to a named person with the addition of words describing him:

(1) As agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder.

(2) As any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him.

(3) In any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties. [1961 c.726 §73.1170]

73.1180 Ambiguous terms and rules of construction. The following rules apply to every instrument:

(1) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(2) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(3) Words control figures except that if the words are ambiguous figures control.

(4) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(5) Unless the instrument otherwise specifies, two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay."

(6) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with ORS 73.6040 tenders full payment when the instrument is due. [1961 c.726 §73.1180]

73.1190 Other writings affecting instrument. (1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument. [1961 c.726 §73.1190]

73.120 [Repealed by 1961 c.726 §427]

73.1200 Instruments "payable through" bank. An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself au-

thorize the bank to pay the instrument. [1961 c.726 §73.1200]

73.1210 Instruments payable at bank. A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it. [1961 c.726 §73 1210]

73.1220 Accrual of cause of action. (1) A cause of action against a maker or an acceptor accrues:

(a) In the case of a time instrument on the day after maturity.

(b) In the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment:

(a) In the case of a maker of a demand note, from the date of demand.

(b) In all other cases from the date of accrual of the cause of action. [1961 c.726 §73.1220]

73.130, 73.140, 73.150, 73.160, 73.170, 73.180, 73.190, 73.200 [Repealed by 1961 c.726 §427]

TRANSFER AND NEGOTIATION

73.2010 Transfer; right to indorsement. (1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner. [1961 c 726 §73.2010]

73.2020 Negotiation. (1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement. [1961 c.726 §73.2020]

73.2030 Wrong or misspelled name. Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument. [1961 c.726 §73.2030]

73.2040 Special indorsement; blank indorsement. (1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

(2) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. [1961 c.726 §73.2040]

73.2050 Restrictive indorsements. An indorsement is restrictive which either:

(1) Is conditional; or

(2) Purports to prohibit further transfer of the instrument; or

(3) Includes the words "for collection," "for deposit," "pay any bank," or like terms signifying a purpose of deposit or collection; or

(4) Otherwise states that it is for the benefit or use of the indorser or of another person. [1961 c.726 §73 2050]

73.2060 Effect of restrictive indorsement. (1) No restrictive indorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection," "for deposit," "pay any bank," or like terms as provided in subsections (1) and (3) of ORS 73.2050, must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of ORS 73.3020 on what constitutes a holder in due course.

(4) The first taker under an indorsement for the benefit of the indorser or another person must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of ORS 73.3020 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty as provided in subsection (2) of ORS 73.3040. [1961 c.726 §73 2060]

73.2070 Negotiation effective although it may be rescinded. (1) Negotiation is effective to transfer the instrument although the negotiation is:

(a) Made by an infant, a corporation exceeding its powers, or any other person without capacity; or

(b) Obtained by fraud, duress or mistake of any kind; or

(c) Part of an illegal transaction; or

(d) Made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law. [1961 c.726 §73.2070]

73.2080 Reacquisition. Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been canceled is discharged as against subsequent holders in due course as well. [1961 c.726 §73.2080]

RIGHTS OF A HOLDER

73.3010 Rights of a holder. The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in ORS 73.6030 on payment or satisfaction, discharge it or enforce payment in his own name. [1961 c 726 §73.3010]

73.3020 Holder in due course. (1) A holder in due course is a holder who takes the instrument:

(a) For value; and

(b) In good faith; and

(c) Without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(2) A payee may be a holder in due course.

(3) A holder does not become a holder in due course of an instrument:

(a) By purchase of it at judicial sale or by taking it under legal process; or

(b) By acquiring it in taking over an estate; or

(c) By purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased. [1961 c.726 §73.3020]

73.3030 Taking for value. A holder takes the instrument for value:

(1) To the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(2) When he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(3) When he gives a negotiable instrument for it or makes an irrevocable commitment to a third person. [1961 c 726 §73.3030]

73.3040 Notice to purchaser. (1) The purchaser has notice of a claim or defense if:

(a) The instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

(b) The purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(3) The purchaser has notice that an instrument is overdue if he has reason to know:

(a) That any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(b) That acceleration of the instrument has been made; or

(c) That he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be 30 days.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim:

(a) That the instrument is antedated or postdated.

(b) That it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof.

(c) That any party has signed for accommodation.

(d) That an incomplete instrument has been completed, unless the purchaser has notice of any improper completion.

(e) That any person negotiating the instrument is or was a fiduciary.

(f) That there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of ORS 73.1010 to 73.8050 to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it. [1961 c.726 §73.3040]

73.3050 Rights of a holder in due course. To the extent that a holder is a holder in due course he takes the instrument free from:

(1) All claims to it on the part of any person; and

(2) All defenses of any party to the instrument with whom the holder has not dealt except:

(a) Infancy, to the extent that it is a defense to a simple contract; and

(b) Such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) Such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) Discharge in insolvency proceedings; and

(e) Any other discharge of which the holder has notice when he takes the instrument. [1961 c 726 §73.3050]

73.3060 Rights of one not holder in due course. Unless he has the rights of a holder in due course any person takes the

instrument subject to:

(1) All valid claims to it on the part of any person; and

(2) All defenses of any party which would be available in an action on a simple contract; and

(3) The defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose; and

(4) The defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party. [1961 c 726 §73 3060]

73.3070 Burden of establishing signatures, defenses and due course. (1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue:

(a) The burden of establishing it is on the party claiming under the signature; but

(b) The signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course. [1961 c 726 §73 3070]

LIABILITY OF PARTIES

73.4010 Signature. (1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature. [1961 c 726 §73.4010]

73.4020 Signature in ambiguous capacity. Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement. [1961 c.726 §73 4020]

73.4030 Signature by authorized representative. (1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument:

(a) Is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity.

(b) Except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity. [1961 c 726 §73.4030]

73.4040 Unauthorized signatures. (1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of ORS 73.1010 to 73.8050. Such ratification does not of itself affect any rights of the person ratifying against the actual signer. [1961 c.726 §73 4040]

73.4050 Impostors; signature in name of payee. (1) An indorsement by any person in the name of a named payee is effective if:

(a) An impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) A person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) An agent or employe of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing. [1961 c 726 §73.4050]

73.4060 Negligence contributing to alteration or unauthorized signature. Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business. [1961 c.726 §73 4060]

73.4070 Alteration. (1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in:

(a) The number or relations of the parties; or

(b) An incomplete instrument, by completing it otherwise than as authorized; or

(c) The writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course:

(a) Alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense.

(b) No other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed. [1961 c.726 §73.4070]

73.4080 Consideration. Want or failure of consideration is a defense as against any person not having the rights of a holder in due course as provided in ORS 73.3050, except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside the Uniform Commercial Code under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount. [1961 c.726 §73.4080]

73.4090 Draft not an assignment. (1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance. [1961 c.726 §73.4090]

73.4100 Definition and operation of acceptance. (1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith. [1961 c 726 §73.4100]

73.4110 Certification of a check. (1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged. [1961 c.726 §73.4110]

73.4120 Acceptance varying draft. (1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat

the draft as dishonored in which case the drawee is entitled to have his acceptance canceled.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the continental United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged. [1961 c.726 §73 4120]

73.4130 Contract of maker, drawer and acceptor. (1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to ORS 73.1150 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse. [1961 c.726 §73 4130]

73.4140 Contract of indorser; order of liability. (1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument. [1961 c.726 §73.4140]

73.4150 Contract of accommodation party. (1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party. [1961 c.726 §73.4150]

73.4160 Contract of guarantor. (1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds. [1961 c.726 §73.4160]

73.4170 Warranties on presentment and transfer. (1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that:

(a) He has a good title to the instrument or is authorized to obtain payment or accep-

tance on behalf of one who has a good title; and

(b) He has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith:

(A) To a maker with respect to the maker's own signature; or

(B) To a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(C) To an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) The instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith:

(A) To the maker of a note; or

(B) To the drawer of a draft whether or not the drawer is also the drawee; or

(C) To the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(D) To the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that:

(a) He has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) All signatures are genuine or authorized; and

(c) The instrument has not been materially altered; and

(d) No defense of any party is good against him; and

(e) He has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in paragraph (d) of subsection (2) of this section to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority. [1961 c.726 §73.4170]

73.4180 Finality of payment or acceptance. Except for recovery of bank payments as provided in ORS 74.1010 to 74.5040 on bank deposits and collections and except for liability for breach of warranty on presentment under ORS 73.4170, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment. [1961 c.726 §73.4180]

73.4190 Conversion of instrument; innocent representative. (1) An instrument is converted when:

(a) A drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) Any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) It is paid on a forged indorsement.

(2) In an action against a drawee under subsection (1) of this section the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) of this section the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of the Uniform Commercial Code concerning restrictive indorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively pursuant to ORS 73.2050 and 73.2060 are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor. [1961 c.726 §73.4190]

PRESENTMENT, NOTICE OF DISHONOR AND PROTEST

73.5010 When presentment, notice of dishonor, and protest necessary or permissible. (1) Unless excused as provided in ORS 73.5110 presentment is necessary to charge secondary parties as follows:

(a) Presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date.

(b) Presentment for payment is necessary to charge any indorser.

(c) In the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in paragraph (b) of subsection (1) of ORS 73.5020.

(2) Unless excused as provided in ORS 73.5110:

(a) Notice of any dishonor is necessary to charge any indorser.

(b) In the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in paragraph (b) of subsection (1) of ORS 73.5020.

(3) Unless excused as provided in ORS 73.5110 protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity. [1961 c.726 §73 5010]

73.5020 Unexcused delay; discharge. (1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due:

(a) Any indorser is discharged; and

(b) Any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged. [1961 c.726 §73.5020]

73.5030 Time of presentment. (1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) Where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable.

(b) Where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later.

(c) Where an instrument shows the date on which it is payable presentment for payment is due on that date.

(d) Where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration.

(e) With respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) With respect to the liability of the drawer, 30 days after date or issue whichever is later; and

(b) With respect to the liability of an indorser, seven days after his indorsement.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day. [1961 c.726 §73 5030]

73.5040 How presentment made. (1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made:

(a) By mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) Through a clearing house or a place designated by the party who is to pay or accept; or

(c) At the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made:

(a) To any one of two or more makers, acceptors, drawees or other payors; or

(b) To any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the continental United States must be presented at such bank.

(5) In the cases described in ORS 74.2100 presentment may be made in the manner and with the result stated in that section. [1961 c 726 §73.5040; 1963 c 402 §1]

73.5050 Rights of party to whom presentment is made. (1) The party to whom presentment is made may without dishonor require:

(a) Exhibition of the instrument; and

(b) Reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) That the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) A signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance. [1961 c 726 §73 5050]

73.5060 Time allowed for acceptance or payment. (1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment. [1961 c.726 §73.5060]

73.5070 Dishonor; holder's right of recourse; term allowing re-presentment. (1) An instrument is dishonored when:

(a) A necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline as provided in ORS 74.3010; or

(b) Presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by

the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time. [1961 c 726 §73.5070]

73.5080 Notice of dishonor. (1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified. [1961 c.726 §73 5080]

73.5090 Protest; noting for protest. (1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) of this section any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting. [1961 c.726 §73.5090]

73.5100 Evidence of dishonor and notice of dishonor. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(1) A document regular in form as provided in ORS 73.5090 which purports to be a protest.

(2) The purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor.

(3) Any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry. [1961 c.726 §73 5100]

73.5110 Waived or excused presentment, protest or notice of dishonor or delay therein. (1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when:

(a) The party to be charged has waived it expressly or by implication either before or after it is due; or

(b) Such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) By reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when:

(a) The maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) Acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only. [1961 c 726 §73 5110]

DISCHARGE

73.6010 Discharge of parties. (1) The extent of the discharge of any party from liability on an instrument is governed by:

(a) ORS 73.6030 on payment or satisfaction; or

(b) ORS 73.6040 on tender of payment; or

(c) ORS 73.6050 on cancellation or renunciation; or

(d) ORS 73.6060 on impairment of right of recourse or of collateral; or

(e) ORS 73.2080 on reacquisition of the instrument by a prior party; or

(f) ORS 73.4070 on fraudulent and material alteration; or

(g) ORS 73.4110 on certification of a check; or

(h) ORS 73.4120 on acceptance varying a draft; or

(i) ORS 73.5020 on unexcused delay in presentment or notice of dishonor or protest.

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument:

(a) Reacquires the instrument in his own right; or

(b) Is discharged under any provision of ORS 73.1010 to 73.8050, except as otherwise provided in ORS 73.6060 with respect to discharge for impairment of recourse or of collateral. [1961 c.726 §73.6010]

73.6020 Effect of discharge against holder in due course. No discharge of any party provided by ORS 73.1010 to 73.8050 is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument. [1961 c.726 §73.6020]

73.6030 Payment or satisfaction. (1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability:

(a) Of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) Of a party (other than an intermediary bank or a payor bank which is not a depositary bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee as provided in ORS 73.2010. [1961 c 726 §73.6030]

73.6040 Tender of payment. (1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right

of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender. [1961 c 726 §73.6040]

73.6050 Cancellation and renunciation. (1) The holder of an instrument may even without consideration discharge any party:

(a) In any manner apparent on the face of the instrument or the indorsement, as by intentionally canceling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) By renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto. [1961 c.726 §73 6050]

73.6060 Impairment of recourse or of collateral. (1) The holder discharges any party to the instrument to the extent that without such party's consent the holder:

(a) Without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) Unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves:

(a) All his rights against such party as of the time when the instrument was originally due; and

(b) The right of the party to pay the instrument as of that time; and

(c) All rights of such party to recourse against others. [1961 c.726 §73.6060]

ADVICE OF INTERNATIONAL SIGHT DRAFT

73.7010 Letter of advice of international sight draft. (1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account. [1961 c.726 §73.7010]

MISCELLANEOUS

73.8010 Drafts in a set. (1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2) of this section. With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has

the same effect as payment of a check notwithstanding an effective stop order as provided in ORS 74.4070.

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged. [1961 c 726 §73.8010]

73.8020 Effect of instrument on obligation for which it is given. (1) Unless otherwise agreed where an instrument is taken for an underlying obligation:

(a) The obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) In any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety. [1961 c.726 §73.8020]

73.8030 Notice to third party. Where a defendant is sued for breach of an obligation for which a third person is answerable over under ORS 73.1010 to 73.8050 he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under ORS 73.1010 to 73.8050. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after seasonable receipt of the notice the person notified does come in and defend he is so bound. [1961 c 726 §73.8030]

73.8040 Lost, destroyed or stolen instruments. The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument. [1961 c.726 §73.8040]

73.8050 Instruments not payable to order or to bearer. ORS 73.1010 to 73.8050 apply to any instrument whose terms do not preclude transfer and which is otherwise negotiable within ORS 73.1010 to 73.8050 but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument. [1961 c 726 §73 8050]

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,
December 1, 1963

Sam R. Haley
Legislative Counsel