

# TITLE 8

## COMMERCIAL INSTRUMENTS AND TRANSACTIONS

- Chapter 71. Negotiable Instruments  
72. Bank Collection Act  
73. Uniform Trust Receipts Law  
74. Uniform Warehouse Receipts Act  
75. Uniform Sales Act  
76. Conditional Sales  
79. Bulk Sales  
80. Assignments  
81. Tender and Receipts  
82. Interest and Usury

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### Chapter 71

#### Negotiable Instruments

##### FORM AND INTERPRETATION

- 71.001 Requirements for negotiability  
71.002 Sum certain defined  
71.003 Unconditional promise or order defined  
71.004 Determinable future time defined  
71.005 Promise to do act in addition to payment of money; provisions not affecting negotiability  
71.006 Omissions; seal; particular kind of money  
71.007 When payable on demand  
71.008 When payable to order  
71.009 When payable to bearer  
71.010 When terms are sufficient  
71.011 Presumption as to date  
71.012 Antedated or postdated instrument  
71.013 Insertion of date  
71.014 Blanks, authority to fill; validity  
71.015 Incomplete instrument not delivered  
71.016 Delivery  
71.017 Ambiguities and omissions  
71.018 Signature; trade or assumed name  
71.019 Signature by agent  
71.020 Liability of person signing as agent  
71.021 Signature by procuration  
71.022 Indorsement or assignment by corporation or infant  
71.023 Forged signature

##### CONSIDERATION

- 71.024 Presumptions of valuable consideration and value  
71.025 What constitutes value  
71.026 What constitutes holder for value  
71.027 Lienholder as a holder for value  
71.028 Absence, failure or partial failure of consideration as defense  
71.029 Liability of accommodation party

##### NEGOTIATION

- 71.030 What constitutes negotiation  
71.031 Indorsement  
71.032 Necessity for indorsement of entire instrument  
71.033 Kinds of indorsements  
71.034 Special indorsement; indorsement in blank  
71.035 Conversion of blank indorsement into special  
71.036 Restrictive indorsement  
71.037 Effect of restrictive indorsement  
71.038 Qualified indorsement  
71.039 Conditional indorsement  
71.040 Special indorsement of instrument payable to bearer  
71.041 Indorsement of instrument payable to two or more persons

- 71.042 Instrument drawn or indorsed to fiscal officer of a bank or corporation
- 71.043 Indorsement in case of misspelled or wrongly designated name
- 71.044 When indorser can negative personal liability
- 71.045 Presumption as to time of negotiation
- 71.046 Presumption as to place of making indorsement
- 71.047 Continuation of negotiability
- 71.048 Striking out indorsement
- 71.049 Transfer without indorsement, effect of
- 71.050 Further negotiation by prior party after negotiation back to him

**RIGHTS OF THE HOLDER**

- 71.051 Right of holder to sue; effect of payment to holder
- 71.052 What constitutes a holder in due course
- 71.053 Delay in negotiating demand instrument
- 71.054 Notice to transferee before he has paid in full
- 71.055 What constitutes defective title
- 71.056 What constitutes notice of infirmity or defective title
- 71.057 Rights of holder in due course
- 71.058 Defenses against holders not in due course; rights of holder deriving title through holder in due course
- 71.059 Proof that a holder is a holder in due course

**LIABILITIES OF PARTIES**

- 71.060 Maker's engagements and admissions
- 71.061 Drawer's engagements and admissions; stipulation negating or limiting liability
- 71.062 Acceptor's engagements and admissions
- 71.063 When a person is deemed an indorser
- 71.064 Liability of stranger signing in blank before delivery
- 71.065 Warranty of negotiator where negotiation is by delivery or qualified indorsement
- 71.066 Warranty and engagement of indorser without qualification
- 71.067 Indorser's liability on instrument negotiable by delivery
- 71.068 Order of liability of indorsers; liability of joint payees or indorsers
- 71.069 Agent's liability where he negotiates without indorsement

**PRESENTMENT FOR PAYMENT**

- 71.070 Necessity for presentment for payment; when tender of payment deemed made
- 71.071 Time when presentment must be made
- 71.072 What constitutes a sufficient presentment
- 71.073 Place of presentment
- 71.074 Exhibiting and delivering up instrument
- 71.075 Time of presentment where instrument payable at bank
- 71.076 Presentment where person primarily liable is dead
- 71.077 Presentment when persons primarily liable are partners
- 71.078 Presentment to joint debtors
- 71.079 When presentment is not required to charge drawer
- 71.080 When presentment is not required to charge indorser
- 71.081 When delay in presentment is excused
- 71.082 When presentment may be dispensed with
- 71.083 When instrument is dishonored by nonpayment
- 71.084 Recourse to parties secondarily liable after dishonor
- 71.085 Time of maturity
- 71.086 How time is computed
- 71.087 Instrument payable at bank as authority to bank to pay
- 71.088 What constitutes payment in due course

**NOTICE OF DISHONOR**

- 71.089 To whom notice of dishonor must be given
- 71.090 By whom notice may be given
- 71.091 Notice given by agent
- 71.092 To whose benefit notice by or on behalf of holder inures
- 71.093 To whose benefit notice by or on behalf of party entitled to give notice inures
- 71.094 When agent may give notice; effect of notice to principal
- 71.095 Sufficiency of notice
- 71.096 Form and terms of notice
- 71.097 To whom notice may be given
- 71.098 Notice where party is dead
- 71.099 Notice to partners
- 71.100 Notice to joint parties
- 71.101 Notice in case of bankruptcy, insolvency or assignment for creditors
- 71.102 Time notice must be given
- 71.103 Time of notice where parties reside in same place
- 71.104 Time of notice where parties reside in different places
- 71.105 Mailed notice; miscarriage of mails
- 71.106 What deemed a deposit in postoffice
- 71.107 Notice to antecedent parties by recipient of notice
- 71.108 Where notice must be sent; effect of actual receipt of notice
- 71.109 Waiver of notice
- 71.110 Persons bound by waiver
- 71.111 Waiver of protest as effecting waiver of presentment and notice of dishonor
- 71.112 When notice is dispensed with
- 71.113 Excuse for delay in giving notice
- 71.114 When drawer need not be given notice
- 71.115 When indorser need not be given notice
- 71.116 Subsequent nonpayment after notice of dishonor by nonacceptance, necessity for notice
- 71.117 Omission to give notice of nonacceptance; effect on subsequent holder
- 71.118 When protest is required

**DISCHARGE OF NEGOTIABLE INSTRUMENTS**

- 71.119 How instrument is discharged
- 71.120 How person secondarily liable is discharged
- 71.121 Rights of party secondarily liable after payment
- 71.122 Renunciation of rights by holder
- 71.123 Cancellation made unintentionally; under mistake; without authority; burden of proof
- 71.124 Material alteration of instrument
- 71.125 What constitutes a material alteration

**BILLS OF EXCHANGE**

- 71.126 Bill of exchange defined
- 71.127 Bill of exchange not an assignment of funds in hands of drawee; necessity of acceptance
- 71.128 Bill addressed to more than one drawee
- 71.129 Inland and foreign bills
- 71.130 When bill may be treated as note
- 71.131 Referee in case of need

**ACCEPTANCE**

- 71.132 What is acceptance; limitation to payment of money
- 71.133 Holder's right to require acceptance on face of bill
- 71.134 Acceptance on separate paper
- 71.135 Antecedent promise in writing to accept, when deemed actual acceptance
- 71.136 Time allowed drawee to accept; effective date of acceptance
- 71.137 Liability of drawee retaining or destroying bill

- 71.138 Acceptance of incomplete, overdue or dishonored bill  
 71.139 Kinds of acceptance  
 71.140 Acceptance to pay at particular place  
 71.141 Qualified acceptance  
 71.142 Right to refuse qualified acceptance; effect of such acceptance; time for dissent

## PRESENTMENT FOR ACCEPTANCE

- 71.143 Necessity of presentment for acceptance  
 71.144 Necessity for presentment or negotiation within reasonable time  
 71.145 Requisites of presentment  
 71.146 Days on which bill may be presented  
 71.147 When delay in presentment is excused  
 71.148 When presentment is excused  
 71.149 Dishonor by nonacceptance  
 71.150 Duty of holder where bill not accepted  
 71.151 Rights of holder where bill is not accepted

## PROTEST

- 71.152 Necessity for protest  
 71.153 How protest is made  
 71.154 By whom protest is made  
 71.155 Time protest must be made; extension where bill has been duly noted  
 71.156 Where protest must be made  
 71.157 Protest for nonpayment after protest for nonacceptance  
 71.158 Protest before maturity for better security  
 71.159 When protest is dispensed with and delay in protesting is excused  
 71.160 Protest in case of lost, destroyed or wrongly detained bill

## ACCEPTANCE FOR HONOR

- 71.161 When bill may be accepted for honor  
 71.162 Form and contents of acceptance for honor  
 71.163 Presumption for whose honor acceptance is made  
 71.164 Liability of acceptor for honor  
 71.165 Engagements of acceptor for honor  
 71.166 Maturity of sight bill accepted for honor  
 71.167 Prerequisites to presenting for payment to acceptor for honor or referee in case of need

- 71.168 When presentment for payment to acceptor for honor must be made  
 71.169 Delay in making presentment to acceptor for honor and referee in case of need  
 71.170 Protest for nonpayment by acceptor for honor

## PAYMENT FOR HONOR

- 71.171 Who may make payment for honor  
 71.172 How payment for honor is made  
 71.173 Declaration of payer for honor  
 71.174 Preference between persons offering to pay for honor  
 71.175 Effect of payment for honor  
 71.176 Where holder refuses to receive payment supra protest  
 71.177 Rights of payer for honor

## BILLS IN A SET

- 71.178 Effect of drawing bill in a set  
 71.179 Parts negotiated to different holders; rights of holders  
 71.180 Liability of indorser of two or more parts of a set  
 71.181 Acceptance of bill drawn in a set  
 71.182 Payment by acceptor of bill drawn in a set  
 71.183 Effect of discharge of part of a bill drawn in a set

## PROMISSORY NOTES AND CHECKS

- 71.184 Negotiable promissory note defined  
 71.185 Check defined; provisions of this chapter applicable  
 71.186 Time for presenting check for payment  
 71.187 Certification of check as acceptance  
 71.188 Acceptance or certification of check for holder, effect  
 71.189 Check not an assignment of funds; liability of bank  
 71.190 Short title of chapter  
 71.191 Definitions  
 71.192 Person primarily and secondarily liable defined  
 71.193 Reasonable time, determination of  
 71.194 Effect of Sunday or holiday on computation of time  
 71.195 Cases not provided for in this chapter

## CROSS REFERENCES

Bank Collection Act, effect on negotiable instruments law, 72.180  
 Bills of lading, Ch. 771  
 Documents of title to goods, negotiability and negotiation of, 75.270 to 75.400  
 Joinder of persons severally liable on instrument, 13.140  
 Negotiable instruments issued by state, municipal corporation or a political subdivision, payment of, 291.516 to 291.524, 294.005 to 294.025  
 Public utilities, negotiable instruments issued by, 757.400 to 757.450  
 Telegraph, making or drawing negotiable instruments by, 758.100

## 71.001

Bonds, refinancing, of municipal corporations, 287.310  
 Documents of title to goods, negotiability, 75.270  
 Life insurance policy premiums, written evidence of indebtedness to pay, nonnegotiability of, 739.530

Revenue bonds and refunding revenue bonds issued to finance interstate bridge, negotiability of, 381.239

## 71.006

Seal, effect of, 42.130

## 71.019

Bank or trust company, right to assume agent acting within authority, 708.530

## 71.024

Consideration, presumption of, disputable, 41.360 (21)

## 71.029

Public utilities, capacity to guaranty, indorse or become surety, limitation on, 757.440

## 71.031

Deceased payee of veterans compensation warrant, payment of such warrant without negotiation, 407.400

Indorsements, legal effect of, 72.040, 72.180  
 Old age or blind assistance, indorsement of check of deceased recipient of, 411.610

- State warrants, checks or orders, payment without indorsement when payee is deceased, 291.526, 291.528
- 71.034**
- Indorsements, legal effect, 72.040, 72.180
- 71.037**
- Indorsements, legal effect, 72.040, 72.180
- 71.045**
- Presumption as to time of indorsement, 41.360(22)
- 71.046**
- Presumption as to place of indorsement, 41.360(22)
- 71.051**
- Assignment of thing in action, effect on set-off or other defense, 80.020
- 71.062**
- Bank or trust company, amounts that can be accepted by, limitation, 708.380, 713.060
- Certification of check as equivalent to acceptance, 71.187
- Certified checks, engagements and admissions, 708.555
- 71.064**
- Public utility, capacity to indorse, limitation, 757.440
- 71.072**
- Rules of ordinary care in presentment, 72.060
- 71.073**
- Presentment at branch of drawee bank, 714.120
- 71.075**
- Bank receipt of instrument by, presumption as to time of, 72.110
- Delay in presentment to bank or trust company, 708.545
- 71.081**
- Delay in presentment to bank or trust company, 708.545
- Time for presenting check for payment, 71.186
- 71.083**
- Bank, time within which dishonor must be made, 72.120
- Mail, item presented by, election to treat as dishonored, 72.140
- 71.087**
- Revocation of credit given by bank, 72.120
- 71.089**
- To whom notice of protest must be given, 194.070
- 71.096**
- Form and terms of notice, 72.150
- Written notice, construction of, 42.290
- 71.102**
- Bank, notice of dishonor by, 72.120
- Mail, item presented by, notice of dishonor of, 72.150
- 71.113**
- Delay in giving notice excused, 72.150
- 71.119**
- Obligation delivered to debtor, presumption of payment, 41.360(9)
- Person in possession of order on himself, presumption of payment, 41.360(13)
- 71.124**
- Certification of materially altered check, liability of certifying bank, 708.555
- 71.136**
- Time within which bank may dishonor, 72.120
- 71.153**
- Notice of protest, to whom notary public must give, 194.070, 194.080
- Record of notice of protest by notary public, 194.090
- Written notice, construction, 42.290
- 71.154**
- Notary public, unlawful to protest certain negotiable instruments, 194.100
- 71.155**
- Time protest must be given by bank, 72.120
- 71.186**
- Delay in presentment to bank or trust company, 708.545
- 71.187**
- Engagements and admissions of acceptor, 71.062, 708.555
- 71.190**
- Effect of holidays on payment of negotiable instruments, 187.010, 187.030

**FORM AND INTERPRETATION****71.001 Requirements for negotiability.**

An instrument to be negotiable must conform to the following requirements:

- (1) It must be in writing and signed by the maker or drawer;
- (2) Must contain an unconditional promise or order to pay a sum certain in money;
- (3) Must be payable on demand, or at a fixed or determinable future time;
- (4) Must be payable to order or to bearer; and
- (5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

**71.002 Sum certain defined.** The sum payable is a sum certain within the meaning of this chapter, although it is to be paid:

- (1) With interest; or
- (2) By stated instalments; or
- (3) By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or
- (4) With exchange, whether at a fixed rate or at the current rate; or
- (5) With cost of collection or an attorney's fee, in case payment shall not be made at maturity.

**71.003 Unconditional promise or order defined.** An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with:

- (1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
- (2) A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

**71.004 Determinable future time defined.** An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable:

- (1) At a fixed period after date or sight; or
- (2) On or before a fixed or determinable future time specified therein; or
- (3) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a conting-

ency is not negotiable, and the happening of the event does not cure the defect.

**71.005 Promise to do act in addition to payment of money; provisions not affecting negotiability.** An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable, but the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

- (1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
- (2) Authorizes a confession of judgment if the instrument be not paid at maturity; or
- (3) Waives the benefit of any law intended for the advantage or protection of the obligor; or
- (4) Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

**71.006 Omissions; seal; particular kind of money.** The validity and negotiable character of an instrument are not affected by the fact that:

- (1) It is not dated; or
- (2) Does not specify the value given, or that any value has been given therefor; or
- (3) Does not specify the place where it is drawn or the place where it is payable; or,
- (4) Bears a seal; or,
- (5) Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

**71.007 When payable on demand.** An instrument is payable on demand:

- (1) Where it is expressed to be payable on demand, or at sight, or on presentation; or
- (2) In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.

**71.008 When payable to order.** The instrument is payable to order where it is drawn payable to the order of a specified

person, or to him or his order. It may be drawn payable to the order of:

- (1) A payee who is not maker, drawer, or drawee; or
- (2) The drawer or maker; or
- (3) The drawee; or
- (4) Two or more payees jointly; or
- (5) One or some of several payees; or
- (6) The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

**71.009 When payable to bearer.** The instrument is payable to bearer:

- (1) When it is expressed to be so payable; or
- (2) When it is payable to a person named therein or bearer; or
- (3) When it is payable to the order of a fictitious or nonexistent or living person not intended to have any interest in it, and such fact was known to the person making it so payable, or known to his employe or other agent who supplies the name of such payee; or
- (4) When the name of the payee does not purport to be the name of any person; or
- (5) When the only or last indorsement is an indorsement in blank.

**71.010 When terms are sufficient.** The instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements of this chapter.

**71.011 Presumption as to date.** Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement, as the case may be.

**71.012 Antedated or postdated instrument.** The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

**71.013 Insertion of date.** Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall

be payable accordingly. The insertion of a wrong date does not void the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

**71.014 Blanks, authority to fill; validity.** Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein, and a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument, operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given, and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

**71.015 Incomplete instrument not delivered.** Where an incomplete instrument has not been delivered, it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder as against any person whose signature was placed thereon before delivery.

**71.016 Delivery.** Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him, so as to make them liable to him, is conclusively presumed, and where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional deliv-

ery by him is presumed until the contrary is proved.

**71.017 Ambiguities and omissions.** Where the language of the instrument is ambiguous, or there are omissions thereon, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures, there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

(2) Where the instrument provides for the payment of interest without specifying the date from which interest is to run, the interest runs from the date of the instrument, and, if, the instrument is undated, from the issue thereof;

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4) Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either, at his election;

(6) Where the signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

**71.018 Signature; trade or assumed name.** No person is liable on the instrument whose signature does not appear thereon, except as in this chapter otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

**71.019 Signature by agent.** The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

**71.020 Liability of person signing as agent.** Where the instrument contains, or a person adds to his signature, words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is

not liable on the instrument, if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character without disclosing his principal, does not exempt him from personal liability.

**71.021 Signature by procuration.** A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

**71.022 Indorsement or assignment by corporation or infant.** The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

**71.023 Forged signature.** Where a signature is forged, or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

## CONSIDERATION

**71.024 Presumptions of valuable consideration and value.** Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value.

**71.025 What constitutes value.** Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time.

**71.026 What constitutes holder for value.** Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

**71.027 Lienholder as a holder for value.** Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

**71.028 Absence, failure or partial failure of consideration as defense.** Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

**71.029 Liability of accommodation party.** An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

### NEGOTIATION

**71.030 What constitutes negotiation.** An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder completed by delivery.

**71.031 Indorsement.** The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

**71.032 Necessity for indorsement of entire instrument.** The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

**71.033 Kinds of indorsements.** An indorsement may be either special or in blank; and it may also be either restrictive or qualified or conditional.

**71.034 Special indorsement; indorsement in blank.** A special indorsement specifies the person to whom or to whose order the instrument is to be payable, and the indorsement of such indorsee is necessary to the further negotiation of the instrument.

An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negotiated by delivery.

**71.035 Conversion of blank indorsement into special.** 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.

**71.036 Restrictive indorsement.** An indorsement is restrictive which either:

- (1) Prohibits the further negotiation of the instrument; or
- (2) Constitutes the indorsee the agent of the indorser; or
- (3) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

**71.037 Effect of restrictive indorsement.** A restrictive indorsement confers upon the indorsee the right:

- (1) To receive payment of the instrument;
- (2) To bring any action thereon that the indorser could bring;
- (3) To transfer his rights as such indorsee where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

**71.038 Qualified indorsement.** A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse," or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

**71.039 Conditional indorsement.** Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

**71.040 Special indorsement of instrument payable to bearer.** When an instrument



payable to bearer is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

**71.041 Indorsement of instrument payable to two or more persons.** Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has the authority to indorse for the others.

**71.042 Instrument drawn or indorsed to fiscal officer of a bank or corporation.** Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

**71.043 Indorsement in case of misspelled or wrongly designated name.** Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

**71.044 When indorser can negative personal liability.** Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

**71.045 Presumption as to time of negotiation.** Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

**71.046 Presumption as to place of making indorsement.** Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

**71.047 Continuation of negotiability.** An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

**71.048 Striking out indorsement.** The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is

struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

**71.049 Transfer without indorsement, effect of.** Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

**71.050 Further negotiation by prior party after negotiation back to him.** Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

## RIGHTS OF THE HOLDER

**71.051 Right of holder to sue; effect of payment to holder.** The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

**71.052 What constitutes a holder in due course.** A holder in due course is a holder who has taken the instrument under the following conditions:

- (1) That it is complete and regular upon its face;
- (2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
- (3) That he took it in good faith and for value;
- (4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

**71.053 Delay in negotiating demand instrument.** Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

**71.054 Notice to transferee before he has paid in full.** Where the transferee re-

ceives notice of infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

**71.055 What constitutes defective title.** The title of a person who negotiates an instrument is defective within the meaning of this chapter when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to fraud.

**71.056 What constitutes notice of infirmity or defective title.** To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

**71.057 Rights of holder in due course.** A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

**71.058 Defenses against holders not in due course; rights of holder deriving title through holder in due course.** In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect to all parties prior to the latter.

**71.059 Proof that a holder is a holder in due course.** Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he, or some person under whom he claims, acquired the title as a holder in due course. But the last mentioned rule does not apply

in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

## LIABILITIES OF PARTIES

**71.060 Maker's engagements and admissions.** The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

**71.061 Drawer's engagements and admissions; stipulation negating or limiting liability.** The drawer, by drawing the instrument, admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

**71.062 Acceptor's engagements and admissions.** The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance; and admits:

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2) The existence of the payee and his then capacity to indorse.

**71.063 When a person is deemed an indorser.** A person placing his signature upon an instrument otherwise than as a maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

**71.064 Liability of stranger signing in blank before delivery.** When a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable

to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

**71.065 Warranty of negotiator where negotiation is by delivery or qualified indorsement.** Every person negotiating an instrument by delivery or by a qualified indorsement warrants:

(1) That the instrument is genuine and in all respects what it purports to be;

(2) That he has a good title to it;

(3) That all prior parties had capacity to contract;

(4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subsection (3) of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

**71.066 Warranty and engagement of indorser without qualification.** Every indorser who indorses without qualification warrants to all subsequent holders in due course:

(1) The matters and things mentioned in subsections (1), (2) and (3) of ORS 71.065; and

(2) That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that, on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it.

**71.067 Indorser's liability on instrument negotiable by delivery.** Where a person places his indorsement on an instrument negotiable by delivery, he incurs all the liabilities of an indorser.

**71.068 Order of liability of indorsers; liability of joint payees or indorsers.** As respects one another, indorsers are liable prima facie in the order in which they indorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint

indorsees who indorse are deemed to indorse jointly and severally.

**71.069 Agent's liability where he negotiates without indorsement.** Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by ORS 71.065, unless he discloses the name of his principal and the fact that he is acting only as agent.

## PRESENTMENT FOR PAYMENT

**71.070 Necessity for presentment for payment; when tender of payment deemed made.** Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is by its terms payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as in this chapter otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

**71.071 Time when presentment must be made.** Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

**71.072 What constitutes a sufficient presentment.** Presentment for payment, to be sufficient, must be made:

(1) By the holder, or by some person authorized to receive payment on his behalf;

(2) At a reasonable hour on a business day;

(3) At a proper place as defined in ORS 71.073;

(4) To the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made.

**71.073 Place of presentment.** Presentment for payment is made at the proper place:

(1) Where a place of payment is specified in the instrument and it is there presented;

(2) Where no place of payment is specified, but the address of the person to make

payment is given in the instrument and it is there presented;

(3) Where no place of payment is specified and no address is given, and the instrument is presented at the usual place of business or residence of the person to make payment;

(4) In any other case, if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

**71.074 Exhibiting and delivering up instrument.** The instrument must be exhibited to the person from whom payment is demanded, and when it is paid, must be delivered up to the party paying it.

**71.075 Time of presentment where instrument payable at bank.** Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

**71.076 Presentment where person primarily liable is dead.** Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found.

**71.077 Presentment when persons primarily liable are partners.** Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

**71.078 Presentment to joint debtors.** Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

**71.079 When presentment is not required to charge drawer.** Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

**71.080 When presentment is not required to charge indorser.** Presentment for payment is not required in order to charge an in-

dorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

**71.081 When delay in presentment is excused.** Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

**71.082 When presentment may be dispensed with.** Presentment for payment is dispensed with:

(1) Where, after the exercise of reasonable diligence, presentment as required by this chapter cannot be made;

(2) Where the drawee is a fictitious person;

(3) By waiver of presentment, express or implied.

**71.083 When instrument is dishonored by nonpayment.** The instrument is dishonored by nonpayment when:

(1) It is duly presented for payment and payment is refused or cannot be obtained; or

(2) Presentment is excused and the instrument is overdue and unpaid.

**71.084 Recourse to parties secondarily liable after dishonor.** Subject to the provisions of this chapter, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

**71.085 Time of maturity.** Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before 12 noon, on Saturday, when that entire day is not a holiday.

**71.086 How time is computed.** Where the instrument is payable at a fixed period after date, after sight or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

**71.087 Instrument payable at bank as authority to bank to pay.** Where the instrument is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

**71.088 What constitutes payment in due course.** Payment is made in due course when it is made at or after the maturity of the instrument, to the holder thereof, in good faith, and without notice that his title is defective.

### NOTICE OF DISHONOR

**71.089 To whom notice of dishonor must be given.** Except as in this chapter otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

**71.090 By whom notice may be given.** The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

**71.091 Notice given by agent.** Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

**71.092 To whose benefit notice by or on behalf of holder inures.** Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

**71.093 To whose benefit notice by or on behalf of party entitled to give notice inures.** Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

**71.094 When agent may give notice; effect of notice to principal.** Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the prin-

cipal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

**71.095 Sufficiency of notice.** A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

**71.096 Form and terms of notice.** The notice may be in writing, or merely oral and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

**71.097 To whom notice may be given.** Notice of dishonor may be given either to the party himself or to his agent in that behalf.

**71.098 Notice where party is dead.** When any party is dead and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

**71.099 Notice to partners.** Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

**71.100 Notice to joint parties.** Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

**71.101 Notice in case of bankruptcy, insolvency or assignment for creditors.** Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or his trustee or assignee.

**71.102 Time notice must be given.** Notice may be given as soon as the instrument is dishonored, and, unless delay is excused as provided in ORS 71.103 to 71.118, must be given within the time fixed by this chapter.

**71.103 Time of notice where parties reside in same place.** Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

(2) If given at his residence, it must be given before the usual hours of rest on the day following;

(3) If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

**71.104 Time of notice where parties reside in different places.** Where the person giving and the person to receive the notice reside in different places, the notice must be given within the following times:

(1) If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter;

(2) If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail if it had been deposited in the postoffice within the time specified in the last subsection.

**71.105 Mailed notice; miscarriage of mails.** Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

**71.106 What deemed a deposit in post-office.** Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department.

**71.107 Notice to antecedent parties by recipient of notice.** Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

**71.108 Where notice must be sent; effect of actual receipt of notice.** Where a party has added an address to his signature, notice of dishonor must be sent to that address, but if he has not given such address, then the notice must be sent as follows:

(1) Either to the postoffice nearest to

his place of residence or to the postoffice where he is accustomed to receive his letters; or

(2) If he lives in one place and has his place of business in another, notice may be sent to either place; or

(3) If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in ORS 71.102 to 71.104, it will be sufficient, though not sent in accordance with the requirements of this section.

**71.109 Waiver of notice.** Notice of dishonor may be waived, either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be express or implied.

**71.110 Persons bound by waiver.** Where the waiver 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.

**71.111 Waiver of protest as effecting waiver of presentment and notice of dishonor.** A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

**71.112 When notice is dispensed with.** Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

**71.113 Excuse for delay in giving notice.** Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

**71.114 When a drawer need not be given notice.** Notice of dishonor is not required to be given to the drawer in either of the following cases:

(1) Where the drawer and drawee are the same person;

(2) Where the drawee is a fictitious person, or a person not having capacity to contract;

(3) Where the drawer is the person to

whom the instrument is presented for payment;

(4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;

(5) Where the drawer has countermanded payment.

**71.115 When indorser need not be given notice.** Notice of dishonor is not required to be given to an indorser in either of the following cases:

(1) Where the drawee is a fictitious person, or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

(2) Where the indorser is the person to whom the instrument is presented for payment;

(3) Where the instrument was made or accepted for his accommodation.

**71.116 Subsequent nonpayment after notice of dishonor by nonacceptance, necessity for notice.** Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

**71.117 Omission to give notice of nonacceptance; effect on subsequent holder.** An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

**71.118 When protest is required.** Where any negotiable instrument has been dishonored, it may be protested for nonacceptance or nonpayment, as the case may be, but protest is not required, except in the case of foreign bills of exchange.

## DISCHARGE OF NEGOTIABLE INSTRUMENTS

✓ **71.119 How instrument is discharged.** A negotiable instrument is discharged:

(1) By payment in due course by or on behalf of the principal debtor; ✕

(2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

(3) By the intentional cancelation thereof by the holder;

(4) By any other act which will discharge a simple contract for the payment of money;

(5) When the principal debtor becomes

the holder of the instrument at or after maturity in his own right.

**71.120 How person secondarily liable is discharged.** A person secondarily liable on the instrument is discharged:

(1) By any act which discharges the instrument;

(2) By the intentional cancelation of his signature by the holder;

(3) By the discharge of a prior party;

(4) By a valid tender of payment made by a prior party;

(5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

(6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

**71.121 Rights of party secondarily liable after payment.** Where the instrument is paid by a party secondarily liable thereon it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements and again negotiate the instrument, except:

(1) Where it is payable to the order of a third person, and has been paid by the drawer; and

(2) Where it was made or accepted for accommodation, and has been paid by the party accommodated.

**71.122 Renunciation of rights by holder.** The holder may expressly renounce his rights against any party to the instrument before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor, made at or after the maturity of the instrument, discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

**71.123 Cancelation made unintentional; under mistake; without authority; burden of proof.** A cancelation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature there-

on appears to have been canceled the burden of proof lies on the party who alleges that the cancelation was made unintentionally, or under mistake, or without authority.

**71.124 Material alteration of instrument.** Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers; but when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

**71.125 What constitutes a material alteration.** Any alteration which changes:

- (1) The date;
- (2) The sum payable, either for principal or interest;
- (3) The time or place of payment;
- (4) The number or the relation of the parties;
- (5) The medium or currency in which payment is to be made, or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

### BILLS OF EXCHANGE

**71.126 Bill of exchange defined.** A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

**71.127 Bill of exchange not an assignment of funds in hands of drawee; necessity of acceptance.** A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

**71.128 Bill addressed to more than one drawee.** A bill may be addressed to two or more drawees jointly, whether they are partners or not, but not to two or more drawees in the alternative or in succession.

**71.129 Inland and foreign bills.** An in-

land bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

**71.130 When bill may be treated as note.** Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

**71.131 Referee in case of need.** The drawer of a bill, and any indorser, may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit.

### ACCEPTANCE

**71.132 What is acceptance; limitation to payment of money.** The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

**71.133 Holder's right to require acceptance on face of bill.** The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such a request is refused, may treat the bill as dishonored.

**71.134 Acceptance on separate paper.** Where the acceptance is written on a paper other than the bill itself, it does not bind the acceptor, except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

**71.135 Antecedent promise in writing to accept, when deemed actual acceptance.** An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

**71.136 Time allowed drawee to accept; effective date of acceptance.** The drawee is



allowed 24 hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as to the day of presentation.

**71.137 Liability of drawee retaining or destroying bill.** Where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within 24 hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.

**71.138 Acceptance of incomplete, overdue or dishonored bill.** A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

**71.139 Kinds of acceptance.** An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

**71.140 Acceptance to pay at particular place.** An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only, and not elsewhere.

**71.141 Qualified acceptance.** An acceptance is qualified, which is:

- (1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;
- (2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (3) Local, that is to say, an acceptance to pay only at a particular place;
- (4) Qualified as to time;
- (5) The acceptance of some one or more of the drawees, but not of all.

**71.142 Right to refuse qualified acceptance; effect of such acceptance; time for dissent.** The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat

the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

## PRESENTMENT FOR ACCEPTANCE

**71.143 Necessity of presentment for acceptance.** Presentment for acceptance must be made:

- (1) Where the bill is payable after sight or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
- (2) Where the bill expressly stipulates that it shall be presented for acceptance; or
- (3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

**71.144 Necessity for presentment or negotiation within reasonable time.** Except as in this chapter otherwise provided, the holder of a bill which is required by ORS 71.143 to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails so to do, the drawer and all indorsers are discharged.

**71.145 Requisites of presentment.** Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

- (1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;
- (2) Where the drawee is dead, presentment may be made to his personal representative;
- (3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, pre-

sentment may be made to him or to his trustee or assignee.

**71.146 Days on which bill may be presented.** A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of ORS 71.072 and 71.085. When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12 noon on that day.

**71.147 When delay in presentment is excused.** Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers.

**71.148 When presentment is excused.** Presentment for acceptance is excused, and a bill may be treated as dishonored by nonacceptance, in either of the following cases:

- (1) Where the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill;
- (2) Where, after the exercise of reasonable diligence, presentment cannot be made;
- (3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

**71.149 Dishonor by nonacceptance.** A bill is dishonored by nonacceptance:

- (1) When it is duly presented for acceptance and such an acceptance as is prescribed by ORS 71.132 to 71.142 is refused or cannot be obtained; or
- (2) When presentment for acceptance is excused and the bill is not accepted.

**71.150 Duty of holder where bill not accepted.** Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance, or he loses the right of recourse against the drawer and indorsers.

**71.151 Rights of holder where bill is not accepted.** When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary.

## PROTEST

**71.152 Necessity for protest.** Where a foreign bill, appearing on its face to be such, is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

**71.153 How protest is made.** The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

- (1) The time and place of presentment;
- (2) The fact that presentment was made, and the manner thereof;
- (3) The cause or reason for protesting the bill;
- (4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

**71.154 By whom protest is made.** Protest may be made by:

- (1) A notary public; or
- (2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

**71.155 Time protest must be made; extension where bill has been duly noted.** When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as provided in ORS 71.159. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

**71.156 Where protest must be made.** A bill must be protested at the place where it is dishonored, except that when a bill, drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable and no further presentment for payment to or demand on the drawee is necessary.

**71.157 Protest for nonpayment after protest for nonacceptance.** A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

**71.158 Protest before maturity for better security.** Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

**71.159 When protest is dispensed with and delay in protesting is excused.** Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

**71.160 Protest in case of lost, destroyed, or wrongly detained bill.** Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

#### ACCEPTANCE FOR HONOR

**71.161 When bill may be accepted for honor.** Where a bill of exchange has been protested for dishonor by nonacceptance, or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

**71.162 Form and contents of acceptance for honor.** An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

**71.163 Presumption for whose honor acceptance is made.** Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

**71.164 Liability of acceptor for honor.** The acceptor for honor is liable to the hold-

er, and to all parties to the bill subsequent to the party for whose honor he has accepted.

**71.165 Engagements of acceptor for honor.** The acceptor for honor, by such acceptance, engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also that it shall have been duly presented for payment and protested for nonpayment, and notice of dishonor given to him.

**71.166 Maturity of sight bill accepted for honor.** Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance, and not from the date of the acceptance for honor.

**71.167 Prerequisites to presenting for payment to acceptor for honor or referee in case of need.** Where a dishonored bill has been accepted for honor supra protest, or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

**71.168 When presentment for payment to acceptor for honor must be made.** Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity;

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in ORS 71.104.

**71.169 Delay in making presentment to acceptor for honor and referee in case of need.** The provisions of ORS 71.081 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

**71.170 Protest for nonpayment by acceptor for honor.** When the bill is dishonored by the acceptor for honor, it must be protested for nonpayment by him.

#### PAYMENT FOR HONOR

**71.171 Who may make payment for honor.** Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any

person liable thereon or for the honor of the person for whose account it was drawn.

**71.172 How payment for honor is made.**

The payment for honor supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it.

**71.173 Declaration of payer for honor.**

The notarial act of honor must be founded on a declaration made by the payer for honor, or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays.

**71.174 Preference between persons offering to pay for honor.** Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

**71.175 Effect of payment for honor.**

Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

**71.176 Where holder refuses to receive payment supra protest.** Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

**71.177 Rights of payer for honor.** The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

### BILLS IN A SET

**71.178 Effect of drawing bill in a set.** Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

**71.179 Parts negotiated to different holders; rights of holders.** Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing

in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

**71.180 Liability of indorser of two or more parts of a set.** Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

**71.181 Acceptance of bill drawn in a set.**

The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

**71.182 Payment by acceptor of bill drawn in a set.**

When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

**71.183 Effect of discharge of part of a bill drawn in a set.**

Except as in this chapter otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

### PROMISSORY NOTES AND CHECKS

**71.184 Negotiable promissory note defined.** A negotiable promissory note, within the meaning of this chapter, is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until endorsed by him.

**71.185 Check defined; provisions of this chapter applicable.**

A check is a bill of exchange drawn on a bank payable on demand. Except as in this chapter otherwise provided, the provisions of this chapter applicable to a bill of exchange payable on demand apply to a check.

**71.186 Time for presenting check for payment.**

A check must be presented for payment within a reasonable time after its issue, or the drawer will be discharged from

liability thereon to the extent of the loss caused by the delay.

**71.187 Certification of check as acceptance.** Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

**71.188 Acceptance or certification of check for holder, effect.** Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon.

**71.189 Check not an assignment of funds; liability of bank.** A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies to the check.

**71.190 Short title of chapter.** This chapter shall be known as the Negotiable Instruments Law.

**71.191 Definitions.** In this chapter, unless the context otherwise requires:

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter-claim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

**71.192 Person primarily and secondarily liable defined.** The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are “secondarily” liable. ✕

**71.193 Reasonable time, determination of.** In determining what is a “reasonable time” or an “unreasonable time” regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments and the facts of the particular case.

**71.194 Effect of Sunday or holiday on computation of time.** Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

**71.195 Cases not provided for in this chapter.** In any case not provided for in this chapter the rules of the law merchant shall govern.



## **ATTENTION**

ORS chapters 71 and 72 (1953 parts) are repealed effective September 1, 1963, by section 427 of chapter 726, Oregon Laws 1961 (Uniform Commercial Code). Until September 1, 1963, ORS chapters 71 and 72 (1953 parts) will remain in effect, unless otherwise provided by legislative action after 1961.

Insert this sheet between ORS chapters 71 and 72.

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