

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1-201. GENERAL DEFINITIONS

Subject to additional definitions contained in the subsequent chapters of this Code which are applicable to specific Codes or parts thereof, and unless the context otherwise requires, in this Code:

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

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

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Code (Sections 1-205 and 1-208). Whether an agreement has legal consequences is determined by the provisions of this Code, if applicable; otherwise by the law of contracts (Section 1-103). (Compare "Contract".)

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

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

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

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

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

(9) "Buyer in ordinary course in business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a collateral loan broker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

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

(12) "Court" means the Oneida Nation Court.

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

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

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

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

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

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

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

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

(21) "Holder" means a person who is in possession of a document of title or an

instrument or an investment certificated security drawn, issued or endorsed to him or to his order or to bearer or in blank.

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

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

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

(25) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency except that it does not include rare or unusual coins used for numismatic purposes. Such rare or unusual coins shall be considered goods; provided, however, that nothing in this subsection shall be deemed to impair or alter the obligation of an insurer to an insured under a contract of insurance heretofore or hereafter issued or delivered within the territorial jurisdiction of the Oneida Indian Nation covering loss of or damage to property.

(26) A person has "notice" of a fact when

(a) he has actual knowledge of it; or

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

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

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

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

(a) it comes to his attention; or

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

communications.

(28) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties and unless he had reason to know of the transaction and that the transaction would be materially affected by the information.

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

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

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

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

(33) "Purchase" includes taking by sale, discount, negotiation, mortgagee, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

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

(35) "Qualified Financial Contract" means a contract as defined in section 5-701(b) of the New York General Obligations Law.

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

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

(38) "Rights" includes remedies.

(39) "Security interest" means an interest in personal property or fixtures which

secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to the Uniform Commercial Code, Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under Section 2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9 of the New York Commercial Code. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment is in any event subject to the provisions on consignment sale (Section 2-326). Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

- (a) the original term of the lease is equal to or greater than the remaining economic life of the goods,
- (b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,
- (c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or
- (d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

- (a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,
- (b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,
- (c) the lessee has an option to renew the lease or to become the owner of the goods,
- (d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the

goods for the term of the renewal at the time the option is to be performed,
or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

(a) Additional considerations is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise the discount is determined by a commercially reasonable rate that take into account the facts and circumstances of each case at the time the transaction was entered into.

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

(41) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing. Without limiting the generality of the preceding sentence, any financing or other statement of security agreement filed pursuant to Part 4 of Article 9 of the Uniform Commercial Code which contains a copy, however made, of the signature of a secured party or his representative, or of a debtor or his representative, is "signed" by the secured party or the debtor, as the case may be.

(42) "Surety" includes guarantor.

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

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

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

(46) "Uniform Commercial Code" means, in this Chapter and Chapter 2 and 2A when not referring to the Oneida Indian Nation Commercial Code, a reference to the current version of the Uniform Commercial Code utilized by the State of New York.

(46) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3-303, 4-208 and 4-209 of the New York Uniform Commercial Code) a person gives "value" for rights if he acquires them.

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

(b) as security for or in total or partial satisfaction of a pre-existing claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

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

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

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

1-202. PRIMA FACIE EVIDENCE BY THIRD PARTY DOCUMENTS

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

1-203. OBLIGATION OF GOOD FAITH

Every contract or duty within this Code imposes an obligation of good faith in its performance or enforcement.

1-204. TIME; REASONABLE TIME; "SEASONABLY"

(1) Whenever this Code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

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

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

1-205. COURSE OF DEALING AND USAGE OF TRADE

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

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

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

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

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

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

1-206. STATUTE OF FRAUDS FOR KINDS OF PERSONAL PROPERTY NOT OTHERWISE COVERED

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contract for the sale of goods, (Section 2-201).

(3) Subsection one of this section does not apply to a qualified financial contract if either (a) there is sufficient evidence to indicate that a contract has been made or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of such qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

1-207. PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OR RIGHTS

A party who with explicit reservation of rights perform or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

1-208. OPTION TO ACCELERATE AT WILL

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

1-209. SUBORDINATED OBLIGATIONS

An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.