

CHAPTER 9-07

INTERPRETATION OF CONTRACT

9-07-01. Public and private contracts interpreted by same rules. All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by the laws of this state.

9-07-02. Language of contract governs if clear. The language of a contract is to govern its interpretation if the language is clear and explicit and does not involve an absurdity.

9-07-03. Contract interpreted to give effect to mutual intention. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting so far as the same is ascertainable and lawful. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

9-07-04. Intention ascertained from writing alone if possible. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone if possible, subject, however, to the other provisions of this chapter.

9-07-05. Real intention to govern in cases of fraud, mistake, or accident. When through fraud, mistake, or accident a written contract fails to express the real intention of the parties, such intention is to be regarded and the erroneous parts of the writing disregarded.

9-07-06. Contract interpreted as a whole. The whole of a contract is to be taken together so as to give effect to every part if reasonably practicable. Each clause is to help interpret the others.

9-07-07. Several contracts part of one transaction interpreted together. Several contracts relating to the same matters between the same parties and made as parts of substantially one transaction are to be taken together.

9-07-08. Contract interpreted so it may be carried into effect. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

9-07-09. Words to be interpreted in ordinary sense. The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

9-07-10. Interpretation of technical words. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

9-07-11. What law governs. Repealed by S.L. 1973, ch. 77, § 1.

9-07-12. Contract explained by reference to circumstances. A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates.

9-07-13. Contract extends only to things to be covered. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

9-07-14. Interpreted as promisor believed promisee understood it. If the terms of a promise in any respect are ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed at the time of making it that the promisee understood it.

9-07-15. Clauses subordinate to general intent. Particular clauses of a contract are subordinate to its general intent.

9-07-16. Written part of contract controls printed part. When a contract is partly written and partly printed, or when part of it is written or printed under the special directions of the parties and with a special view to their intention and the remainder is copied from a form originally prepared without special reference to the particular parties and particular contract in question, the written parts control the printed parts and the parts which are purely original control those which are copied from a form and if the two are absolutely repugnant the latter must be disregarded insofar as such repugnancy exists.

9-07-17. Repugnancies reconciled with intent. Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clause subordinate to the general intent and purposes of the whole contract.

9-07-18. Inconsistent words rejected. Words in a contract which are inconsistent with its nature or with the main intention of the parties are to be rejected.

9-07-19. Uncertainty interpreted against party causing it - Presumption as to cause. In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party, except in a contract between a public officer or body, as such, and a private party, and in such case it is presumed that all uncertainty was caused by the private party.

9-07-20. Stipulations necessary to make contract reasonable implied. Stipulations which are necessary to make a contract reasonable or conformable to usage are implied in respect to matters concerning which the contract manifests no contrary intention.

9-07-21. Things incidental to contract - When and when not implied. All things that in law or usage are considered as incidental to a contract or as necessary to carry it into effect are implied therefrom, unless some of them are mentioned expressly therein. In such case, all other things of the same class are deemed to be excluded.

9-07-22. Rules governing time of performance when not specified. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act in its nature is capable of being done instantly, as for example if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained.

9-07-23. When time is essence of contract. Time is of the essence of a contract if it is provided expressly by the terms of the contract or if such was the intention of the parties as disclosed thereby.