

1 **13-827. Course of dealing.**

2 A course of dealing is a manner of dealing between the parties in previous transactions
3 which it is reasonable to regard as establishing ~~[a]~~the parties' common understanding ~~[with respect~~
4 ~~to]~~of the meaning of the term[s] in dispute.

6 **USE NOTES**

7 This instruction should be given in conjunction with UJI 13-825 NMRA~~[-when a question~~
8 ~~of interpretation exists as to a term or terms in a contract and there is evidence submitted~~
9 ~~concerning course of dealing]~~when there is a dispute as to the meaning of an ambiguous term or
10 terms in a contract and there has been a sufficient evidentiary showing of a prior course of dealing
11 between the parties to submit the evidence to the jury to consider in resolving the dispute.
12 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 20-8300-006,
13 effective for all cases pending or filed on or after December 31, 2020.]

14 **Committee commentary.** — ~~[Evidence of how the parties have dealt with each other in~~
15 ~~other similar transactions may be relevant to the proper construction of the contract at issue. This~~
16 ~~type of evidence is referred to as “course of dealing.” The evidence of course of dealing may assist~~
17 ~~in construing ambiguous terms in a contract or it may also serve to supplement or amplify explicit~~
18 ~~terms in a contract. J.A. Farnsworth, Contracts § 7.13.~~

19 ~~In order for there to be a “course of dealing,” it is necessary that the prior conduct not be~~
20 ~~an isolated instance but rather reflect a sufficient sequence of events to support the conclusion that~~
21 ~~it reliably evinces the understanding of the parties. Restatement (Second) of Contracts, §223(2);~~

1 ~~[*Id.*] J.A. Farnsworth, Contracts § 7.13. The concept of “course of dealing” should not be confused~~
2 ~~with the concept of “course of performance,” which deals with the parties’ performance of the~~
3 ~~contract at issue. See UJI 13-828 NMRA. Similarly, the concept of “course of dealing” must be~~
4 ~~distinguished from prior negotiations of the contract at issue.]~~

5 Evidence of a prior course of dealing between the parties is admissible for the factfinder to
6 consider in determining the meaning of an ambiguous term in a contract. See *Allsup’s Convenience*
7 *Stores, Inc. v. N. River Ins. Co.*, 1999-NMSC-006, ¶ 31, 127 N.M. 1, 976 P.2d 1. For a course of
8 dealing to be shown, the parties must have previously dealt with one another in similar transactions
9 in a manner that supports the conclusion that the dealings evince the parties’ understanding of the
10 contractual term(s) in question. See 2 Zachary Wolfe, *Farnsworth on Contracts* § 7.16 (4th ed.
11 2019). A course of dealing, which involves conduct prior to the contract in question, should not
12 be confused with a course of performance, which involves the parties’ performance of the contract
13 at issue. *Id.*

14 [Amended by Supreme Court Order No. 18-8300-013, effective for all cases pending or filed on
15 or after December 31, 2018; as amended by Supreme Court Order No. 20-8300-006, effective for
16 all cases pending or filed on or after December 31, 2020.]