Chapter 71

General Provisions for Uniform Commercial Code

71.1010

LAW REVIEW CITATIONS: 47 OLR 460-463; 48 OLR 141-167, 192, 209-226.

71.1020

CASE CITATIONS: Farmers' Bank of Weston v. Ellis, (1927) 122 Or 266, 258 P 186; Voyt v. Bekins Moving & Storage Co., (1942) 169 Or 30, 119 P2d 586, 127 P2d 360; Tripp and Saunders v. Renhard, (1948) 184 Or 622, 200 P2d 644.

LAW REVIEW CITATIONS: 1 OLR 116, 124; 8 OLR 219; 39 OLR 318-336; 49 OLR 113.

71.1030

LAW REVIEW CITATIONS: 8 OLR 99; 10 OLR 275.

71.1050

CASE CITATIONS: General Elec. Cred. Corp. v. R. A. Heintz Constr. Co., (1969) 302 F Supp 958.

71.1090

LAW REVIEW CITATIONS: 43 OLR 48.

71.2010

NOTES OF DECISIONS

1. In general

If one is not in possession of the instrument at the commencement of the action, for some cause other than because the instrument is lost, he cannot be a "holder." Investment Serv. Co. v. Martin Bros. Container & Tbr. Prod. Corp., (1970) 255 Or 192, 465 P2d 868.

"Nominal" is a vague term which allows three possible constructions: (1) an absolute sum; (2) relative to the initial price of the property; or (3) relative to the market value of the equipment at the time the option is exercised. Oregon Research Institute, Inc. v. Dept. of Rev., (1971) 4 OTR 433.

Whether a lease with an option to purchase constitutes a security interest is aided by a presumption in favor of the security interest if the lessee has the option to purchase at the end of the lease for a nominal amount. Id.

2. Under former similar statute

(1) Holder. A payee was a "holder." American Nat. Bank v. Kerley, (1923) 109 Or 155, 220 P 116; Beck v. David, (1929) 128 Or 542, 274 P 914; First Nat. Bank v. Noble, (1946) 179 Or 26, 168 P2d 354.

Where a drawee pays a check and receives it as a canceled voucher the drawee was not a "holder." First Nat. Bank v. United States Nat. Bank, (1921) 100 Or 264, 197 P 547.

The word "holder" meant anyone in actual or constructive possession of a note, and entitled at law to recover or receive its contents from the parties to it. Buckman v. Hill Military Academy, (1948) 182 Or 621, 189 P2d 575.

A payee was a "holder." United Fin. Co. v. Anderson, (1957) 212 Or 443, 319 P2d 571.

(2) Transfer as collateral. One taking note as collateral security for pre-existing debt took for value as a holder in due course. Amer. Nat. Bank v. Kerley, (1923) 109 Or 155, 220 P 116, 32 ALR 262; Cole v. Vinton, (1933) 142 Or 313, 20 P2d 436.

The transfer of a note as collateral in lieu of other collateral which was surrendered to the payee of the note was a transfer for value. Bank of Gresham v. Clarke, (1932) 140 Or 57, 12 P2d 559.

(3) Past services. Past services creating no legal obligation and without expectation of compensation were not sufficient consideration for a subsequent note. Kirchner v. Clostermann, (1931) 136 Or 557, 299 P 995.

(4) Exchange of paper. Where there was an exchange of commercial paper, each instrument formed a sufficient consideration for the other, and such exchange was an independent obligation not conditioned on the payment of the other, unless such condition was expressed in it. Matlock v. Scheuerman, (1908) 51 Or 49, 93 P 823, 17 LRA(NS) 747.

(5) Notice. The general equity doctrine of constructive notice was not applicable to a purchaser for value before maturity; only knowledge of such facts as would constitute bad faith was sufficient to impeach his title. Bank of Calif. Nat. Assn. v. Portland Hide & Wool Co., (1929) 131 Or 123, 282 P 99; Steel v. Bank of Calif., (1932) 140 Or 107, 9 P2d 1053.

Notice of infirmity in a check was not given to a purchaser by a statement of the indorser that the maker had requested him to wait two or three days before presenting it for payment. Matlock v. Scheuerman, (1907) 51 Or 49, 93 P 823, 17 LRA(NS) 747.

Plaintiff did not have actual knowledge merely because he was vice-president of the bank on which a check had been drawn and he made no inquiry at the bank before purchase. Id.

Purchasers of negotiable debenture certificates of a building and loan association, being "without notice or knowledge of any defect in the title," had a right to rely on the insignia of regularity. Mott v. Guardian Bldg. & Loan Assn., (1932) 140 Or 489, 14 P2d 447.

A transferee was chargeable with "notice" when the transferor's name was followed by words disclosing a fiduciary relationship and the instrument was transferred in payment of transferor's private debt. American Sur. Co. v. Multnomah County, (1943) 171 Or 287, 138 P2d 597.

FURTHER CITATIONS: Bowman v. Metzger, (1895) 27 Or 23, 39 P 3; Ruby v. W. Coast Lbr. Co., (1932) 139 Or 388, 10 P2d 358; Baker Loan & Trust Co. v. Portland Cattle Loan Co., (1933) 141 Or 524, 6 P2d 36, 18 P2d 599; Evans Prods. Co. v. Jorgensen, (1966) 245 Or 362, 421 P2d 978; Lanners v. Whitney, (1967) 247 Or 223, 428 P2d 398; Stumbo v. Paul B. Hult Lbr. Co., (1968) 251 Or 20, 444 P2d 564.

ATTY. GEN. OPINIONS: Meaning of the word "delivery," 1922-24, p 113; when checks are "issued," 1940-42, p 238; applicability of usury laws to national bank's BankAmericard program, 1966-68, p 160; duty of State Treasurer to examine indorsements on state drafts, 1966-68, p 564.

LAW REVIEW CITATIONS: 43 OLR 51, 55, 71, 76, 82, 145, 147, 148, 152, 160, 163, 216; 49 OLR 113, 114; 7 WLJ 96-106.

71.2030

NOTES OF DECISIONS

Termination of a contract is required to be in good faith. Tele-Controls, Inc. v. Ford Industries, Inc., (1967) 388 F2d 48.

LAW REVIEW CITATIONS: 49 OLR 114.

71.2050

NOTES OF DECISIONS

Former similar statute was complied with if the buyer and seller agreed that a third party would set the price. Nelson Equip. Co. v. Harner, (1951) 191 Or 359, 230 P2d 188, 24 ALR2d 999.