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Security Transactions

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strong policy arguments and said that there shall be no privity requirement. As to a noxious and dangerous article they said the same, but have yet to have such a case. Beyond this the court has negated the effect of the privity requirement only by resort to other legal concepts, such as the third party beneficiary and the agency relationship. Unfortunately these concepts are awkward to apply, often requiring fictions or at least extention of the concepts into a new area. While this may be expedient in particular cases, eventually the application of these "borrowed" concepts may prove unworkable, especially where the equities of the case demand denial of recovery.

The U.C.C.'s provision is a practical and realistic extention of the warranty obligation, based upon strong policy arguments; such an approach requires no torturing of existing legal principles, and provides a high degree of predictability. There is no obstacle to the court making this equitable exception to the privity requirement[27] when the injury is inflicted on someone in the buyer's household. Cases such as *Martin v. J. C. Penney* could be brought directly within such an exception, without resort to other legal concepts.

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SECURITY TRANSACTIONS

Mortgages—Obligation Requirement. In Koster v. Wingard, 50 Wn.2d 855, 314 P.2d 928 (1957), the court refused to accept the plaintiff's contention that an equitable mortgage was created by the acts of the parties. During the course of the opinion the court stated that "...a mortgage can not exist without a debt, and that debt must be identified and the amount fixed with certainty." Since the court needed only to decide whether the alleged equitable mortgage was actually supported by an obligation, the court's language was broader than required by the issue before it. The Washington court has previously used the language "a mortgage cannot exist without a debt" in other situations where the case did not require the statement of so broad a rule. *Hays v. Bashor,* 108 Wash. 491, 185 Pac. 814 (1919); *Tesdahl v. Collins,* 2 Wn.2d 76, 97 P.2d 649 (1939); *O'Reilly v. Tillman,* 111 Wash. 594, 191 Pac. 866 (1920).

The court in *Koster v. Wingard, supra,* may have meant to state a general requirement for both equitable and legal mortgages that if the obligation for which the mortgage is given fails for some reason, the mortgage is not enforceable. WALSH, MORTGAGES 74 (1934); OSBORNE, MORTGAGES 74 (1951); Osborne § 103 (1951); 3 GLENN, MORTGAGES § 396-97 (1943). In stating the requirement as broadly as it did, the court would apparently invaliadet gift mortgages, mortgages given for advances to be made in the future, and those mortgages which secure unliquidated debts. There is a considerable amount of authority to support the proposition that money need not be

[27] See *Privity; Property Damages; and Personal Injuries...A Re-Appraisal.* note 8, supra.

advanced when the mortgage is given and also that the debt need not be ascertained with certainty. 3 GLENN, MORTGAGES § 396-97 (1943); OSBORNE, MORTGAGES § 105, 113 (1951); WALSH, MORTGAGES 77 (1934). Moreover, there is some authority for the proposition that gift mortgages are valid. 1 GLENN, MORTGAGES § 5.6 (1943); OSBORNE, MORTGAGES § 104 (1951); WALSH, MORTGAGES 74 (1934).

Since the court has created doubt about the validity of the aforementioned transactions, their exact position in this state will be difficult to determine until further decisions have been handed down.

Chattel Mortgages Executed In Foreign Jurisdictions—Their Validity—Rights of Creditors With Regard Thereto. In *Isaacs v. Mack Motor Truck Corp.*, 50 Wn.2d 325, 311 P.2d 663 (1957), the defendant sold a truck to the Robb & Skov Logging Co. in Oregon. To secure the balance of the purchase price the defendant executed a chattel mortgage on the truck. The mortgage was duly filed in Oregon under the Oregon statute, which does not require an affiidavit of good faith as does the Washington statute. Subsequently, the logging company moved the truck from Oregon to Washington. The plaintiffs are Washington creditors of the logging company who sued to enjoin a foreclosure of the chattel mortgage by the defendant.

The superior court was of the opinion that the mortgage was invalid because the defendant had not filed an affidavit of good faith as required by RCW 61.04.020. The supreme court reversed, holding that a chattel mortgage executed in a foreign jurisdiction remained valid in this state even if it had not been executed with the formalities required by the Washington statute. However, the court held that such a chattel mortgage would not be superior to the liens of attaching creditors who rendered services without notice of the mortgage, unless the property had been removed from its original jurisdiction without the knowledge or consent of the mortgagee, and unless the mortgagee had exercised reasonable diligence in complying with the filing laws of the new jurisdiction or had proceeded to assert his rights when he had learned of the mortgaged property's whereabouts. Since the superior court had not made these fact findings, the case was remanded for further proceedings.