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Sales - Credit Sales - Application of Usury Statute

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SALES—CREDIT SALES—APPLICATION OF USURY STATUTES—Plaintiff bought a tractor from defendant's agent for \$2950 and received a trade-in allowance of \$1180, leaving an unpaid balance of \$1770. Defendant's agent agreed to arrange for a loan from defendant for the balance of the purchase price, without stating a time price for the tractor different from the cash price previously discussed. The loan was made, and plaintiff signed a note and chattel mortgage in the amount of \$2161.84, payable in two annual installments. The \$391.84 excess over the balance due exceeded the maximum legal rate of interest allowed by Nebraska's Installment Loan Act.¹ Plaintiff later sued in equity, and the court cancelled the promissory note and chattel mortgage. Judgment was awarded plaintiff for all payments made on the note on the ground that the loan was usurious and therefore void. On appeal to the Supreme Court of Nebraska, *held*, affirmed. The transaction was not a good faith time sale, but a device to avoid the operation of the usury statutes, and the note and chattel mortgage were void from their inception. *Curtis v. Securities Acceptance Corp.*, (Neb. 1958) 91 N.W. (2d) 19.

Nebraska is one of the few states whose courts have held installment-sale contracts to be within the scope of the usury statutes.² In turning from the traditional view that usury laws do not apply to conditional sales transactions,³ these courts have been motivated to a great degree by recognition of the similarity in economic effect between a loan, the

¹ Neb. Rev. Stat. (1952) §§45-114 to 45-162.

² Five states appear to belong to this group. *Arkansas*: Hare v. General Contract Purchase Corp., 220 Ark. 601, 249 S.W. (2d) 973 (1952); *Michigan*: Hillman's v. Em 'N Al's, 345 Mich. 644, 77 N.W. (2d) 96 (1956); *Minnesota*: Seebold v. Eustermann, 216 Minn. 566, 13 N.W. (2d) 739 (1944); *Nebraska*: McNish v. General Credit Corp., 164 Neb. 526, 83 N.W. (2d) 1 (1957); *Texas*: G.F.C. Corp. v. Williams, (Tex. Civ. App. 1950) 231 S.W. (2d) 565.

³ E.g., *Commercial Credit Co. v. Tarwater*, 215 Ala. 123, 110 S. 39 (1926); *Nazarian v. Lincoln Finance Corp.*, 77 R.I. 497, 78 A. (2d) 7 (1951). See 143 A.L.R. 238 (1943).

proceeds of which are used to purchase consumer goods, and a time sale followed by a transfer of papers from the seller to a lending institution.⁴ In the principal case the court placed great reliance on the fact that plaintiff was never quoted a time price as such. Such an approach indicates a serious limitation which Nebraska and the other courts adhering to the minority view place upon the application of usury statutes to credit sales. The limitation permits a seller to charge a time price which exceeds the cash price by an amount greater than would be permissible in the case of a loan, if the buyer was informed of the total time price and had the opportunity to choose between it and the cash price.⁵ This "bona fide time price" doctrine seems to work at cross purposes with the ostensible aim of the minority courts to protect the integrity of the usury laws. In light of the policy reasons underlying those laws, it is difficult to distinguish between a transaction where a total time price is stated and one where itemized charges are merely added to the cash price. It is true that the requirement of a statement of a total time price may help the unwary purchaser and clearly establish his intent to pay the greater price. But the purpose of the usury statutes, to limit interest charges to the prescribed level regardless of the borrower's agreement to pay more, is frustrated whether or not the purchaser is aware of the difference between cash and time prices. In applying the "bona fide time price" doctrine, these courts seem to be attempting to reconcile the effect of their construction of the usury statutes with an inherent belief that the owner of property should be entitled to sell at the price he desires.⁶ The logical inconsistency to which the minority courts are led by this conflict of policy considerations raises grave doubts as to the propriety of the extension of protection to installment buyers through judicial interpretation of statutes enacted for the most part long before the modern phenomenon of widespread credit buying of consumer goods.⁷ Policy determinations such as those here involved might best be left

⁴ See *Hare v. General Contract Purchase Corp.*, note 2 supra. But cf. *General Motors Acceptance Corp. v. Weinrich*, 218 Mo. App. 68, 262 S.W. 425 (1924), for the classical distinction between borrowers and installment purchasers relied on by majority courts. See, generally, comment, 71 HARV. L. REV. 1143 (1958).

⁵ See, e.g., *McNish v. General Credit Corp.*, note 2 supra; *Dunn v. Midland Loan Finance Corp.*, 206 Minn. 550, 289 N.W. 411 (1939).

⁶ A good example of collision between these conflicting policies is *Sloan v. Sears, Roebuck and Co.*, (Ark. 1958) 308 S.W. (2d) 802, where the majority of the Arkansas court held a sale to be usurious where no "time price," as distinguished from the cash price, had been stated but a "carrying charge" had been added to the cash price. No finance company was involved, and there was full disclosure of all charges. Holt, J., dissented on the ground that the transaction was a bona fide credit sale, made in good faith.

⁷ Although the minority view has gained support in recent years, some courts have specifically reaffirmed their adherence to the traditional rule. See *Brooks v. Auto Wholesalers, Inc.*, (D.C. Mun. App. 1953) 101 A. (2d) 255; *Bell v. Idaho Finance Co.*, 73 Idaho 560, 255 P. (2d) 715 (1953).

to the legislatures,⁸ especially since important and well-established commercial practices are affected.⁹ Moreover, the position held by the majority of courts is not entirely without features for the protection of purchasers on credit, as the parties are never allowed to conceal a usurious loan behind the cloak of a conditional sale.¹⁰ The traditional view also avoids the anomaly of having the validity of the credit sale (perhaps with forfeiture in the balance) turn upon a choice of words having little effect on the true nature of the transaction.

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⁸ Some states have adopted statutes specifically proscribing excessive interest charges in credit-sale transactions. E.g., Md. Code Ann. (1957) art. 83, §132. See comment, 58 COL. L. REV. 854 (1958).

⁹ In deference to the business practices developed in reliance upon decisions that usury laws did not apply to credit sales, the Arkansas court in *Hare v. General Contract Purchase Corp.*, note 2 *supra*, reversed itself prospectively, by *caveat*.

¹⁰ E.g., *Jackson v. Commercial Credit Corp.*, 90 Ga. App. 352, 83 S.E. (2d) 76 (1954); *Mathis v. Holland Furnace Co.*, 109 Utah 449, 166 P. (2d) 518 (1946); 2 CONTRACTS RESTATEMENT §529 (1932).