Washington Law Review

Volume 9 | Number 1

6-1-1934

The American Law Institute's Restatement of the Law of Contracts with Annotations to the Washington Decisions

Committee of Washington State Bar Association on Annotations to the Restatement of the Law by the American Law Institute

The American Law Institute's Restatement of the Law of Contracts with Annotations to the Washington Decisions*

Chapter 6
CONTRACTUAL RIGHTS OF PERSONS NOT PARTIES TO THE CONTRACT**

Section 136. DUTIES CREATED BY A PROMISE TO DISCHARGE A DUTY.

(1) Except as stated in Sections 140, 143,

(a) a promise to discharge the promisee's duty creates a duty of the promisor to the creditor beneficiary to perform the promise;

(b) a promise to discharge the promisee's duty creates also a duty to the promisee;

(c) whole or partial satisfaction of the promisor's duty to the creditor beneficiary satisfies to that extent the promisor's duty to the promisee;

(d) whole or partial satisfaction of the promisor's duty to the promisee in any other way than by rendering the promised performance in whole or in part does not limit the promisor's duty to the creditor beneficiary

(2) Whether the extent of the promisor's duty to the creditor beneficiary is measured by the promisee's actual, supposed, or asserted duty to the beneficiary at the time of the making of the contract, or at some other time, depends upon the interpretation of the promise.

Comment on Subsection (1)

a. Though the right of the creditor beneficiary arises immediately on the formation of the contract, his right, unlike that of a donee beneficiary is not immediately indefeasible. As stated in Section 143, until the creditor brings suit, or otherwise materially changes his position in reliance on the promise, he may lose his right or have it qualified by a new agreement between the promisor and the promisee.

b. A contract to satisfy a duty of the promisee to another is an intangible asset of the promisee, peculiar in this respect, that it cannot generally be made available by any creditor but the beneficiary

c. If, after breach by the promisor, the beneficiary obtains payment from the promisee, the promisee has an election between a right of action for damages against the promisor and a right to recover the consideration paid. Either right can be made available by general creditors.

d. The value of the promisee's property is increased to the ex-

*The absence of annotations to particular sections of the Restatement indicates that no Washington decisions have been found on the principle therein stated.

**Continued from last issue.

tent that the contract is of value to him. It is an intangible asset. The law allows a direct action by the creditor beneficiary against the promisor without joining the promisee, instead of requiring a procedure like garnishment or a suit to realize on an asset of the debtor not available to seizure by ordinary legal process. Ordinarily the value of the asset is the amount of the debt which the promisor has undertaken to pay, but, as Illustrations 3 and 4 indicate, this will not always be the case. (Illustration 3. A promises C in writing for sufficient consideration to have a fence built between their estates, and C pays A the price of the fence. A and C know at the time that A has cattle which are likely to injure C's property if the fence is not built as agreed. B contracts with A to carry out A's contract with C that the fence shall be built and shall be paid for on completion of the work. B is shown the writing containing A's contract with C, but B does not know that A has cattle. The fence is not built as contracted, and due to that fact A's cattle enter C's property and cause great damage. Both C and A can recover judgment against B though the damages recoverable may not be the same as could be recovered by C from A, since the chance of special injury in case of breach was known to A when he contracted, but was not known to B when he contracted.) (Illustration 4. A owes C $1000. For sufficient consideration B promises A to pay C $1000 for an assignment of C's right. On tender of such an assignment C can recover from B on his promise.)

e. The promisor who undertakes to pay a debt of the promisee subjects himself to a duty both to the promisee and to the creditor beneficiary A single performance, however, rendered to the beneficiary will satisfy both obligations. As to the right to specific performance see Section 138.

f It is immaterial whether the duty of the promisee to the creditor beneficiary arises from a bargain between them or is created by an assumption by the promisee, acting as promisor in a previous contract, of some duty due by another to the creditor beneficiary, or is a non-contractual duty

Comment on Subsection (2)

g. Where a promisee believes that he is or may be indebted to a third person and contracts with a promisor with a view to his discharge, the promise may take one of four forms firstly, to pay the third person whatever is due him at the time of the promise, secondly, to pay the third person whatever may be due at the time when performance becomes due him or is claimed by him, thirdly, to pay the third person a fixed sum which the promisee rightly or wrongly assumes to be due, or wishes to have paid whether due or not, or, fourthly, to take whatever measures may be necessary to obtain the promisee's freedom from liability

h. Promises in the first and second forms present typical cases of creditor beneficiaries. In promises in the third form also the

beneficiary is a creditor beneficiary as that term is defined in Section 133 (1, b), even though the claim is not well founded. In promises in the fourth form the creditor is neither a donee beneficiary nor a creditor beneficiary A promise however that is apparently in the fourth form may in view of accompanying circumstances sometimes be properly interpreted as falling within one of the other classes.

i. Where a promise is to pay a particular claim the proper interpretation of the promise will generally be that no supervening defences to the claim shall excuse the promisor. His undertaking is not discharged by such circumstances as the promisee's subsequent discharge in bankruptcy or the running of the Statute of Limitations in favor of the promisee. Where, however, the promise is to assume the debts of the promisee, as where a new corporation or new partnership makes such a promise to another corporation or partnership, the interpretation will often be proper that the promisor undertakes to pay only creditors who have valid claims when they assert them.

ANNOTATION

Subsection (1) (a). The Washington cases are in accord with this Section.

In the following cases the creditor of a vendor of goods was allowed to recover from the vendee who, as part of the purchase price, agreed to pay the vendor's debt to the creditor· *Silsby v. Frost*, 3 W Terr. 388, 17 P. 887 (1888) *Don Yook v. Washington Mill Co.*, 16 W 459, 47 P. 964 (1897) *Gilmore v. Skookum Box Factory*, 20 W 703, 56 P. 934 (1899) *Reiley v. Spokane Sanitary Laundry Co.*, 71 W 516, 128 P 1075 (1913).

The right of the mortgagee to recover on the debt against a grantee of the mortgaged premises who promises his grantor to pay the debt has been recognized in the following cases: *Solicitors' Loan and Trust Co. v. Robins*, 14 W 507, 45 P 39 (1896) equitable subrogation theory of *Keller v. Ashford*, 133 U. S. 610 followed, *Ordway v. Downey*, 18 W 412, 51 P. 1047 (1898) *Harbican v. Chamberlin*, 82 W 556, 144 P 717 (1914) *Corkrell v. Poe*, 100 W 625, 171 P 522 (1918) *First State Bank v. Arneson*, 109 W 346, 186 P. 889 (1920) *Bollong v. Corman*, 117 W 336, 201 P 297 (1921) *Insley v. Webb*, 122 W 98, 209 P 1093 (1922) *Hargis v. Hargis*, 160 W 594, 295 P. 742 (1931) In *Frazey v. Casey*, 96 W 422, 165 P 104 (1917), where the mortgage debt was represented by a promissory note and the mortgaged premises were sold to defendant who orally promised to pay the note, it was held that the holder of the instrument could not maintain an action on it against the purchaser under Rem. Code Section 3409, providing that no person is liable on an instrument whose signature does not appear thereon. The right of the mortgagee beneficiary to sue on the independent promise, however, seems conceded. It was so held in *Frazey v. Casey, supra*, distinguished in *Federal Bank v. Miller* 155 W 479, 484, 284 P 751 (1930) The doctrine that no action can be brought *on the instrument*, except against persons whose names appear thereon, was reaffirmed in *State Bank v. Adkins*, 134 W 94, 99· 235 P 18 (1925).

In *Dimmick v. Collins*, 24 W 78, 63 P 1101 (1901) the right of a creditor to sue his debtor's vendee who promised to pay vendor's debt was recognized, *Lian v. Huglen*, 141 W 369, 251 P 585 (1926) purchaser of cannery and equipment, promising to employ plaintiff who had existing contract of employment, held liable to employee; *Zioncheck v. Hepden*, 144 W 272, 257 P 835 (1927), creditor holding note of partnership may recover on promise of vendee of partnership's assets to pay the partnership's debts; in *Moore v. Baasch*, 109 W 568, 187 P 388 (1920), officers and stockholders of two banks reciprocally guaranteed paper taken over

by an amalgamated bank, held, bank taking over the paper and state bank examiner taking over the bank on its insolvency may maintain action upon the guaranty. While regarded by the court as a case where the promisor agrees to pay debt to the beneficiary, it seems rather a case where the promisor has promised the promisee to pay the debt of a third party (persons liable on the paper) to the beneficiary.

The right of a person injured by the negligence of the insured to recover against the insurance company on a liability policy issued to the insured and providing for such an action by the injured person, has been recognized in the following cases: *Finkelberg v. Continental Casualty Co.*, 126 W 543, 219 P. 12 (1923) *Stusser v. Mutual Union Insurance Co.*, 127 W 449, 221 P. 331 (1923).

Liability of surety on contractor's bond to laborers and materialmen. Where a private bond is given to secure performance by contractor and to indemnify owner against claims for labor and materials, surety on the bond is not liable in an action by the workman or materialman: *Sears v. Williams*, 9 W 428, 37 P. 665 (1894) *Armour & Co. v. Western Construction Co.*, 36 W 529, 78 P. 1106 (1905) *Spokane Merchants Assn. v. Pacific Surety Co.*, 86 W 489, 150 P. 1054 (1914), bond conditioned that contractor "shall pay all laborers, mechanics, subcontractors, and materialmen and all persons who shall supply such laborers, etc., with materials, etc."· *Rust v. U. S. Fidelity and Guaranty Co.*, 87 W 93, 151 P. 248 (1915), bond conditioned "for the payment of all liens, claims, and other sums of money"· *Du Pont de Nemours Co. v. National Surety Co.*, 90 W 227, 155 P. 1050 (1916), rehearing 94 W 461, 162 P. 866; *Bon Marche Realty Co. v. Southern Surety Co.*, 152 W 604, 278 P. 679 (1929), semble; *Forsyth v. New York Indemnity Co.*, 159 W 318, 293 P. 284 (1930). *Contra*: *McDonald v. Davey*, 22 W 366, 60 P. 1116 (1900), but overruled by *Armour & Co. v. Western Construction Co.* and *Forsyth v. New York Indemnity Co., supra, Du Pont Co. v. Columbia Casualty Co.*, 150 W 362, 273 P. 181 (1928).

Where bond is given in pursuance of statute for construction of public improvements and conditioned to pay laborers, materialmen, etc., such bonds are "presumptively given for benefit of creditors to take the place of a lien which does not lie against a municipality and materialmen or laborers may recover against the surety"· *Baum v. County of Whatcom*, 19 W 626, 54 P. 29 (1898) *Pacific Bridge Co. v. U. S. Fidelity Co.*, 33 W. 47, 73 P. 772 (1903), semble; *Rust v. U. S. Fidelity Co.*, 87 W 93, 97· 151 P. 248 (1915), *dictum*.

Subsection (1) (b). What authority there is, is in accord with the Restatement: *Frazey v. Casey*, 96 W 422, 424. 165 P. 104 (1917), *dictum*, *Canders v. Sheets* 142 W 155, 252 P. 531 (1927), mortgagor paying deficiency judgment to mortgagee may recover the sum paid for vendee under real estate contract who has agreed with mortgagor to pay the debt.

Subsection (1) (c) and (d). While no Washington cases have been found squarely in point, it is believed that these Sections state the rule that would be followed.

Section 137. Disclaimer by a Beneficiary.

A donee beneficiary or a creditor beneficiary who has not previously assented to the promise for his benefit, may, in a reasonable time after learning of its existence and terms, render the duty to himself inoperative from the beginning by disclaimer, unless such action is a fraud on creditors.

Comment

a. Disclaimer by the beneficiary will usually render performance by the promisor impossbile without fault on his part, for performance will usually require co-operation by the beneficiary Where

no such co-operation is necessary, the promisor can perform his duty to the promisee, and may be sued by the promisee if he fails to do so. The beneficiary, however, even though he change his mind after disclaiming, will have no right of his own.

b. Where performance requires co-operation, it may become impossible though there has been no disclaimer, for the beneficiary may, when the time for co-operation arrives, refuse to give it. Wherever the promisor's performance becomes impossible without his fault, whether by disclaimer by the beneficiary or by the beneficiary's refusal to give necessary co-operation, the duty of the promisor to the promisee will be governed by the principles generally applicable to contracts which have become impossible of performance (see Sections 454-469, Chapter 14)

ANNOTATION

No Washington case has been found squarely involving this problem.

Section 138. ALLOWANCE OF SPECIFIC PERFORMANCE.

If specific enforcement of a duty owed to a donee beneficiary or to a creditor beneficiary is possible and in accordance with the rules of equity, a suit for such enforcement can be maintained. The suit may be brought either by the promisee or by the beneficiary

ANNOTATION

While no Washington cases have been found in which specific performance has been decreed, there is no reason apparent or suggested in the cases why in an appropriate case, it should not be.

Section 139. BENEFICIARIES UNIDENTIFIED AT THE TIME OF CONTRACT.

It is not essential to the creation of a right in a donee beneficiary or in a creditor beneficiary that he be identified when a contract containing the promise is made.

ANNOTATION

Washington cases are in accord with this Section.

Reiley v. Spokane Sanitary Laundry Co., 71 W 516, 128 P 1075 (1913)
Finkelberg v. Continental Casualty Co., 126 W 543, 219 P 12 (1923)
Stusser v. Mutual Union Insurance Co., 127 W 449, 221 P 331 (1923)
Washington Perfection Co. v. Dawn, 138 W 427, 244 P 697 (1926), agreement of defendant "to personally pay each and every said indebtedness of said corporation" may be enforced by creditor of the corporation although he was not at the time identified.

Section 140. AVAILABILITY AGAINST A BENEFICIARY OF THE PROMISOR'S DEFENSES AGAINST THE PROMISEE.

There can be no donee beneficiary or creditor beneficiary unless a contract has been formed between a promisor and promisee; and if a contract is conditional, voidable, or unenforceable at the time of its formation, or subsequently ceases to be binding in whole or in part because of impossibility, illegality or the present or prospective failure of the promisee to perform a return promise which was the consideration for the promisor's promise, the right of a donee beneficiary or creditor beneficiary under the contract is subject to the same limitation.

ANNOTATION

Accord (donee beneficiary), *Thomas v. Grand Lodge*, 12 W 500, 41 P. 882 (1895), evidence of misrepresentations of insured in application for insurance in mutual benefit society admissible against beneficiary in suit on the policy.

Merriman v. Maryland Casualty Co., 147 W 579, 266 P. 682 (1928), right of injured person to maintain action on liability policy is subject to conditions in the policy that insurance company shall have the right to defend on the merits any action brought against assured and that assured shall furnish copy of summons or process served upon him.

Section 141. A CREDITOR BENEFICIARY'S RIGHTS TO JUDGMENT AND SATISFACTION. PROMISEE'S RIGHT AGAINST THE PROMISOR.

(1) A creditor beneficiary who has an enforceable claim against the promisee can get judgment against either the promisee or the promisor or against each of them on their respective duties to him. Satisfaction in whole or in part of either of these duties, or of judgments thereon, satisfies to that extent the other duty or judgment.

(2) To the extent that a creditor beneficiary satisfies his claim from assets of the promisee without resorting to the promisor's contract the promisee has a right of reimbursement from the promisor, which may be enforced directly and also, if the creditor beneficiary's claim is fully satisfied, by subrogation to the claim of the creditor beneficiary against the promisor, and to any judgment thereon and to any security therefor of the promisor.

ANNOTATION

Subsection (1). *Gilmore v. Skookum Box Factory*, 20 W 703 at 707, 56 P. 934 (1899), and *Johnson v. Shuey*, 40 W 22, 29, 30; 82 P. 123 (1905), are in accord with this Section.

Section 142. VARIATION OF THE DUTY TO A DONEE BENEFICIARY BY AGREEMENT OF PROMISOR AND PROMISEE.

Unless the power to do so is reserved, the duty of the promisor to the donee beneficiary cannot be released by the promisee or affected by any agreement between the promisee and the promisor, but if the promisee receives consideration for an attempted release or discharge of the promisor's duty, the donee beneficiary can assert a right to the consideration so received, and on doing so loses his right against the promisor.

Comment

a. The reservation of power on the part of the promisee to change the beneficiary or otherwise to vary the terms of a gift promise must ordinarily be expressed in specific terms. Such a power, however, exists though not so expressed in a member of a fraternal benefit society to change the beneficiary of the insurance to which his membership entitles him, unless the charter or by-laws of the society otherwise provide.

ANNOTATION

See annotation to Section 133 (1) (a).

Section 143. VARIATION OF THE PROMISOR'S DUTY TO A CREDITOR BENEFICIARY BY AGREEMENT OF PROMISOR AND PROMISEE.

A discharge of the promisor by the promisee in a contract or a variation thereof by them is effective against a creditor beneficiary if,

(a) the creditor beneficiary does not bring suit upon the promise or otherwise materially change his position in reliance thereon before he knows of the discharge or variation, and

(b) the promisee's action is not a fraud on creditors.

Comment

a. The beneficiary is justified in relying on the promise and it is immaterial whether he learns of it from the promisor, the promisee or a third party If there is a material change of position in reliance on the promise the change of position precludes discharge or variation of the contract without his consent. It is not necessary that the creditor beneficiary enter into a novation with the promisor, though a novation would a fortiori be effectual. What is essential for a novation is stated in Sections 424-430, Chapter 13. The present Section does not deal with such a case, but only with the rights of the beneficiary under the contract between the promisor and the promisee.

b. Aside from cases of justifiable reliance, this Section states an application of the law governing fraudulent conveyances to releases and to agreements to rescind or vary a prior contract to discharge a duty of the promisee. Even if the creditor beneficiary has taken no action in reliance on the promise the promisee cannot be permitted to impair the asset value of the promise if doing this will operate to defraud either the creditor beneficiary or the promisee's other creditors. If there is an actual intent on the part of the promisee to defraud, the promisor can claim no advantage from a release or rescission unless he gave value therefor and was ignorant of the promisee's wrongful intent. Furthermore, however innocent the promisee's intent may have been, if a release or rescission leaves him without assets sufficient to satisfy all his creditors, the release or rescission is a fraud upon the creditor beneficiary and also upon the promisee's other creditors. Here also, unless the promisor gave value for the release or rescission without knowledge of the circumstances rendering the transaction improper, he cannot take advantage of it.

ANNOTATION

McConaughy v. Juvenal, 73 W 166, 171, 172; 131 P 851 (1913). The defendants who guaranteed fire losses of a mutual fire insurance company cannot, after policies are written on the strength of such guarantees, set up as against claims under policies, either a release by the insurance company or a counter claim against it; *Moore v. Baasch*, 109 W 568, 187 P 388 (1920). Where officers and stockholders of two banks had reciprocally guaranteed paper taken over by an amalgamated bank and there had been assent and reliance by the amalgamated bank, the guarantors cannot annul the contract and thus defeat the rights of the beneficiary by mutual releases.

Section 144. EFFECT OF AN ERRONEOUS BELIEF AS TO THE EXISTENCE OF A DUTY OF THE PROMISEE TO THE BENEFICIARY.

Unless the case is within the rules making contracts voidable for mutual mistake, where performance of a promise in a contract will benefit a person other than the promisee, the promisor's duty is not avoided or limited by an erroneous belief of the promisor or of the promisee as to the existence or extent of a duty of the promisee to the beneficiary.

Comment

a. The various forms in which a promise to pay a real or supposed debt may be made are stated in Section 136 (2) and the Comment thereon.

b. The case stated in the present Section is that of a promise to pay a stated sum supposed to be due, where the promisee's belief as to his indebtedness is erroneous. The beneficiary is a creditor beneficiary if there is no intent to make a gift, though, if nothing is actually due the beneficiary, performance will give the same advantage as a gift would. The circumstances of mutual mistake on the part of both the promisor and the promisee, however, may be sufficient to make such a contract voidable under rules stated in Sections 500-510, Chapter 17.

ANNOTATION

Illustration No. 2 under this Section states the following case: A, the owner of Blackacre, mortgages it to C for $5000. A conveys Blackacre subject to the mortgage to Z, who does not assume or agree to pay the mortgage debt. Z conveys Blackacre to B, who by the deed of conveyance assumes and agrees to pay the mortgage debt. C may recover judgment against B unless B can establish such a mutual mistake on the part of himself and Z as invalidates B's agreement.

In connection with this illustration see *Corkrell v. Poe*, 100 W 625 171 P. 522 (1918), where it was held that guarantee who assumes mortgage was liable to mortgagee for deficiency judgment even though his grantor, a grantee from the mortgagor, was not liable on the debt.

Section 145. BENEFICIARIES UNDER PROMISES TO THE UNITED STATES, A STATE, OR A MUNICIPALITY.

A promisor bound to the United States or to a State or municipality by contract to do an act or render a service to some or all of the members of the public, is subject to no duty under the contract to such members to give compensation for the injurious consequences of performing or attempting to perform it, or of failing to do so, unless,

(a) an intention is manifested in the contract, as interpreted in the light of the circumstances surrounding its formation, that the promisor shall compensate members of the public for such injurious consequences, or

(b) the promisor's contract is with a municipality to render services the non-performance of which would subject the municipality to pay damages to those injured thereby

Comment

a. Clause (a) is a special application of the principles stated in Sections 133 (1a), 135. Clause (b) is a special application of the principles stated in Sections 133 (1b), 136.

ANNOTATION

McPhee v. U. S. Fidelity and Guaranty Co., 52 W 154, 100 P 174 (1909). Sheriff not liable on official bond to persons entitled to reward for capturing criminal where sheriff permitted escape where official bond was conditioned to "well, truly and faithfully perform all of his duties as sheriff" under statute giving right of action on the bond to all persons injured or aggrieved by his wrongful act or default. *Kangley v. Rogers*, 85 W 250, 147 P 898 (1915), notary liable on official bond for damage caused to mortgagee by false certification of notary that wife of mortgagor personally appeared before him. But notary is not liable on official bond for signing the jurat to a false affidavit, although he knows the affidavit to be false. *Saevoff v. Steffan*, 123 W 225, 212 P 158 (1923) *Kusah v. McCorkle*, 100 W 318, 170 P 1023 (1918), person injured by fellow prisoner can recover on sheriff's official bond if jury finds under circumstances it was negligent for sheriff to place insane suspect in cell with plaintiff; see also, in connection with liability on official bonds, R. C. S. Sections 959, 960, 9932.

Section 146. DUTIES CREATED BY A PROMISE TO DISCHARGE A DUTY.

A creditor beneficiary who holds security for the performance due him and who, knowing of the contract between the promisor and the promisee, voluntarily or negligently surrenders to the promisor all or any part of the security or impairs or destroys the same, thereby limits his right against the promisee to the extent that he is injured by the diminution or destruction of the value of the security

Comment

a. The Section is an application of a principle of suretyship. By the contract between the promisor and promisee the relation between them becomes that of principal and surety

ANNOTATION

Insley v. Webb, 122 W 98, 209 P. 1093 (1922), the mortgagee's release of grantee who has assumed the mortgage debt discharges the mortgagor from liability on deficiency judgment. *Continental Mutual Savings Bank v. Elliott*, 166 Wash. 283, 6 P (2d) 638 (1932), where a mortgagee gives an extension of time to a grantee who has assumed the mortgage debt represented by a promissory note, the mortgagor is not released in view of Section 119 N. I. L. (R. C. S. Section 3509) providing for methods of discharge of persons primarily liable on a negotiable instrument. *First State Bank v. Arneson*, 109 Wash. 346, 186 P. 889 (1920), and *Insley v. Webb, supra*, are thus distinguished: "but in neither of these cases was the action based upon an instrument negotiable in form, and in neither was the negotiable instrument's act in any manner referred to," *Bank v. Elliott, supra*, at p. 300.

Section 147 EFFECT OF A PROMISE OF INCIDENTAL BENEFIT.

An incidental beneficiary acquires by virtue of the promise no right against the promisor or the promisee.

ANNOTATION

Horstmann Co. v. Waterman, 103 Wash. 18, 173 P. 733 (1918), where seller of corporate stock agreed with buyer and a corporation to pay all the debts of the corporation and defendant guaranteed to the buyer and the corporation that seller would perform his contract, creditors of the

corporation, although they have a right against the seller (see Sections 133 (1b) and 136 (1a) have no right against the guarantor. By the guarantor's promise the creditors are only incidentally benefited, semble: *Schoemer v. Zeran, etc.*, 126 Wash. 218, 230; 217 P. 1009 (1923) where mortgagee contracts with defaulting mortgagor to advance $1000, "the sum to be used in completing a building on the property," third persons who do work on the building and claim liens thereon cannot recover on the mortgagee's promise; *Hanson v. Blackwell Motor Co.*, 143 Wash. 547, 255 P. 939 (1927), "garage owner's breach of contract to repair the steering wheel of an automobile, does not give any right of action in favor of third persons, not parties to the contract, who were injured while riding as guests of the owner of the car." Syllabus of the court.

Chapter 7
ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES OR CONDITIONS*

Section 148. LIMITATIONS AND DEFINITIONS PECULIAR TO THE CHAPTER.

(1) The statements in this Chapter are qualified with reference to rights and duties under negotiable instruments or conveyances of land, by the special rules of law governing negotiable instruments, and by the rules of the law of property creating rights in or imposing duties on a person because he has acquired an interest in land.

(2) In this Chapter

(a) "Right" includes all rights arising under contracts or for breaches of contract, and only such rights;

(b) "Obligor" means a person subject to a contractual duty or liable for breach of a contract;

(c) "Obligee" means the original owner of a right.

Comment on Subsection (1)

a. Negotiable instruments are excluded from the Restatement in this Chapter as generally from the Restatement of Contracts because the rules governing them are to some extent different from those governing the assignment of non-negotiable contractual rights. For a similar reason a statement of the benefits and burdens attached to successive owners of property because of a contract in a prior conveyance or lease is omitted. The law on that subject grew up as part of the law governing real property and is excluded from the Restatement of this Subject.

ANNOTATION

Where a person having a right by contract to take water from the land of another, but who had not reduced such right to possession, sold and conveyed by quit-claim deed said right to a third party, the deed will be given effect not as an executed conveyance but as an executory contract of assignment and the vendee as assignee will take only such interest as the vendor as assignor had, which was the right to demand the possession and enjoyment of the water right, *Glasford & Shield v. Baker & Cain*, 1 Wash. Terr., 224 (1867).*

* The annotations for Chapter 6 were prepared by Dean Harold Shepherd of the University of Washington Law School. The annotations for Chapter 7 were prepared in memorandum form by the late Professor Harvey Lantz of the University of Washington Law School. His notes were arranged for publication by Dean Harold Shepherd and Warren Shattuck, student editor of the Washington Law Review.