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The 1961 Rees-Levering Act: Caveat Venditor

The ancient Roman maxim caveat venditor may not be the exact semantic equivalent of "seller beware,"¹ but it is not an inappropriate watchword for dealers in the automobile sales industry. Since 1945 the California Conditional Sales of Motor Vehicles Act² has regulated the formation, and to a large extent the performance and discharge, of all motor vehicle conditional sale contracts. This act was originally designed to stop various abuses and unfair practices by automobile vendors and to protect the buyer where the transaction fell just short of fraud or usury.⁸ In 1961, "as a part of a comprehensive reformulation of the Automobile Finance Law,"⁴ the California legislature repealed the existing act and enacted the Rees-Levering Motor Vehicle Sales Finance Act.⁶ Although it reenacted most of the major provisions of the 1945 law, the Rees-Levering Act added many new significant provisions and revisions so that this detailed and comprehensive legislation now regulates all phases of installment purchases of motor vehicles. A technical and complicated statute, the 1961 act well deserves the careful attention of both buyers and sellers lest it become the proverbial "trap for the unwary."

PRELIMINARY CONSIDERATIONS

Preliminary to the discussion, it should be noted that the Rees-Levering Act is a separate piece of legislation and exclusively applies in certain cases. It is not, for example, a part of the Uniform Sales Act⁶ and will not be superceded by the Uniform Commercial Code if adopted in this state.⁷ The original statute, moreover, antedated the Unruh Act, and although the 1961 revision

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² Stats. 1945, c. 1030. References hereinafter made to the Conditional Sales of Motor Vehicles Act (i.e., Cal. Civ. Code §§ 2981-82 prior to January 1, 1962) are to Stats. 1959, c. 1466, unless the text or footnote indicates otherwise. Prior to the Rees-Levering Act, the Conditional Sales of Motor Vehicles Act was the subject of numerous amendments: Stats. 1949, c. 1594; Stats. 1951, c. 343; Stats. 1957, c. 613; Stats. 1959, c. 1466; Stats. 1961, c. 243. As it appears in Stats. 1959, c. 1466, however, the act is set out in its most representative form prior to repeal. (Stats. 1961, c. 243 did not amend Cal. Civ. Code § 2981.)
⁵ Stats. 1961, c. 1626, p. 2647, §§ 1-4, 6, 7. Stats. 1961, c. 1626, p. 2652, § 5, which amended Cal. Veh. Code § 11713, is not discussed in this comment. Unless text or footnote indicates otherwise, citations to Cal. Civ. Code §§ 2981-2984.3 refer to Stats. 1961, c. 1626. For the sake of brevity, the numbered "items" of Cal. Civ. Code § 2982(a) under both acts are cited by enclosing the item number in parentheses, although they are not so identified in the statute.
adopted many "Unruh" provisions, the act is not a part of that legislation. The California statute, furthermore, while it has numerous counterparts in other states, is sufficiently unique so that the courts have not had occasion to refer to foreign law as an aid to the interpretation of the local provisions.

For internal purposes the act also has a limited application. Thus, an instrument may be construed as a conditional sale contract to determine liability under the provisions of the statute, but, at the same time, it may not be so interpreted when other code sections are called into play. As an illustration, in Gentry v. Kelley Kar Co. and in People v. One 1955 Buick 2-Door Coupe an "Automobile Leasing Agreement" was inconsistently construed by the same district court of appeal. The same defendant (dealer) was involved in each case, and in both cases the instruments before the court were essentially identical. The circumstances of the sale, furthermore, were also substantially similar. Nevertheless, in the Gentry case the court held that the transaction was a conditional sale within the meaning of the statute, but in the earlier case it had held it was not. This apparent inconsistency, however, is resolved by the fact that People v. One 1955 Buick 2-Door Coupe was an action by the state for forfeiture of a vehicle for violation of the narcotics provisions of the Health and Safety Code. If construed as a conditional sale contract, the agreement would be a defense to the state's action. The court held that the definition of a conditional sale contract as set out in the pertinent code section of the statute was limited to actions arising under the act and therefore it was free to interpret the transaction differently for purposes of the Health and Safety Code.

While both the Gentry and Buick cases were decided under the 1945 statute, they involved provisions which have been transferred virtually intact into the 1961 law. They serve, therefore, to illustrate the further proposition that the Rees-Levering Act is in many respects a codification and clarification of much of the case law which interpreted and applied the original statute; and that cases decided under the repealed code sections will continue to be important as precedential and illustrative authority for problems growing out of the Rees-Levering Act. Moreover, because of their nonretroactive effect, the new code sections will not be before the appellate courts for some time, and, for

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awhile at least, litigation will primarily concern violations of the earlier provi-

**Definitions**

The Rees-Levering Act is set forth in the California Civil Code, sections 2981 to 2984.3 and, like its predecessor, lends itself to a two-fold classification: definitions and regulations. Section 2981 sets out the definitions which are to be followed by the courts in applying the regulatory provisions of sections 2982 to 2984.3. "Conditional sale contract" is defined by this section to include the three traditional situations whereby property is transferred from a seller to a buyer under an installment purchase arrangement. It thus covers the conditional sale agreement where the seller retains title to the property pending performance of the contract by the buyer, or where he retains a lien as security for such performance; and the bailment-lease transaction where the lessee pays as "rental" the substantial equivalent of the value of the property and is bound or has the option to become the owner of the property upon compliance with the terms of the contract.

*Carter v. Seaboard Finance Co.*, the earliest case before the supreme court under the original act, held that the above definitions also include the case where the transfer is accomplished and secured by a chattel mortgage on the motor vehicle rather than under a conditional sale contract as such. Although originally section 2981 defined "seller" as a person who sells or leases property under a conditional sale contract, the court also held that a finance company selling a repossessed truck and trailer after default by the original buyer and crediting the proceeds to his account was a "seller" within the meaning of the statute.

As part of its overall revision of the act, the 1961 legislature redefined "seller" to mean a "person engaged in the business of selling or leasing motor vehicles under conditional sale contracts." The apparent purpose behind this change is to limit the operation of the statute to retail transactions and exclude the casual private seller from its requirements. If so, however, the rewording is not entirely satisfactory, and counsel for finance companies and acceptance corporations may have a new foundation upon which to base an argument that the act does not apply to their clients in a Carter-type situation.

Both the 1945 and 1961 acts define the "cash price" of the motor vehicle as

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17 CAL. CIV. CODE § 2981(a)(1).
18 CAL. CIV. CODE § 2981(a)(3).
19 CAL. CIV. CODE § 2981(a)(2).
20 33 Cal.2d 564, 203 P.2d 758 (1949).
21 CAL. CIV. CODE § 2981(b).
the amount in cash for which the seller would transfer unqualified title to the
vehicle to the buyer at the seller's place of business on the date the conditional
sale contract is executed, including applicable sale taxes. The 1961 definition
also includes the amount to be paid to any public officer in connection with the
transaction. While this definition is not unduly difficult of application, it
should be noted that any adjustment or change in the down payment, finance
charge or contract balance may automatically distort the cash price figure, caus-
ing a violation of the statute. Thus where the seller credited a dealer's discount
to the down payment, the buyer later asserted that the figure representing the
cash price was thereby false and fictitious and violated the provisions of the
act. While, in the particular case, the attempt ultimately proved unsuccessful,
its possibilities will not be overlooked by a subsequent generation of car buyers
seeking to avoid the effects of a bad bargain.

DOWN PAYMENT AND FINANCE CHARGE

The definition of the "down payment," as will be seen later, has caused
much litigation under the 1945 law, and the 1961 act has done little to clarify
the problem. The present definition, almost identical with the older one, defines
"down payment" as the amount in "cash or property value or money's worth"
which the buyer pays or agrees to pay at or prior to delivery of the motor
vehicle. By express provision of the 1961 version of section 2981, the definition
also includes any "cash, property, or thing of value" deposited with the seller
pending the execution of the conditional sale contract, which must be refunded
if the contract is not completed. Neither act defines "property value or money's
worth," and the cases, with one exception, have not been helpful in clarifying
the issue. However, it is clear that the dealer who accepts anything in addition
to or in lieu of cash as a down payment should separately itemize and describe
such payment or run the risk of having the contract avoided.

Any premium or interest collectible by the seller or finance agency for arrang-
ing installment payments of the purchase price must be stated on the face of
the contract and the amount so collectible is definitely limited. The 1945
act refers to this as the "time price differential." The Rees-Levering Act, how-
ever, discards this poetic phraseology for the more descriptive "finance charge." Regardless of its nomenclature, it means "any amount which the buyer agrees

23 CAL. CIV. CODE § 2981(e).
24 Ibid.
26 CAL. CIV. CODE § 2981(f).
27 Ibid.
note 71 infra.
29 CAL. CIV. CODE § 2982(a)(6).
30 CAL. CIV. CODE § 2982(c).
31 Stats. 1959, c. 1466, p. 3762, § 1.
32 CAL. CIV. CODE §§ 2981(h), 2982(a)(6), 2982(c).
to pay to the seller in excess of the unpaid balance." The unpaid balance is simply the cash price less the down payment, plus any insurance premiums called for by the contract. Because of the narrow definitions given the latter terms, any other charges than those expressly provided for should be considered as part of the finance charge and treated as interest. For the dealer who has already charged the maximum, this would make the contract usurious. Furthermore, the definition of the "contract balance" (the amount which the buyer agrees to pay in installments) expressly prohibits the inclusion of any sums for which the buyer may later become obligated under the terms of the contract in connection with insurance, repair and maintenance, preservation of the security interest "or otherwise."

Great caution should be used in drafting a contract so that the cost itemizations will correspond accurately to the above definitions, for each definition, to a greater or lesser degree, contains within itself one or more elements of the others. As pointed out above, and to be further discussed, the misapplication of one of these definitions leads inexorably to a violation of others, and although the guilty seller might conceivably justify the original, he is soon involved in a complicated scheme of noncompliance with the statutory terms.

**Substance, Form and the "Motor Vehicle"**

The Rees-Levering Act makes two further significant changes in the definitions contained in the original legislation. For one thing, the act codifies, in a sense, the implied holding of several cases that substance rather than (or, "as well as") form governs the contract, and any attempt to make a conditional sale by means of a "sale order" or "purchase order" will not relieve the seller from complying with the disclosure aspects of the statute. Thus the 1961 act requires any sales or purchase order, car reservation or "other instrument" to contain the same recitals as the formal agreement, and this is so even if it is only used pending the execution of the conditional sale contract. This new regulation in a very real sense extends the scope of the act into the preliminary negotiation stages as well as the formation of the contract.

The second significant definitional change made by the Rees-Levering Act appears in the definition of a "motor vehicle." The 1945 act, as well as the present statute, defined a motor vehicle as "any vehicle required to be registered

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84 Cal. Civ. Code § 2982(g).
under the Vehicle Code." The 1961 law, however, adds to this definition the further qualification that the subject vehicle must be bought "primarily for personal and family purposes." It expressly excludes motor vehicles "bought primarily for business or commercial purposes."

Taken in conjunction with the new definition of "seller," the Rees-Levering Act effectively excludes both the casual private seller and the commercial buyer of motor vehicles under conditional sale contracts. Whether this was wise or not remains to be seen, and much litigation involving these new definitions can be anticipated.

While private sales of motor vehicles under conditional sale contracts are probably best left unregulated, the changes in the definition of a motor vehicle would seem to have the effect of excluding from the protection of the statute a large class of buyers who have heretofore benefited by such protection. Quaere whether this does not place many small businessmen in the same precarious position they occupied prior to 1945. Consider, for example, the case of a janitor who endeavors to better himself by establishing his own independent maintenance business and, in so doing, purchases a new panel truck for five thousand dollars under a conditional sale contract. It is doubtful that in such a case he is any less in need of the protection of the statute than when, for the same amount, he purchases a new car "primarily for personal and family purposes." Numerous similar examples may be posed; e.g., an independent neighborhood ice cream vendor. The operator of a large business or enterprise who regularly buys or leases motor vehicles in the operation of his business is, no doubt, better able to strike a fair bargain and to protect himself from unfair practices. The act apparently makes no distinction between the two classes, however, and courts are going to be hard pressed to justify such a distinction by implication from the wording of the definition.

**Regulatory Features of the Act**

Section 2982, as originally enacted, and section 2982.5 added in 1959 contained all the regulatory provisions of the Conditional Sale of Motor Vehicles Act. This section with various subdivisions governed the formalities, execution and contents of each contract, and it also regulated certain other matters pertaining to performance and discharge. The Rees-Levering Act replaces old section 2982 with a new section 2982 and adds other code sections to the act.

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88 Stats. 1959, c. 1466, p. 3763, § 1.
90 Ibid.
91 See authority cited note 22 supra.
92 For example, the relief afforded the buyers in the two leading cases under the original 1945 act, Carter v. Seaboard Finance Co., 33 Cal.2d 564, 203 P.2d 748 (1949) and Estrada v. Alvarez, 38 Cal.2d 386, 240 P.2d 278 (1952), may not be available to similar buyers under present Cal. Civ. Code §§ 2981-82. See generally Selected 1960-1961 California Legislation, supra note 22 at 689-90.
93 Stats. 1959, c. 1874.
Many of these new sections, however, are reenactments of subdivisions of the original section 2982 as it was amended during the course of its comparatively brief history. Essentially new sections 2982 to 2984.3 contain the same basic legislation and do not indicate any major policy changes in the legislative purposes behind the act, except in certain areas which will be noted later. New section 2982 subdivisions (a) to (d) are virtually the same as their counterparts in the older law. Subdivision (e), however, is now section 2983, and subdivisions (f), (g) and (h) are now sections 2983.1 to 2983.3 respectively. Former section 2982.5, which permitted a contract clause requiring the buyer or registered owner to give written notice of change of address to the “legal owner,” has not been reenacted in the Rees-Levering Act.

The 1961 law, however, must not be taken as a mere recodification of the original act in spite of what has been said above. This new act adds many sophisticated qualifications and amendments to the older provisions and, aside from requiring additional formalities and contents, the new law now regulates far more fully redemption rights, remedies and actions arising under the statute, correction of violations in certain cases without liability, and it adds many new notice requirements.

**FORMAL REQUIREMENTS**

Subdivision (a) of new section 2982 of the Rees-Levering Act, like its predecessor, prescribes the formalities and contents required for the proper execution of each conditional sale contract of a motor vehicle within its coverage. While in a sense subdivision (a) is a Statute of Frauds, any analogy between the two statutes would be hopelessly incomplete. For one thing, subdivision (a) contains no exceptions: “Every conditional sale contract for the sale of motor vehicle, with or without accessories, shall be in writing. . . . [and] shall be signed by the buyer . . . and by the seller” or their authorized representatives. Note that both signatures are required for proper execution, not merely that of the party to be charged. The Rees-Levering provisions, furthermore, go far beyond these simple requirements. The contract, if printed, shall be set in no smaller than six-point type. It shall contain “in a single document” all the agreements respecting total costs and terms of payment, “including any promissory notes or any other evidences of indebtedness.” When the buyer and seller have signed the contract, “or purchase order,” the latter must deliver a fully executed copy of the contract to the buyer, containing no blanks to be filled in later, and delivery of the motor vehicle is forbidden until he does so.\(^4\)

In addition to the above formalities, subdivision (a) requires each contract to contain a separate statement of certain described items, which are then set forth and numbered one to ten. The original act provided that the required statements appear on the contract in the same order as they were set out in

\(^4\) *Cal. Civ. Code § 2982(a).*
subdivision (a).45 One court, however, held that where the items did not appear in the exact statutory order, the requirements of the subdivision were nevertheless substantially complied with.46 The decision on this point was of doubtful authority until 1961 when the subdivision was amended to provide that the items may appear in the contract "not necessarily in the sequence or order set forth below."

The separate items called for by subdivision (a) include a statement of the (1) cash price, (2) down payment, (3) unpaid cash price, (4) cost of any insurance premiums included in the contract, (5) the unpaid balance, (6) amount of the finance charge, (7) contract balance, and (8) the number, amount and due dates of the installments required to pay the contract balance. Items (1) to (8) of the Rees-Levering Act correspond with items (1) to (9) of the original statute, with the exception of former item (5) which required a description of fees paid to public officers on account of the sale and transfer.47 This provision is now a part of the definition of the "cash price."48 The deletion of this requirement from subdivision (a) thus caused a renumbering of items (6) to (9) of the original.

Item (9) of the revised subdivision is the same as former item (10), and requires the seller to list the names and addresses of all persons liable on the contract or to whom certain notices are required or permitted to be sent. Item (10) of the present subdivision, however, is an entirely new requirement, being one of the borrowed "Unruh" provisions, and makes mandatory the inclusion of a notice to the buyer appraising him of his essential rights and obligations under the statute.49

Later cases under the original act distinguished between the "formal" and the "substantive" requirements of the statute,50 and the above provisions constitute the former. This twofold characterization was appropriate and helped to clarify some of the problems arising from a violation of the statute. In view of the increased complexity of the law and the many new areas now regulated by the 1961 act, the distinction may no longer be adequate to serve its purpose and a more elaborate characterization and sub-classifications will probably be called for.

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45 Stats. 1959, c. 1466, p. 3763, § 2.
47 Stats. 1959, c. 1466, p. 3764, § 2.
48 CAL. CIV. CODE § 2981(e).
49 CAL. CIV. CODE § 2982(a)(10). This provision reads: "A notice, in at least eight-point bold type if the contract is printed, reading as follows: 'Notice to the buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.'" Compare CAL. CIV. CODE § 1803.2(c).
COMPLYING WITH THE FORMAL REQUIREMENTS

Under the original act, *Carter v. Seaboard Finance Co.*, early decided that the requirements of the statute were mandatory and not merely directory. The decision on this point has been uniformly followed by subsequent cases, but there soon developed some confusion as to what type of compliance was required by the law. Courts dealing with this problem generally agreed that substantial compliance was required, but what acts did or did not amount to substantial compliance in the individual case do not appear to have followed a standardized pattern. While in *Millick v. Peer* the court apparently used "substantial" in a loose sense, other courts have applied a more stringent standard and have used the term synonymously with "strict." Thus, where the buyer could, by a simple mathematical computation of figures appearing on the contract, easily ascertain the correct amount of the unpaid balance or time price differential, there was, nevertheless, not sufficient compliance with the statute's formal requirements.

Although the 1945 act did not contain the positive prohibition against executing a blank contract or executing some preliminary agreement which would be later transcribed into a conditional sale contract by the seller as is expressed by subdivision (a) of the 1961 version, the courts early found a clear implication of such meaning and did not hesitate to apply it. Until recently, then, it was held that where the contract failed entirely to recite the required statements, it was in violation of the statute. It was held that the buyer must be able to tell at "first glance" the total extent of his obligations and indebtedness under the contract at the time he signs it, and, at such time, he is entitled to receive an exact copy. If the buyer executed a blank contract which was later filled in and executed by the seller, and a copy was thereafter mailed to the buyer, even though it conformed in every respect to preliminary agreements between the parties and no alterations were made in the agreed figures, the agreement was not effectual and the statute was violated. Nor was a contract which failed to recite the time price differential or contract balance cured by a

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City Lincoln-Mercury Co. v. Lindsey, 52 Cal.2d 267, 339 P.2d 851 (1959); Bank of America v.
65 Tri-City Credit Bureau v. Brimmer, 182 Cal.App.2d 321, 6 Cal.Rptr. 107 (1960); Dube v.
Cal.App.2d 1, 315 P.2d 371 (1957), indicating that the question of violation or nonviolation of
the statute may be immaterial where the issue is whether title passes to the buyer under the terms
and conditions of the automobile conditional sale contract.
"Revision Agreement" executed between the buyer and a bank to which the contract had been assigned by the seller, where the latter instrument also failed to make the required recitals. 57

Desper v. J. T. Jenkins Co., 58 a late case under the 1945 act, made several inroads into the established principles governing the interpretation of the statute. In this case the seller had its head office in San Francisco, but negotiations were conducted between the buyer and the seller's agent in Los Angeles, where the purchaser ultimately executed the conditional sale contract. The contract was then mailed to San Francisco where the president of the seller executed it and, allegedly, had a copy mailed to the buyer. In an action by the buyer, he charged that the execution of the contract was in violation of the statute and that he had never received a copy of the contract. The judgment of the trial court in favor of the seller was affirmed on appeal by division one of the second district court of appeal. "The company," said the court, "should not be penalized for accommodating plaintiff [the buyer] by permitting him to sign the contract in Los Angeles instead of requiring him to come to San Francisco." 59 The court also rejected the buyer's contention that he had not received a copy of the contract at all by relying on the presumption that the ordinary course of business had been followed. 60

The result reached by the court in the Desper case is not entirely unjustified by the particular facts and circumstances of that case. The spirit of the decision, furthermore, has been impliedly affirmed by the supreme court in another and more recent case. 61 However, it is submitted that the opinion is not completely in accord with rulings of prior cases, and grounds for distinguishing them may be somewhat questionable. 62 Clearly an estoppel would have been a more preferable basis upon which to find for the defendant in this action. And certainly the concept of estoppel is implicit in the decision. But if an offending contract is "illegal" as some cases maintain, then an estoppel could not be invoked without violating elementary contract principles. 63 In any event Desper does not recommend itself to this writer as a satisfactory decision upon which to argue a relaxation of the formal requirements of the statute by the courts. Undoubtedly the authority of the case will be limited to situations closely parallel on the facts, and the whole problem here will not be duplicated in cases concerning contracts executed after the effective date of the Rees-Levering Act due to the change in the definition of a motor vehicle. 64

59 Id. at 286, 17 Cal.Rptr. at 313.
60 CAL. CODE CIV. PROC. § 1963(20).
62 Compare cases cited notes 53 and 36 supra.
63 See cases cited note 57 supra. See also Strong, The Enforceability Of Illegal Contracts, 12 HASTINGS L.J. 347 (1961).
64 CAL. CIV. CODE § 2981(j).
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THE DOWN PAYMENT REQUIREMENTS

Satisfying the "down payment" requirement of item (2) of the original subdivision (a) of section 2982 and the application of the definition of the term has been the cause of much litigation, and, unfortunately, the result of the cases still leaves the question considerably clouded. Nor does the 1961 legislation help to clarify the confusion which has existed in the cases. The uncertainty with regard to the down payment requirement persists primarily because, although the issue was raised in many of the cases, it was seldom separately discussed and explained. Where a violation of the requirement was charged it has been nearly always blended with allegations of other violations of the formal requisites of the statute. Generally the courts have treated such allegations as a group and held that there was or was not substantial compliance with the statute, or disposed of the case on other grounds. In the Carter case, for example, the instrument covered two motor vehicles and failed to recite the amount of down payment credited to each. However, the buyer also asserted that the agreement violated the statute for failure to list the full cash price, cost of insurance, total time price differential, itemized fees, and the amount of the final installment. Without discussion of the alleged violations point by point, the Carter court held that the formal requirements of the act were not substantially complied with. In Estrada v. Alvarez the same court had before it a contract which recited a "cash" down payment of $3500, when in fact a Buick reasonably worth $3800 was traded in as, and for, a down payment. But it was also asserted that the contract failed to recite the cash price, unpaid

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65 Cal. Civ. Code § 2982(a) requires the contract to contain "in a single document all of the agreements . . . including any promissory notes or any other evidences of indebtedness." It also provides, "Every conditional sale contract shall contain . . . 2. The amount of the buyer's down payment, and whether made in cash or represented by the net agreed value of described property traded in, or both, together with a statement of the respective amounts credited for cash and for such property." Cal. Civ. Code § 2981(f) includes "money's worth" and "thing of value," as well as "property" and "property value." Apparently a distinction is intended. Whether a promissory note is "money's worth" or a "thing of value" is fairly conjectural at this point, although the problem is touched on in Bratta v. Caruso Car Co., 166 Cal.App.2d 661, 333 P.2d 807 (1958). In light of the definition of "down payment," any promissory note or other evidence of indebtedness given by the buyer to the seller prior to or at delivery of the motor vehicle would, theoretically, have to be a part of the down payment. Although item (2) does not expressly require a separate statement of any indebtedness evidenced by a promissory note or similar instrument, the implication is clear from the wording of subdivision (a), supra, and the holding in Bratta. Or, quaere, does subdivision (a) require the note or otherwise to be embodied in the conditional sale contract, regardless of how the payment represented by it is to be allocated. An infinite variety of possibilities may be imagined. It is submitted that the provisions should be clarified in the statute. Reference to the legislative history may not be entirely reliable in this and other areas. For example, the court in Katsaros v. O. E. Saugstad Co., 197 Cal.App.2d 745, 749, 17 Cal.Rptr. 453, 456 (1961) quotes the following statement from the final report of the Assembly Interim Committee on Finance and Insurance, dated December 1960: "He [the buyer] knows also that the law as it now stands is so vague and uncertain that the results of a successful suit cannot be known, or even reasonably appraised in advance of the judgment itself, and the dealer has everything to gain and nothing to lose in fighting the case as long as he possibly can." Since both the Kyle and Lindsey cases were or should have been before the committee at the time, this broad generalization has doubtful validity. See note 149 infra.

cash price and the time price differential. In *Baum v. Aleman*, the subject contract recited a total down payment of $788.80, including a cash payment of $388.80 and a trade-in worth $400. The evidence, however, showed that the buyer had delivered only $120 in cash and gave his promissory note for $268.80 as the balance of the cash down payment. The buyer here also charged violations of other formal requirements, such as the contract balance and time price differential. In both *Estrada* and *Baum* the contract was held to violate the provisions of the act without a separate discussion of the down payment issue.

On the other side of the coin, however, some courts have held a contract good where similar violations were urged. In *General Motors Accept. Corp. v. Gilbert* the agreement recited a cash down payment of $700, of which only $400 had been paid. “The contention that the contract was void for failure to comply with Civil Code, section 2982,” the court said, “cannot be sustained.” The conditional sale contract in *Murray v. Lure* listed a down payment of $890.85. This sum represented the agreed value of a lot which the buyer promised to convey to the seller as a down payment on a house trailer. It is not clear from the opinion just how this figure was listed on the contract, and the buyer’s contention that the figure was a “fabrication” was apparently based on the valuation of the land in question. Assuming that the agreement merely recited a “down payment of $890.85,” or listed the figure under the heading of “cash,” clearly an issue, other than the value of the lot, should have been raised. In any event, the court held that “the statements set forth in the conditional sales contract complied with the requirements of section 2982 of the Civil Code.” In both cases the facts indicated, and the buyer charged, other violations of the formal requirements.

One case to meet the question head on was *Bratta v. Caruso Car Co.* The contract here stated a “cash” down payment of $300. The fact of the matter was that the buyer had executed a promissory note for that amount and delivered it to the seller in lieu of actual cash. The district court of appeal held that such facts constituted a violation of the statute. “There is nothing,” stated the court, “to suggest that the word ‘cash’ in the statute is used in any other than its usually understood meaning of money.” Nor was a promissory note “money’s worth” within the meaning of the definition of “down payment” so as to allow it to stand under a recital of “cash.” The court, furthermore, refused to construe the conditional sale contract and the promissory note as a single instrument, holding that all the agreements between the parties are to be set out in the former and not otherwise. The court was also quick to point out that

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69 Id. at 739, 17 Cal.Rptr. at 40.
71 Id. at 179, 305 P.2d at 77.
73 Id. at 664, 333 P.2d at 810.
even if a contrary conclusion was warranted, the unpaid cash price was in reality $300 more than the figure stated on the contract because of the note, and this was in and of itself a violation of the provisions of the act.

Counsel for the seller in the *Bratta* case had argued, not without foundation, that the buyer was fully informed of his obligations, understood the full significance of the contract, and with respect thereto he was never misled or deceived. It might also be pointed out that the seller’s acceptance of the promissory note was an “accommodation” extended by him to enable the buyer to secure independent financing. The court conceded that the statute was a shield and not a sword, that it was not intended to provide car buyers with a “windfall,” and it did not dispute the argument of counsel on the points mentioned. Nevertheless, it pointed out, “the prescribed form and requisites of section 2982 are mandatory and a failure of a seller to comply thereto renders the contract unenforceable.”

**Enter Division Two**

An interesting sidelight on the problem of the down payment issue, is the fact that the *Gilbert* and *Bratta* cases and *Stasher v. Harger-Haldeman*, before it was reviewed by the supreme court, were decided by different divisions of the same district court of appeal. In the *Stasher* case the buyer was credited with $1600 toward the total down payment as the value of a trade-in, which, however, took a $1648.10 pay-off, leaving a net deficiency of $48.10. His down payment, on the other hand, was also credited with a dealer’s discount of $632.62, giving him a “total down” of $584.53. This figure, asserted the plaintiff in her action to rescind the contract, was false and fictitious because it was not an amount paid or agreed to be paid by the buyer. Furthermore, the cash price was also claimed to be illusory since it did not reflect the dealer’s discount and was thus not the amount for which the seller would transfer unqualified title to the car at the time and place of the contract’s execution. The plaintiff also objected to the manner of listing the fees to be paid on account of the transfer and the fact that the agreement recited “36” in one place and “39” in another as the number of installments. The appellate court agreed with the plaintiff and reversed the trial court’s judgment for the seller, holding that the requirements of the statute had not been complied with by him.

While hard law perhaps in the individual case, both the *Bratta* and *Stasher* decisions are based on substantial authority and are logical extensions of previously established constructions and principles. Citing three supreme court decisions and *Bratta v. Caruso Car Co.*, the district court of appeal in the *Stasher* case made the following observations.

It is well settled that the use of an inaccurate or a fictitious figure in the

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74 *Id.* at 667, 333 P.2d at 811.
76 Second District. *Gilbert*, Division One; *Bratta*, Division Three; *Stasher*, Division Two.
statement of the cash price or the down payment constitutes a substantial violation of the statute. . . .

It seems clear that the inclusion of a discount in the stated down payment would not serve to make the buyer aware of the true substance of the transaction. . . . [T]he false inclusion of an unrealistic down payment tends to frustrate the purpose of the statute requiring clear, full and accurate disclosure.\textsuperscript{77}

**LICENSE AND REGISTRATION FEES**

Before reviewing the supreme court decision in *Stasher v. Harger-Haldeman*,\textsuperscript{78} which is probably the most important pronouncement of that court since the *Carter* case, one other problem regarding the formal requirements must be examined. The issue here concerns the seller's compliance with the provisions of item (5) of subdivision (a) of the original section 2982. Item (5) required a description and itemization of any sums to be actually paid to any public officer as fees in connection with the transaction and which are included in the contract balance. In the *Stasher* case the instrument contained the following recital: "(5) Fees (License and Vehicle tax) ........ 57.00." After setting out the above statement, the district court of appeal made the following holding.

Similarly, the contract involved in *General Motors Accept. Corp. v. Kyle*, supra, 54 Cal. 2d 101, 106, recited only "FEES PAID: Registration and Transfer $....., Other $..... $54.00." In the last cited decision, this was held to constitute a material violation of subdivision (a) of section 2982.

A similar holding is required here since the facts are essentially the same.\textsuperscript{79}

In addition to the *Kyle* case cited by the district court of appeal above, *Bank of America v. Nielsen*\textsuperscript{80} also held that the requirements of item (5) were not complied with where the contract recited, "5. Fees paid: Notary Public $........, Registration and Transfer $2.00, other $29.86, (total) $31.86." *Carter v. Seaboard Finance Co.*,\textsuperscript{81} moreover, had held the subject agreement invalid where, among other violations, it failed to make any recital at all regarding such fees.

In the *Millick* and *Murray* cases, however, the contracts were upheld where one recited "D.M.V. fees $24.00" and the other "TR. Lic. $24.00." In *Desper v. J. T. Jenkins Co.* a district court of appeal reached a result apparently inconsistent with the *Carter* case on this issue. The contract in *Desper* contained no recital at all referring to any fees paid or to be paid to a public officer in connection with the transaction. But the court also found that there was a collateral agreement between the parties with respect to the payment of such fees, by


\textsuperscript{80} 198 Cal.App.2d 131, 18 Cal.Rptr. 205 (1961).

\textsuperscript{81} 33 Cal.2d 564, 203 P.2d 758 (1949).
which the seller would pay them and extend credit to the buyer on an open book account for the amount of such payment. The reasoning of the court was that item (5) required the inclusion of such fees only as are included in the contract balance. This specific provision, it held, controlled the general provision that the contract must contain all the agreements between the parties,\(^8\) and so the failure to make the recital in question was not a violation of the statute.\(^8\)

**JUSTICE SCHAUER AND MRS. STASHER**

Just as *Carter v. Seaboard Finance Co.* was the first of many decisions to litigate the question of compliance with the formal requisites of the original act, the opinion of Mr. Justice Schauer in *Stasher v. Harger-Haldeman* may well be the last. It may be presumptive to say that *Stasher* is the last word on the subject, but the policy of the supreme court is expressed in such clear and forceful terms that no subsequent litigation should be instituted, either on contracts governed by the original act or the 1961 Rees-Levering Act, without careful attention being given to this decision.

When the *Stasher* case was before the supreme court, that body was perhaps troubled somewhat by certain facts of the case not discussed in the opinion of the lower appellate court. There was, for example, the fact that this was an action instituted by the buyer's wife after his demise and after the car had been in their possession for two and one-half years without any objection being made by either. During such time, furthermore, it had been driven 63,000 miles and $4,634.31 had been paid on a contract balance of $4,636.84. Nothing in the facts indicated any particular question of fraud, usury or overreaching.\(^8\) The court was undoubtedly impressed by the obvious inequity of the situation, which, in turn, only served to emphasize the real vacuity of the plaintiff's assertions.

The recital regarding fees to be paid to a public officer fully complied with the terms of the statute. Item (5), it held, did not require that license fees and vehicle registration fees be itemized independently of each other, and it noted that both the license and registration fees are required by law to be paid to the

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\(^8\) Stats. 1959, c. 1466, p. 3763, § 2: compare *Every conditional sale contract . . . shall contain all of the agreements between the buyer and the seller relating to the personal property described therein,* with *It shall recite the following separate items. . . . 5. A description and itemization of amounts, if any, which will actually be paid by a seller or his assignee to any public officer as fees in connection with the transaction, which are included in the contract balance.*

\(^8\) But cf. [CAL. CIV. CODE §§ 2981(e), 2982(a)]. The former section would seem to preclude this sort of arrangement. Also, under the latter section, would extending credit on an open book account be an "other" evidence of indebtedness within its meaning?

same department of the state government, the Department of Motor Vehicles.\textsuperscript{85} The discrepancy between the number of installments was a typographical error, an accidental or bona fide error in computation. As to the effect of the dealer's discount on the down payment and cash price figures, the plaintiff's argument was purely speculative, and the inclusion of the discount as part of the down payment could not reasonably mislead either the buyer or a third party subsequently financing the sale. "There is nothing unlawful," the court concluded, "in the terms of the transaction which the parties negotiated . . . and all other requirements of the statute having been met, we fail to find any basis for rescission by plaintiff."\textsuperscript{86} Justice Schauer further reasoned:

Substantial compliance, as the phrase is used in the decisions, means \textit{actual} compliance in respect to the substance essential to every reasonable objective of the statute. But when there is such actual compliance as to all matters of substance then mere technical imperfections of form or variations in mode of expression by the seller, or such minima as obvious typographical errors, should not be given the stature of noncompliance and thereby transformed into a windfall for an unscrupulous and designing buyer. . . .

We do not suggest that imperfections in either the form or substance of motor vehicle contracts are to be encouraged. Any error or omission in writing the contract, even if apparently unimportant in itself, conceivably could combine with some other circumstance to become important. The legislation in question is intended to be rigid and exacting. It is so designed because the State found that there were some automobile dealers (even as there are some dishonest persons, at least from time to time, in every business or profession) who are seeking not to render an honest service but, rather, deliberately to overreach, oppress and mulct any trusting customer. Because a law must be universal in its application to any class, and because it must be drafted to govern the acts of the worst offender in the class, it follows that all members of the class, the great majority of whom are honest and respected automobile dealers, some of them probably serving the third or fourth generation of appreciative customers, must suffer the inconvenience of being scrupulously careful in the preparation of contracts, in the performance of all things required by the subject legislation, and in keeping a record of the same.

We understand the burden imposed on these businessmen, as well as the basis for the law, and we understand also that in some of their relationships with customers—or pretending customers—it will be the dealer rather than the customer who needs protection. The case at bench appears to be of the latter type. When appropriate facts are shown courts should be equally as alert to protect the one party to a contract as the other.\textsuperscript{87}

The reasoning of the opinion in this case and the result reached here by


\textsuperscript{86} \textit{Id.} at 31, 372 P.2d at 653, 22 Cal.Rptr. at 661.

\textsuperscript{87} \textit{Id.} at 29, 33, 372 P.2d 652, 655, 22 Cal.Rptr. at 660, 663.
the supreme court cannot seriously be challenged. On each of the issues presented, however, the decision did not require extraordinary analytical powers or the metaphysical dissection of legal principles, simply an awareness of the facts of life and a refusal to be bound by a too rigid theory of construction or an unquestioning adherence to precedent. The real power of the decision actually lies in the above-quoted dictum by which the court apparently settles with uncharacteristic finality questions of compliance with the statutory provisions and the legislative purpose behind the statute. And to forestall any argument that dicta is not authority, it should be noted that the Stasher opinion is essentially founded on dicta set out in General Motors Accept. Corp. v. Kyle\(^8\) which preceded Stasher in the supreme court.\(^9\)

**NEW FORMAL REQUIREMENTS**

The 1961 Rees-Levering Act contains, in addition to the changes listed above, several formal requirements which were not a part of the original legislation nor embodied in the numerous amendments to the 1945 law.

Under the provisions of Vehicle Code section 5604, a dealer is required to notify the buyer in writing if the insurance on the motor vehicle required by him does not insure the buyer against damages for personal injury or property damage. Civil Code section 2984.1 provides the manner by which a seller, under the Rees-Levering Act, must comply with the mandate of the Vehicle Code section. Thus every contract for the conditional sale of a motor vehicle must contain a statement informing the buyer that he is not insured against such liability unless a charge for such insurance is included in the agreement. The statute again specifies the size and facing of type to be used if the contract is printed and sets out the exact wording of the notice.

Several cases decided under the original act involved, as part of the transaction, chattel mortgages given by the buyer on property other than the subject motor vehicle.\(^0\) In one case a deed of trust on real property was given as additional security.\(^1\) The inherent danger of abuse in such cases is now obviated by section 2984.2, which makes unenforceable any agreement in connection with the conditional sale which confers a security interest—title or lien—on any real or personal property other than the motor vehicle and which is given to secure the payment of the contract balance.

New section 2984.3 is another of the adapted “Unruh” provisions and provides

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\(^8\) 54 Cal.2d 101, 351 P.2d 768, 4 Cal.Rptr. 946 (1960).

\(^9\) After quoting Kyle to the effect that the statute constitutes a shield rather than a sword for buyers in proper cases, and that it should not be applied in a manner which will give a windfall to the conditional purchaser, the opinion remarks, “As will hereinafter be shown, that language is particularly applicable to the case at bench.” Stasher v. Harger-Haldeman, 58 A.C. 23, 29, 372 P.2d 649, 652, 22 Cal.Rptr. 657, 660 (1962). (All emphasis supplied.)


\(1\) People v. One 1955 Buick 2-Door Coupe, 187 Cal.App.2d 684, 10 Cal.Rptr. 79 (1960).
several presumptions relative to delivery of a copy of the contract to the buyer. The contract may contain, for example, an acknowledgment of such delivery by the buyer. If so, however, it must be printed or written in the equivalent of ten point bold face type and must appear directly over the buyer's signature. Where these requirements are met, the buyer's execution creates a rebuttable presumption of delivery of a completely filled-in copy of the contract "in any action or proceeding by or against a third party without knowledge to the contrary when he acquired his interest in the contract." If the buyer receives a copy of the contract or a notice containing items (1) to (8) of subdivision (a) of section 2982 and fails to give written notice within thirty days to the holder that he did not receive a copy of the contract complying with the remaining requirements of the act, there is a conclusive presumption of a valid delivery in favor of such third person.

Under the provisions of the 1945 law, subdivision (b) of section 2982 provided that whenever any charge for insurance is included in the contract balance the seller must, within thirty days, provide the buyer with the policy or an exact copy of it. These provisions were considered as part of the formal requirements of the act. They were discarded by the 1961 revision, however, and now subdivision (b) provides that where any amount is charged to the buyer for insurance and is included in the contract balance, but not to be disbursed until one year after the date of the execution of the contract, the finance charge on such amount can only be computed from the month of disbursement to the date of the last payment. In light of this legislative change, therefore, it is clear that the new subdivision (b) of section 2982 is another anti-usury provision and must be classified with the substantive requirements of the statute to be discussed next.

**SUBSTANTIVE REQUIREMENTS OF THE ACT**

The so-called "substantive" requirements of the 1945 act were incorporated in subdivisions (c) to (g) of section 2982. Subdivision (h), added in 1959, prohibited the inclusion of any contract provision which would allow the holder to accelerate maturity and repossess the motor vehicle except upon the buyer's default of any of his obligations under the contract. This provision, going as it did to the contents of the contract, must be deemed another of the act's formal requirements. Its counterpart in the 1961 law, however, which is new section 2983.3, also forbids acceleration and repossession in absence of default by the buyer in the performance of any of his obligations under the contract. The section does not refer to the contents of the contract and, presumably, covers also contingencies not provided for by its terms and which the seller or holder

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93 CAL. CIV. CODE § 2984.3.
94 But see CAL. CIV. CODE §§ 2981(g), 2981(i), 2982(a)(4), 2982(b), 2984.1.
95 Stats. 1959, c. 1466, p. 3765, § 2.
might attempt to impose subsequent to its execution. Section 2983.3 then must be considered part of the statute's new substantive requirements.

Subdivision (c) of the original statute set the maximum allowable amount of time price differential at one percent of the unpaid balance multiplied by the number of months between the date of the contract and the due date of the last installment. This provision, therefore, provided an easy method of computing the maximum allowable time price differential and has been retained by the 1961 reenactment.\(^9\) Most of the cases based upon a violation of subdivision (c) involved a correlative problem in the area of remedies and sanctions rather than issues concerning the computation of the time price differential figure itself. In any case, where the question of interest, finance charge or time price differential arises it should be recalled that the requirements of subdivision (c) are severable from the formal provisions requiring the contract to recite the amount so charged by the seller. Thus the contract may recite a figure as the finance charge or time price differential (thereby complying with the formal requirement), which may, however, be in an amount in excess of that allowed by subdivision (c), thus violating the substantive provision. Conversely, the figure may well conform with the substantive limitation, yet its exclusion or distortion on the contract will be in violation of subdivision (a). In either case, the definitions provided by section 2981 should not be overlooked.\(^7\)

Under the provisions of subdivision (d) of former section 2982, the buyer was given the right, notwithstanding any of the terms of the contract, to pay off his full indebtedness under the contract at any time prior to its maturity. By satisfying such indebtedness, furthermore, he was entitled thereby to receive refund credit on the amount of the unpaid time price differential; and the subdivision set out the method for computing such refund credit. The 1961 version of this subdivision contains nearly identical provisions.\(^8\) One significant change, however, was made. Presumably, under the 1945 act, the buyer was entitled to a credit refund only in the event of a voluntary prepayment by him or by some other person for his account. If the buyer defaulted, or otherwise rescinded or refinanced the contract and was not entitled to recover for a violation of the statute, the seller or holder no doubt could enforce payment of the full time price differential as provided in the terms of the contract. On contracts executed subsequent to the effective date of the Rees-Levering Act, the seller or holder can no longer recover such amount, for the revised provisions of subdivision (d) now provide that where the buyer's indebtedness is liquidated, whether by prepayment "or refinancing, or upon surrender or repossession and resale of the motor vehicle," he is entitled to the credit refund on the "un-

\(^9\) CAL. CIV. CODE § 2982(c).
\(^7\) CAL. CIV. CODE §§ 2981(e)-(i), (k). See generally Carter v. Seaboard Finance Co., 33 Cal.2d 564, 578-82, 203 P.2d 758, 767-69 (1949), for discussion of the California usury law at the time of the original enactment of the statute.
\(^8\) CAL. CIV. CODE § 2982(d).
earned portion of the finance charge" either in cash or as a credit against the amount due by virtue of his obligations under the contract.99 Both versions of subdivision (d) also save for the seller or holder any interest or charges due from the buyer for delinquent installments or collection costs.100

The above provisions of subdivisions (c) and (d) were, and still are, the basic "substantive" provisions of the statute. In none of the cases where a substantive violation was alleged, was the question of compliance with their requirements seriously challenged. The terms of the provisions were sufficiently clear and the methods of computing the finance charge or amount of credit refund could be easily handled without an accountant's knowledge of business mathematics or algebraic equations.

Remedies and Sanctions

In spite of their apparent clarity, subdivisions (c) and (d) were the subject of a tremendous amount of litigation under the 1945 statute. The problems which gave rise to the controversies, however, stemmed from interpretations of subdivisions (e) and (f) of former section 2982.101 Subdivision (e) provided that if the seller violated the requirements of subdivisions (c) or (d), the contract was unenforceable, except by a bona fide purchaser for value, and the buyer could, in a civil action, recover the "total amount paid on the contract balance" from the seller or his assignee. In similar terms subdivision (f) provided that if the "holder" violated the terms of subdivision (d), the buyer could recover "the total amount paid . . . to such holder pursuant to the terms of such contract."102 In both situations, however, a violation was not actionable if it resulted from an accidental or bona fide error in computation. Nothing further was expressed by the statute regarding the buyer's recovery for a violation of the subdivisions, and no sanctions were provided for a violation of the formal requirements, that is, subdivisions (a) or (b). Herein lay the crux of the problem which, before it was finally resolved by the courts prior to 1961, caused considerable confusion in the cases.103

Carter v. Seaboard Finance Co., again, settled the question of the effect of a violation of the formal requirements of the original act.

The obvious purpose of the statute is to protect purchasers of motor vehicles against excessive charges by requiring full disclosure of all items of cost. If the statute be construed as mandatory the contract was unenforceable . . .

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99 Ibid.
100 Compare CAL. CIV. CODE § 2982(d) with § 2983.4.
101 Stats. 1959, c. 1466, p. 3765, § 2.
102 Ibid.
103 Ibid.
for the reason that it was in violation of the statute. This is so notwithstanding the fact that the statute does not expressly pronounce it so.\(^{104}\)

*Estrada v. Alvarez*,\(^{105}\) following and citing *Carter*, set out the rule in more positive language: "[T]he form and requisites of the statute are mandatory; a contract which does not substantially conform thereto is unenforceable; and a buyer who has made payments to the seller under such a contract may recover them."\(^{106}\)

Oddly enough, however, despite these supreme court pronouncements one lower appellate court, in 1955, held that the penalty of unenforceability under subsection (e) did not apply to a violation of subsection (a) or (b).\(^{107}\) It impliedly reversed itself in a later decision.\(^{108}\)

The *Carter* and *Estrada* cases, moreover, pointed out that there were no equitable objections to prevent the buyer's recovery for a formal violation, inasmuch as he is not considered in pari delicto and is a member of the class intended to be protected by the legislation.

Having apparently settled the rule that a buyer may recover for a formal as well as substantive violation, the courts were then faced with questions far more difficult to answer. Conceding that the buyer's action was maintainable in either instance, what, for example, was the measure of damages or recovery? He could, of course, recover the "total amount paid on the contract balance,"\(^{109}\) but could he also recover his down payment? If so, what was the value of his trade-in if it was no longer in possession of the dealer? Could the buyer keep the car? The code provided that he could recover in a "civil action," but was the remedy common law or statutory? Was the seller, on the other hand, entitled to an offset in the buyer's action? If so, how was it valued? Could the seller obtain affirmative relief if the offset exceeded the demand of the buyer. What was the applicable statute of limitations? Was prompt notice of rescission and an offer of restitution a necessary condition of the buyer's action? And what pleadings were appropriate to raise an issue of violation of the statute or a seller's right to an offset, if any existed?

The answer to these questions and others would seem to lie in the resolution of a more fundamental consideration, namely, what was the legal status of a contract which violated the formal or substantive provisions of the statute. Thus a preliminary determination of whether the contract was void or only voidable, and whether it was illegal or merely unenforceable, would clarify and resolve many of the problems listed above. Unfortunately, however, no definitive or

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\(^{104}\) *Carter v. Seaboard Finance Co.*, 33 Cal.2d 564, 573, 203 P.2d 758, 764 (1949). Note that the court reached this result even though subdivisions (d), (e) and (f) were not added until Stats. 1949, c. 1594 and thus not before the court in this case.

\(^{105}\) 38 Cal.2d 386, 240 P.2d 278 (1952).

\(^{106}\) *Id.* at 389, 240 P.2d at 280.


\(^{109}\) Stats. 1959, c. 1466, p. 3765, § 2.
satisfactory answer has been presented by the cases and only a partial solution has been effected by the 1961 revision of the statute. In practically all of the cases, the reader will find that the terms "void," "voidable," "illegal," and "unenforceable" have been used interchangeably and synonymously without any specific attention being directed to their more restricted meanings. Two courts have given some consideration to the problem, but the results reached by them have been far from conclusive. In Williams v. Caruso Enterprises the court held that the contract is "voidable at the behest of the innocent party," whom it likened to "one who is the victim of fraud." The supreme court used similar language later in the Kyle case when it referred to the contract as "voidable at the instance of the buyer," going on to say that the seller does not completely forfeit his security interest in the vehicle by virtue of his violation of the statute.

From the discussion of the issue in the Kyle case, the only opinion to give the problem any real consideration, it is manifest that a contract which violates the provisions of the act exists in some sort of twilight zone and must be specially characterized. In spite of its attempt to clarify the question, the Kyle court continues to refer to the seller's "illegality," and to the "illegal" contract. In City Lincoln-Mercury Co. v. Lindsey, decided in the year prior to Kyle, the supreme court was presented with a contract which violated the formal requirements of the statute and the seller asserted that because of certain facts in the case the buyer was estopped to rely on the violations. In answer to this contention the court said "A party to an illegal contract cannot ratify it, cannot be estopped from relying on the illegality, and cannot waive his right to urge that defense." Subsequent cases continue to refer to the contract as void and illegal as well as voidable and unenforceable.

Placing the cart before the horse, however, the courts have evolved some fairly well settled rules relating to recovery under the act. Thus, it has been generally agreed that a seller whose violation of the statute is substantive may not claim a setoff against the buyer's recovery. The most he is entitled to is the return of the car. If the seller's violation is formal only, he may set off against the amount recoverable by the buyer a sum equal to the loss sustained by him as a result of the depreciation in the value of the car caused by the use

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112 Id. at 978, 295 P.2d at 596.
115 Id. at 274, 339 P.2d at 856.
of it while in the buyer's possession.\textsuperscript{120} In no event may the seller offset an amount exceeding that to which the buyer is entitled to recover;\textsuperscript{121} and no consideration will be given to depreciation in market value or the rental value of the vehicle to the buyer.\textsuperscript{122} The reasoning behind the sanctions for a substantive violation is based on the language of the statute and the legislative policy behind the act. The rationale of the formal sanctions is predicated on the rule that "courts will not impose penalties for non-compliance with statutory provisions in addition to those that are provided expressly or by necessary implication."\textsuperscript{123}

Although subdivision (e) stated that the buyer may recover the total amount paid by him on the "contract balance," it has been held that such sanctions are not an exclusive remedy, and "the buyer can invoke the restitutive measure of recovery and obtain the total amount or value of that with which he parted, including down payments."\textsuperscript{124} This rule applies to either formal or substantive violations.\textsuperscript{125} Where the buyer attempts to recover his down payment, and the down payment wholly or partly consists of the value of a trade-in, the extent of his recovery is limited here to the actual retail value of the vehicle or property traded in rather than by the value represented by the contract figure.\textsuperscript{126} As will be seen later, this rule has been changed by the Rees-Levering Act.\textsuperscript{127}

On the question of who is a proper party to the action, it should be noted that, under the 1945 law, the buyer's right of action passes to his legal successor in interest.\textsuperscript{128} Under the 1961 act, however, the action is only maintainable by the initial buyer.\textsuperscript{129} On the other hand, subdivision (e) of the original statute excepted bona fide purchasers for value, but the decision in Kyle limited this exception to cases where there was a substantive violation. Thus, the bona fide purchaser for value of a contract offensive to the provisions of (a) or (b) could not enforce it and would be liable on it in a buyer's action to recover for the violation.\textsuperscript{130} In \textit{Lewis v. Muntz Car Co.}\textsuperscript{131} the contract violated subdivision (c)

\textsuperscript{121} E.g., General Motors Accept. Corp. v. Kyle, supra note 120 at 111, 351 P.2d at 774, 4 Cal.Rptr. at 502.
\textsuperscript{122} Ibid.
\textsuperscript{124} General Motors Accept. Corp. v. Kyle, 54 Cal.2d 101, 111 351 P.2d 768, 774, 4 Cal.Rptr. 496, 502 (1960).
\textsuperscript{125} Ibid.
\textsuperscript{126} Ibid.
\textsuperscript{127} City Lincoln-Mercury Co. v. Lindsey, 52 Cal.2d 267, 339 P.2d 851 (1959).
\textsuperscript{128} CAL. CIV. CODE § 2983.1. See text accompanying note 138 \textit{infra}.
\textsuperscript{131} General Motors Accept. Corp. v. Kyle, 54 Cal.2d 101, 351 P.2d 768, 4 Cal.Rptr. 496 (1960).
\textsuperscript{132} 50 Cal.2d 681, 328 P.2d 968 (1958).
and the buyer's recovery was limited as against the seller's assignee to the consideration actually paid by him to such assignee. In *Kyle*, however, involving a violation of subdivision (a), the seller's assignee was liable for "that with which the buyer parted under the illegal contract, including payments which he made to the seller-assignor prior to the assignment."132

**_ACTIONS AND REMEDIES UNDER THE 1961 ACT**

The above discussion represents substantially the state of the law which was formulated prior to the passage of the Rees-Levering Act and which still governs contracts executed before its effective date.133 Although it has been said that the 1961 amendments "were not intended to change the case law insofar as it concerns what decisions have called substantive violations,"134 the Rees-Levering Act does make some very significant changes in the substantive requisites and the effect of a violation of the provisions of the new law.

New sections 2983 and 2983.1 now cover the sanctions which are provided for a violation of the new act and govern all actions arising under the present statute. They replace subdivisions (e) and (f) of former section 2982, which, however, continue to control actions on contracts executed prior to January 1, 1962.

Section 2983 provides that if the seller violates any of the provisions of subdivision (a) or (c) of section 2982, the contract shall not be enforceable by the seller and, if the violation is not corrected under the provisions of section 2984, the buyer may recover from the seller the "total amount paid, pursuant to the terms of the contract, by the buyer to the seller or his assignee."135 The section excludes a bona fide purchaser, pledgee or assignee for value from its provisions and does not apply to accidental or bona fide errors in computation. It also provides that where the buyer recovers the value of his trade-in, the amount so recoverable shall be the agreed cash value of the trade-in as it appears on the conditional sale contract. The changes thus made by the 1961 legislature render the *Lewis, Lindsey* and *Kyle* decisions of doubtful authority in cases involving contracts governed by the 1961 act insofar as they relate to any of the above issues.

Section 2983.1 of the new act provides, first of all, that where the seller "or holder" violates any of the provisions of subdivision (d), the buyer may recover three times the amount of the finance charge paid to such person. This section does not, however, specify the effect of a violation of subdivision (d) on the

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134 Id. at 750, 17 Cal.Rptr. at 456.
135 *CAL. CIV. CODE § 2983.*
contract itself, which under the former section would be unenforceable. From the wording of the statute and the rule of construction of the Lindsey case (i.e., that the courts will not impose penalties other than those provided for expressly or by necessary implication) the buyer apparently has been deprived of any action for rescission and restitution for violation of the subdivision's requirements. Nevertheless the treble damage clause should provide sufficient protection in most situations.

A second provision of section 2983.1 states that if the holder acquires the contract without actual knowledge of the seller's violation of subdivisions (a) or (c), the contract remains valid and enforceable by the holder except that the buyer is excused from any obligation to pay the unpaid balance, unless the violation is corrected according to section 2984. If, however, the holder acquires the contract with such knowledge, and no correction is made, the contract is not enforceable and the buyer may recover the amounts specified in section 2983.

Section 2983.1 also provides that the buyer may elect to retain the motor vehicle and continue the contract in force, or, "with reasonable diligence," he may rescind the contract and return the motor vehicle; provided that the contract is unenforceable under section 2983 or other provisions of section 2983.1. Where the buyer does elect to rescind, he shall be credited as restitution the value of the motor vehicle, "without any decrease which results from the passage of time," as established by the cash price figure appearing on the contract.

These new provisions of sections 2983 and 2983.1 clarify some of the problems which existed under the 1945 act. The buyer's remedy is apparently now one and the same for either a substantive or formal violation, and the seller's right of offset in the latter case is effectively removed. The buyer, however, is now under a duty to provide prompt notice and an offer to return the subject vehicle. This latter qualification was somewhat in doubt under the former law.

Section 2983.2 regulates redemption rights and requires certain notices to be made after repossession of the motor vehicle for the buyer's default. Failure to comply with its provisions relieve those otherwise liable on the contract from liability for a deficiency after resale. Section 2983.5 is another "notice" requirement, and retains in the buyer any right of action or defense which would otherwise be cut off by an assignment "to any third party," unless the prescribed notices are made within certain specified periods following the assignment.


141 Compare CAL. CIV. CODE § 1804.2.
Section 2984 relieves somewhat the harshness of the effect of a violation of the requirements of the act by providing a procedure whereby violations may be corrected in certain situations without liability to the seller or the holder. And section 2983.4 gives a right to recover reasonable attorney fees to the prevailing party in any action whether instituted by or against him arising under the act.  

**THE STATUTE OF LIMITATIONS**

One disturbing question which remains to be answered is that concerning the applicability of the appropriate statute of limitations. This problem has not been resolved either by the cases under the original statute or by the 1961 revision. At the heart of the question is the critical issue of what is the exact nature of the buyer's right of action under the statute. A cursory glance at the cases reveals that actions have been brought under many and various titles: action for return of money, for money had and received, for rescission and restitution, fraud and deceit, cancellation of contract, and under common counts. While the action of necessity involves a written agreement, the applicability of the normal four year statute of limitations is, to this writer at least, very doubtful. The effect of a violation on the status of the contract is another closely related question which should have some bearing on the issue, but as seen above, that issue itself remains to be determined.

In the *City Lincoln-Mercury v. Lindsey* case, the supreme court set out the rule that courts will not impose "penalties" for noncompliance other than those expressly provided for or arrived at by necessary implication. In the *Kyle* case, the court criticizes the statute for not providing a uniformly operative scheme for "penalizing" the seller or protecting the buyer. And wherever the courts were confronted with the issue of what sanctions to apply for a formal violation, the guiding principle has been to decide how far the legislature desired to "penalize" the guilty seller. It is clear that the courts have left open the question of whether a cause of action for a formal violation of the statute is or is not the enforcement of a statutory penalty. If it is, then this writer submits that the one-year statute of limitations for their enforcement should clearly apply, and, consistent with the courts' labelling an offensive contract as "illegal," the cause of action should be held to accrue upon its execution.

*Stone v. James* is the only case in which the issue of the statute of limitations is expressly raised and discussed. This lack of consideration to the problem

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141 Compare Cal. Civ. Code § 2982(c) and 1811.1.
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is unusual for most of the cases involve actions filed long after the execution of the contract and after substantial performance had been rendered. In the Stone case the court held that subdivision (e) of the original statute was clearly "a section enforcing a statutory penalty or forfeiture" to which the one-year limitation of subdivision 1 of section 340 of the Code of Civil Procedure applied. In practically the same breath, however, the court stated that the provisions of subdivisions (d) and (e) were probably severable, and that the former granted a right to recover back finance charges—like the recovery of usurious interest—which is in the nature of an action for money had and received and to which, it concluded, the two-year statute of limitations applied. Since subdivision (e) applied where the seller violates the provisions of subdivisions (c) or (d), and under the liberal rules of pleading the buyer is probably not required to set out with specificity which subdivisions (i.e., (d) or (e)) he is relying upon, the logic of this construction entirely escapes this writer.

In a more recent case, Gentry v. Kelley Kar Co., the plaintiff (buyer) alleged violations of both subdivisions (a) (formal) and (c) (substantive). The defendant raised as a defense the one-year statute of limitations on statutory penalties and forfeitures. The trial court found that the plaintiff's causes of action were not barred by the statute of limitations, and its judgment was affirmed on appeal where it was not clear whether the defense was again urged. Apart from its bare affirmation of the trial court, the opinion sheds no light on the issue.

Under the 1961 statute, section 2983 combines the formal and substantive violations and provides, where the seller is concerned at least, one remedy for both. Inasmuch as section 2983.1 now precludes the seller from asserting an offset, the effect of a formal violation is now the same as a substantive violation. Since the nucleus of these new provisions can be found in subdivision (e) of the repealed section 2982, the conclusion follows that sections 2983 and 2983.1, whether construed together or apart, are in the form of a statutory penalty. In such a case, then, following the rule of Stone v. James, the one-year limitation of the Code of Civil Procedure should apply to actions arising under the 1961 act.

CONCLUSION

The effect of the 1961 "reformulation" of the Automobile Finance Law will have a twofold effect on subsequent cases and litigation. On the one hand, it has clarified some problems which existed under the original statute. It should

146 Id. at 741, 299 P.2d 307. Cf. Lewis v. Muntz Car Co., 50 Cal.2d 681, 328 P.2d 968 (1958): "It is concluded that section 2982, subdivision (e), imposes a penalty..." Id. at 687, 328 P.2d at 972 (emphasis supplied). If the Stone v. James decision is right here, as this writer submits, then venue may be another procedural problem presenting interesting possibilities; see Cal. Code Civ. Proc. § 393(1)(a).


be noted, however, that in many of the cases the same issues had been satisfactorily worked out in the courts. On the other hand, the Rees-Levering Act adds to the law many new requirements and procedures which must now be adhered to by dealers in the new and used car business. The act also leaves unsolved some questions which have always been and continue to be of paramount importance, at least theoretically. The added provisions of the act, furthermore, do not follow a uniform pattern, for while one provision strengthens the protection of the buyer, another lessens the burden on the seller. Which class the legislature intended to benefit most by the revision is impossible to determine. It can be argued that many of the new requirements add nothing substantial to the buyer’s protection under the repealed act and are an unnecessary endeavor to make the present statute conform more closely to the Unruh legislation of 1959. Moreover, some of the act’s new exclusions and limitations on the buyer’s recovery, may well lead to abuses and unfair practices and deprive the car-buying public of material benefits which it formerly enjoyed. A preferred solution, it is submitted, would have been merely to clarify the existing legislative policies under the statute, grant more discretion to the trial judge, and leave procedural problems to the appellate courts.

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