IOWA MOTOR VEHICLE CERTIFICATE OF TITLE LAW V

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The most recent commentary[1] by this writer on the Iowa Motor Vehicle Certificate of Title Law was critical of the analysis and result in *Northern Insurance Company of New York v. Miller*.[2] That case held an insurance company, subrogated to its Illinois insured, from whom a motor vehicle was stolen, could recover in replevin from an apparently innocent Iowa purchaser. That individual held an Iowa certificate for the vehicle, issued after he purchased the vehicle from another person holding an Iowa certificate, but neither certificate disclosed the Illinois insured's interest. This holding was reached in spite of the pertinent language of the Iowa Code that:

> [N]o court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title or manufacturer's or importer's certificate duly issued or assigned in accordance with the provisions of this chapter.[3]

I. How Conclusive is the Iowa Certificate of Title?

Subsequent to the case referred to in the prior paragraph, in December, 1964, it was held in *Merchants and Farmers State Bank of Weatherford, Texas v. Rosdail*[4] that a Texas chattel mortgage properly noted on a Texas certificate for the particular vehicle survived a series of transactions including an Alabama registration, Oklahoma registration and several Iowa certificates all issued without notation of the Texas mortgage, and supported a conversion action against an apparently innocent Iowa purchaser. Consistency with the *Northern Insurance Company* case, *supra*, supported that result in *Merchants and Farmers State Bank*. No basis for distinction appears under the certificate of title provisions, between cases where some interest in the vehicle was originally voluntarily granted, as in the Texas case, and where the vehicle was not

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1 Hudson, *Iowa Motor Vehicle Certificate of Title Law IV*, 14 Drake L. Rev. 36 (1964). Earlier articles were Hudson, *Iowa Motor Vehicle Certificate of Title Law III*, 5 Drake L. Rev. 31 (1955); Hudson, *Iowa Motor Vehicle Certificate of Title Law II*, 4 Drake L. Rev. 86 (1955); Hudson, *Iowa Motor Vehicle Certificate of Title Law*, 3 Drake L. Rev. 3 (1953).

2 256 Iowa 764, 129 N.W.2d 28 (1964).

3 Iowa Code § 321.45(2) (1962). *See* note 31 and accompanying text *infra* where the subsection is quoted.

4 257 Iowa 1238, 131 N.W.2d 786 (1965). A supplemental opinion was issued in 136 N.W.2d 286 affirming the proposition referred to in the body but clarifying the opinion as to circumstances of a conversion action against others in the distributive chain besides the last purchaser, and also as to the ability of individual defendants to maintain cross petitions against prior parties in the distributive chain.

voluntarily surrendered, as in the Illinois case. Some, on policy grounds, might, however, prefer the Illinois insurance company, but not the Texas mortgage.

The status of the Iowa certificate as "conclusive" evidence of ownership was also weakened by an opinion announced in November, 1964, in *State Automobile and Casualty Underwriter v. Farm Bureau Mutual Insurance Company*.[5] Here the court was concerned with an action to determine which insurance company was primarily liable to pay for damage to a third person, the buyer's insurance company or the seller's insurance company, when the buyer had taken possession of the vehicle but no title certificate had been transferred at the time of the action inflicting the injuries. The court stated the problem in these terms: "The decision depends upon the ownership of the car, which in turn depends upon whether there was a bona fide sale."[6] The supreme court reversed the trial court and ordered a new trial for the buyer's insurance company because of a stated error in admitting evidence of a settlement agreement made by the buyer's insurance company. But the court affirmed the trial court's finding of a bona fide sale, and the proposition that the presumption of ownership in the seller, based on lack of passing of the title certificate, was rebuttable. The court's statement was:

> Appellant [buyer's insurance company] argues there is a presumption of ownership arising from a title certificate and that there was no positive evidence to overcome this presumption. We disagree. As stated in the foregoing divisions there is evidence to support the court's finding of a bona fide sale. Such a sale is sufficient to overcome the presumption and transfer the liability even though the title certificate is not transferred.[7]

This statement was accompanied, without discussion, by a quotation from Iowa Code section 321.493 (1962), and a reference to *Hartman v. Norman*.[8] Iowa Code section 321.493 provided as follows:

> In all cases where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damages.
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> A person who has made a bona fide sale or transfer of his right, title, or interest in or to a motor vehicle and who has delivered possession of such motor vehicle to the purchaser or transferee shall not be liable for any damage thereafter resulting from negligent operation of such motor vehicle by another, but the purchaser or transferee to whom possession was delivered shall be deemed the owner. The provisions of subsection 2 of section 321.45 shall not apply in determining, for the purpose of fixing liability hereunder, whether such sale or transfer was made.

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5 257 Iowa 56, 131 N.W.2d 265 (1964).
6 *Id.* at 57, 131 N.W.2d at 266.
7 *Id.* at 59, 131 N.W.2d at 267.
8 253 Iowa 694, 112 N.W.2d 374 (1961) referred to in Hudson, *Iowa Motor Vehicle Certificate of Title Law IV*, 14 DRAKE L. REV. 36, 39 n.18 (1964).

Although not discussed here,[9] if it is assumed that "ownership" should determine which insurance company is primarily liable as between two insurance companies, both of which are liable and where there has not been compliance with the requirements for transfer, the person listed on the certificate should be conclusively considered the owner because of the language of the certificate statute,[10] *i.e.* no court in law or equity should recognize any other interest than on the certificate. The only applicable exception referred to in section 321.45(2)[11] was "except for the purpose of section 321.493." The purpose referred to in section 321.493 was the liability of the owner himself, and not the relative position of the insurance companies; especially note the provision in section 321.493 excluding reference to section 321.45(2) "for the purpose of fixing liability hereunder." It should be noted that automobile casualty policies, with the common "omnibus" coverage clauses, promise to pay, on behalf of a person driving a car with consent of insured even if the named insured would have no personal liability under the Iowa "owner liability" section 321.493. The liability of the insurance company is not under section 321.493. In states with certificate of title laws similar to that in Iowa, it has been held that the seller's insurance was primarily liable, under the "omnibus" coverage clause, for the payment of claims against the buyer of the motor vehicle when there was no compliance with the certificate law requirements for transfer of ownership.[12]

Applying the "conclusiveness" test to the insurance problem of "primary" liability and "ownership," as suggested above, and thus making the sellers insurance company primarily liable, would be consistent with the prior Iowa case, *Calhoun v. Farm Bureau Mutual Insurance Company*.[13] The *Calhoun* case held that an insurance company suing under a policy for damages to a car by its insured, could not defend on the theory that the seller was not an owner when the certificate of title had not been assigned to the buyer at the time of damage to the car, insured having "sold" the car under circumstances in which the trial court found was a sale otherwise completed, possession having been delivered to a buyer.

If the interpretation is adopted, as the court apparently did without discussion, that the "conclusiveness" test does not apply to the problem of allocating liability under insurance policies, the seller's insurance company should have had no liability at all for the actions of the buyer, not just being put in the position of not being primarily liable. The holding of a prior

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9 *See* discussion in D. BLASHFIELD, AUTOMOBILE ENCYCLOPEDIA §§ 345.9, 345.13 (3d ed. 1965); J. APPLEMAN, INSURANCE §§ 3901 *et seq.*, 4914 (1942).

10 *See* appendix *infra* for full quotation.

11 *See* appendix *infra.*

12 *See* authorities collected in Hudson, *Iowa Motor Vehicle Certificate of Title Law IV*, 14 DRAKE L. REV. 36, 41 n.23 (1964) and particularly Turpin v. Standard Reliance Ins. Co., 169 Neb. 233, 99 N.W.2d 26 (1959); Brewer v. De Cant, 167 Ohio St. 411, 149 N.E.2d 166 (1958); Ohio Farmers Ins. Co. v. Hoosier Gas Co., 117 Ohio App. 507, 193 N.E.2d 153 (1953).

13 255 Iowa 1375, 125 N.W.2d 121 (1963) commented on in 49 IOWA L. REV. 1338 (1964).

be true, why the result of a loss by the innocent purchaser in the former cases should be perpetuated, and why in this particular case there is more reason to protect the holder of the original certificate especially where, as indicated below, the plaintiff could have easily noted on a certificate a security interest, and made more certain that a duplicate would not be issued without an indication of his interest.[27] But, in the cited cases, there would have been a considerable burden on the Texas and Illinois interests to track down the vehicle and prevent the things that occurred. It should be noted here that in the present case the car was delivered for purpose of resale and that is exactly what occurred.

Apart from the limited policy argument and attempt to prefer the original certificate holder on the basis of comparison to prior cases where subsequent certificates were fraudulently obtained, the court's opinion points out that the criticism directed at those prior cases is not applicable here because both possess Iowa certificates. The criticism discredited concerned the court's failure to interpret subsection 321.45(2) of the 1962 Code so as to conclusively establish an ownership interest in the holder of the Iowa title certificate. It is true, as the court's opinion asserts, section 321.45(2) does not literally provide an answer to this latter case. Also it is true, a fact not referred to in the opinions, that the language of section 321.45(2),[28] is literally only prohibitory (no interest was to be recognized *unless* noted), and does not affirmatively command recognition of the interest indicated on the certificate. Where there

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[27] The opinion cites Yarwood v. DeLage, 91 N.E.2d 272 (Ohio App. 1949) in which a seller of a car was unsuccessful in maintaining a replevin action against an innocent purchaser who had purchased under a chain of title going back to the original purchaser who, without the original certificate which was in the hands of a third party lender, secured a second certificate on an affidavit he had assembled the car from parts. The opinion cites the statement from the Ohio opinion that a valid title cannot be resurrected out of a fraudulently obtained title, and the conclusion that the seller could not maintain replevin because the present innocent purchaser has the same enforceable right to a certificate as the original buyer would have had at the beginning of the transaction. However, the case fails to mention the reference in the Ohio opinion that the innocent purchaser had "actual ownership." The Ohio case result is dismissed in the Iowa opinion simply with the statement that the rights of the holder of the security were not there considered. This is especially interesting in view of the Iowa court's failure to consider the argument in the Iowa case, discussed in note 28 and accompanying text *infra*, that there was in that case a security interest which should have been noted on a certificate of title.

An Ohio Court of Appeals in Buckeye Union Cas. Co. v. Nichols, 215 N.E.2d 733 (Ohio App. 1966) affirming 212 N.E.2d 685 (Ohio Muni. Ct. 1965), held an original Ohio certificate prevailed against an innocent purchaser with an Ohio certificate in a chain from a duplicate issued for the same vehicle with an altered serial number. The Buckeye opinion distinguished another case in the same court where an innocent purchaser with an Ohio certificate in a chain from a duplicate prevailed against an Ohio certificate in a chain from the original owner of a stolen car originally titled in another state. The stated distinction was that the controlling rule was priority for the person holding certificate in chain which began with the first issued Ohio title. There was no reference in the opinion to any controlling sections as to duplicates.

A preference for the chain of title from a duplicate was manifested in First Nat'l Bank of Omaha v. Provident Ins. Co., 176 Neb. 45, 125 N.W.2d 78 (1963), in which the court held that a bank, which took an assignment of a conditional sales contract and possession of a certificate of title, lost to a finance company which took a mortgage on the same car in reliance on a duplicate certificate of title not showing the bank's lien, even though the bank's lien was eventually noted before that of the Finance Company.

[28] *See* appendix *infra*.

is no other Iowa certificate issued, non-recognition, of the interest not on an Iowa certificate, would leave no interest at all to be recognized, an absurd result, so it is necessary to recognize affirmatively the interest on the Iowa certificate. In the case of two Iowa certificates, there is no problem of non-recognition because the claimed interests are noted.

B. *Weaknesses of Nonconclusive Cases*

However, the essential weaknesses of the former cases, the failure to examine the entire statute, and the failure to recognize from a policy point of view the interest of protecting an innocent purchaser are still present in this case. There is no reference at all in the opinion to the provisions of section 321.42[29] which point to an opposite conclusion to that of the court. Iowa Code section 321.42 (1962) provides:

> In the event of any lost or destroyed certificate of title, application shall be made to the department by the owner of such vehicle, or the holder of a lien thereon, for a certified copy of the same upon a form prescribed by the department and accompanied by a fee of two dollars. Such application shall be signed and sworn to by the person making the same. Thereupon the department shall mail a certified copy to the person entitled to receive the certificate of title as indicated by the records of the department at his most recent address shown by such records. Such certified copy shall clearly be marked "duplicate" and shall be identical in every respect to the original to include notation upon the face thereon of liens or encumbrances disclosed by the records of the department. Upon issuance of title the previous certificate last issued shall be void. The new purchaser or transferee shall be entitled to receive an original title upon presentation of the assigned duplicate copy to the county treasurer of the county where such new purchaser and transferee resides. Any purchaser of such vehicle may, at the time of purchase, require the seller of same to indemnify him and all subsequent purchasers of such vehicle against any loss which he or they may suffer by reason of any claim or claims presented upon the original certificate. Any person recovering an original certificate of title for which a duplicate has been issued shall forthwith surrender the same to a county treasurer or the department.

This section does not indicate that a court should go behind the action of the department in such matters as whether the certificate was lost, who was the owner, or as to who is the person entitled to receive the certificate when the section so clearly states: "upon issuance of title the previous certificate last issued shall be void." The reference to indemnity against loss by reason of claims is permissive (may). In view of the reference to the previous certifi-

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29 *See* discussion in G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 20.4 (1965) [hereinafter cited as GILMORE] about the duplicate certificate provisions in the Uniform Motor Vehicle Certificate of Title Act.

The words "and sworn to" were removed by the Iowa 62d G. A., 4 IOWA LEG. SERV. 715 (1967).

cate being void, the indemnity clause must be referring to such things as cost of defending any actions brought, not to a determination that the previous certificate would prevail.[30] Also note that the new purchaser, after a duplicate, is entitled to receive an "original," and that *any* person recovering an original for which a duplicate has been issued shall surrender it. Also, as further support for the conclusion that the certificate issued after the duplicate should control, see Iowa Code section 321.101(8) (1962), which provides:

> The department is hereby authorized, and it shall be its duty, to cancel a certificate of title that appears to have been improperly issued or fraudulently obtained. Upon cancellation of any certificate of title the department shall notify the county treasurer who issued the same, who shall forthwith enter the cancellation upon his records. The department shall also notify the person to whom such certificate of title was issued, as well as any lien holders appearing thereon, of the cancellation and shall demand the surrender of such certificate of title, but the cancellation shall not affect the validity of any lien noted thereon.

Having concluded the second certificate chain conferred no rights upon the innocent purchaser, apparently without an examination of all the provisions of the certificate law, the court further concluded there was nothing in plaintiff's acts which would estop it from denying the validity of the second certificate. In essence, as to the argument of no estoppel, the court stated that delivery of possession of the vehicle knowing it would be offered for resale on a used car lot, is not enough; plaintiff had no knowledge of the second certificate; plaintiff had legal title; plaintiff knew a seller was required to deliver a certificate at the time of delivery of a vehicle and could not do that as long as the plaintiff retained control of the certificate; plaintiff as a licensed dealer was required to obtain a new certificate when acquiring for resale[31] and that by issuing a purchase receipt it did all it was required by law to do; that the failure of the department to pay attention to the purchase receipts in its file made this possible. There is no reference at all to the dilemma in which a purchaser at a car lot is placed.

In connection with the statement that delivery of possession of the car was not sufficient for estoppel, it is assumed, although the opinion gives no authority, the court is relying upon the part of section 321.45(2) of the 1962 Code which states:

> [N]or shall any waiver or estoppel operate in favor of any person claiming title to or interest in any vehicle against a person having possession of the certificate of title or manufacturer's or importer's certificate for such vehicle for a valuable consideration.

In the absence of such a statutory reference, there was considerable authority

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[30] Note that Florida in FLA. STAT. ANN. § 319.29 (1958) as to duplicates provides that all subsequent certificates in the chain after the first duplicate shall be marked duplicates and that subsequent purchasers in the chain of title originating with the duplicate acquire only such rights as the original holder of said duplicate copy had himself.

[31] IOWA CODE § 321.48(1) (1962).

for an estoppel in similar situations of delivery to dealers in favor of buyers in the ordinary course of business.[32] The statute in literal terms does appear to cut off such an argument. The Ohio cases cited[33] in the opinion, in a "floor plan" operation, held in favor of an innocent purchaser, in spite of a similar clause in the Ohio law. This conclusion was reached on an "agency" theory based mostly on prior acquiescence by the finance company in the dealer's failure to comply with the strict requirements of the transaction, a situation apparently not present here. However, the principle of preferring an innocent purchaser, in spite of the literal "no waiver or estoppel clause," is involved here. Furthermore in the Ohio cases the purchaser had not obtained a certificate; here he did. Equally applicable to this situation, where the plaintiff sends forth a car to be sold and sits back holding the certificate and relying on all the provisions of the law, is the somewhat flamboyant language of the judge, writing an opinion in a Florida case. That case protected a purchaser, who obtained no certificate and made no inquiry at a public office, against a finance company which had noted a lien, but had permitted repossessed items to be returned to a dealer's lot for resale. It was from that lot which the purchaser obtained the vehicle. "[T]o allow the finance company to take advantage of the purchaser's not having a title certificate would be about as inconsistent as to allow the culprit who murdered his father and mother to beg for mercy on the ground that he was an orphan."[34]

Apart from the foregoing argument of estoppel in turning the vehicle over for resale, there is the further argument, not referred to in the opinion, that the interest of the plaintiff in the vehicle was really a security interest, or lien, in the vehicle. Therefore it should have been noted on a certificate; mere possession of a certificate under those circumstances is not sufficient to protect against a subsequent innocent purchaser. If there had been a notation on a certificate the motor vehicle department would surely have picked it up when issuing the duplicate.

Should the interest of the plaintiff have been noted on a certificate? The prior recording statute, Iowa Code section 556.4 (1962) provided:

> No sale, contract, or lease, wherein the transfer of title or ownership of personal property is made to depend upon any

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[32] *See* discussion in GILMORE § 26.1 n.1-2, referring to Producers Livestock Marketing Ass'n v. John Morrell & Co., 220 Iowa 948, 263 N.W. 242 (1936); GILMORE §§ 26.2, 26.3, 26.9; R. DUESENBERG & L. KING, SALES & BULK TRANSFERS UNDER THE U.C.C. §§ 10.03 (estoppel), 10.05 (automobile title certificate laws) (1966) [hereinafter cited as DUESENBERG & KING]; S. WILLISTON, THE LAW GOVERNING SALES OF GOODS § 329 (2d ed. 1948); L. VOLD, LAW OF SALES § 61 (2d ed. 1959); RESTATEMENT (SECOND) OF AGENCY § 201 (1958); RESTATEMENT (SECOND) OF AGENCY APPENDIX, REPORTERS NOTES § 174 n.5, at 262 (1958). As to the future *see* UNIFORM COMMERCIAL CODE § 2-403(2) (which protects a buyer in the ordinary course of business when an item has been entrusted to a merchant as defined in § 2-104(1)) and § 9-307(1) (where a buyer in ordinary course of business (§ 1-201(9)) takes free of a security interest created by his seller even though there is perfection and knowledge) [hereinafter cited as U.C.C.].

[33] Fouke v. Commercial Credit Corp., 116 Ohio App. 145, 187 N.E.2d 160 (1962); Mutual Finance Co. v. Kozoil, 111 Ohio App. 501, 165 N.E.2d 444 (1960). *See* references to the Ohio cases in Hudson, *Iowa Motor Vehicle Certificate of Title Law IV*, 14 DRAKE L. REV. 36, 42 n.25 (1964) and GILMORE § 26.9.

[34] Motor Credit Corp. v. Woolverton, 99 So. 2d 286, 291 (Fla. 1957).

> condition, shall be valid against any creditor or purchaser of the vendee or lessee in actual possession obtained in pursuance thereof, without notice, unless the same be in writing, executed by the vendor and vendee . . . and such instrument or a true copy thereof is duly recorded by, or filed and deposited with, the recorder of deeds. . . .

The title certificate law came along and said in Iowa Code section 321.50 (1962), in part:

> The provisions of chapter 556 shall never be construed to apply to or permit or require the deposit, filing or other record whatsoever, of a chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument . . . . Any mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract or similar instrument covering such vehicle, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of the same by the holder of said instrument or, in the case of the certificate of title, if a notation of same has been made by the county treasurer on the face thereof, shall be valid as against the creditors of the mortgagor . . . and subsequent purchasers, mortgagees and other lienholders or claimants, but otherwise shall not be valid against them . . . . Exposure for sale of any such vehicle by the owner thereof, with the knowledge and consent of the holder of any lien, mortgage or encumbrance thereon, shall not render the same void or ineffective as against subsequent purchasers or the creditors of such owner or holder of subsequent liens, mortgages or encumbrances upon such motor vehicle or trailer.

The language of the two statutes (chapter 556 and section 321.50) is not exactly the same (notably the early law refers to a "sale on condition" whereas the latter refers to a "conditional sales contract") but the obvious purpose of both is to have all security interests in property noted on a certificate except in the one case of a manufacturer's or importer's certificate. In *Hull-Dobbs Motor Company v. Associates Discount Corporation*,[35] prior to the Iowa certificate law, the Iowa court held that an arrangement whereby cars were brought to Iowa from Illinois for resale, and Illinois title certificates were attached to checks which didn't clear, was a sale on condition under the Iowa law (possessing the characteristics of obligation to pay, delivery of possession, and title to pass on payment). The title should have been recorded in Iowa, and that because it was not recorded in Iowa a bona fide

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[35] 241 Iowa 1365, 44 N.W.2d 403 (1950), *see* discussion of this case and other Iowa cases involving bad checks in Hudson, *Iowa Motor Vehicle Certificate of Title Law*, 3 DRAKE L. REV. 3, 14 (1953); *accord*, Industrial Credit Co. v. Hargadon Equip. Co., 254 Iowa 757, 119 N.W.2d 238 (1963) where there was an oral agreement between assignee of conditional sales contract for a motor scraper and seller-assignor in possession of the article after repossession that assignee would deliver title on payment of balance due under prior guaranty by assignor on assignment, held to be a "conditional sales" contract, and thus subject to recording requirements, as against a bona fide purchaser of a second conditional sales contract from the seller. There is no reference to any certificate of title.

purchaser (chattel mortgagee) prevailed. Was the relationship between plaintiff (dealer) and Baum in the *Vannoy Chevrolet* case, *supra*, a "conditional sales contract," or a "sale on condition" and thus subject to requirements of notation on a certificate? In an early part of the opinion it states: "plaintiff 'sold' or 'consigned' the car to Billy Baum," but that "Baum signed a note . . . for the purchase price," and that the "procedure [of leaving the certificate of title attached to the note at the bank] was followed to make sure Mr. Baum would settle the note at the bank"; that "when the automobile was sold, Mr. Baum was to pay the note and receive the title certificate."[86] The predominant characteristic of the relationship seems to be that of a security interest in vehicles which Baum had purchased, and the interest should have been noted on a certificate. Perhaps even a written agreement, not apparently present, was necessary as indicated in section 556.4; the amendments in the certificate law refer only to filing and recording and do not change the requirement to a writing.

Is mere possession of a certificate sufficient to protect a security interest, otherwise subject to noting requirements, against third parties? Note that the quoted provisions of section 321.45(2) of the 1962 Code about conclusiveness of the certificate and waiver or estoppel were stated to be "except as provided in section 321.50" (the section about notation of security interests), so that mere possession of a certificate should not have been sufficient. The reference in section 321.50 that exposure for sale of "such vehicle" shall not render the lien ineffective as against a subsequent purchaser is obviously referring to such a vehicle for which a lien has been noted, and does not contemplate a procedure whereby a security is attempted simply by sitting on a certificate and concluding sooner or later somebody will have to come after it.[87]

For the foregoing reasons, especially the applicability of the unmentioned provisions of the statute as to duplicate certificates, and the provisions as to notation of security interests which were not complied with, the innocent purchaser and his finance company should have won.

II. The Effect of the New Statutory Amendments

A. *Owner's Liability*

There has been an interesting change in language by the complementary amendments. The former language of subsection 321.45(2) of the Iowa Code was, in pertinent part: "except for the purpose of section 321.493." This writer argued,[88] that under the former law, the owner's liability should still be governed by the rule of "conclusiveness" of the certificate as to an owner-

[86] 151 N.W.2d at 516.

[87] *See* discussion in Hudson, *Iowa Motor Vehicle Certificate of Title Law*, 3 Drake L. Rev. 3, 13 (1953).

[88] Hudson, *Iowa Motor Vehicle Certificate of Title Law II*, 4 Drake L. Rev. 86, 89 (1955) and Hudson, *Iowa Motor Vehicle Certificate of Title Law III*, 5 Drake L. Rev. 31, 33 (1955). *Contra*, 49 Iowa L. Rev. 1338, 1340 (1964) where the author states that §§ 321.45, 321.493 specifically provide the certificate of title rules do not apply to owner's liability.

ship interest, except in the specific case of a sale and transfer of possession relieving a prior owner of liability referred to in section 321.493. Also, because of the specific reference to that case, other situations involving owner's liability, as cases where a certificate of title is taken in the name of someone other than the person furnishing money, promising to pay, and taking possession should be governed by the rule of subsection 321.45(2) and that no other interest should be recognized unless indicated on a certificate. The change from "purpose" to "purposes" must mean that in no case involving owner's liability will the conclusiveness test of subsection 321.45(2) apply. Although there is no other affirmative evidence that such a change was intended, a change in language is supposed to generally indicate some change or at least to conform the language to what was intended all along.[39]

B. *Insurance*

The re-enactment of provisions of "conclusiveness" in subsection 321.45(2) should reinforce the conclusion expressed above in connection with the discussion of *State Auto and Casualty Underwriters v. Farm Bureau Mutual Insurance Company*.[40] "Conclusiveness" of the stated interest in a certificate should apply to situations in connection with insurance litigation where ownership or other interests become significant. Note that in the re-enactment of subsection 321.45(2)[41] there are listings of exceptions which do not include any reference to disputes under insurance policies. The reference to "except for purposes of section 321.493," still does not meet the insurance problem because section 321.493 deals only with owner's liability. The familiar maxim that *express unius exclusio alterius*[42] would strongly suggest that when certain exceptions to "conclusiveness" are mentioned no others should be considered.

C. *Security Interests*

Initially it should be noted that the enactment of a comprehensive scheme of rules as to security interests in Article Nine of the Uniform Commercial Code required a decision as to the accommodation[43] to be made between the general pattern of Article Nine for perfection by filing financing statements, and the requirement in various states in connection with motor vehicles that liens be noted on a certificate. The Uniform Commercial Code, as presented for adoption by the sponsoring organizations, presented two alternatives, both of which acquiesce to a certain degree to the certificate of title requirements. Iowa adopted alternative B[44] which excludes from the

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39 J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION §§ 1930, 4510 (3d ed. F. Horach 1943).

40 *See* note 4 *supra*.

41 *See* appendix *infra*.

42 *Supra* note 39, at §§ 4915-17.

43 *See* discussion in GILMORE § 9.2, at 294 about the drafting history of motor vehicle certificate of title legislation. *See also* discussion in Note, *Security Interest In Motor Vehicles Under the UCC: A New Chassis For Certificate of Title Legislation*, 70 YALE L.J. 995 (1961).

44 *See* discussion in GILMORE § 20.8 (Article 9: Relationship with certificate of title acts). Certificate of title acts are discussed generally in GILMORE §§ 20.1-.8.

general requirements of filing financing statements, security interests in motor vehicles which are not inventory held for sale. The 1967 Iowa General Assembly amended this to remove the word "motor," apparently to conform this language to the certificate of title law which requires certificates of title for vehicles other than motor vehicles.[45]

The 1967 Iowa amendments to subsection 321.45(2) and section 321.50 conform to the decision to exclude security interests in new and used vehicles held as inventory for sale from the process of notation on a certificate of title. Initially it may be noted that "inventory held for sale" is a more limited phrase than "inventory" as defined in section 9-109(4) of the Uniform Commercial Code: " 'inventory' if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them . . . ." Apparently the vehicle held for lease would be covered by the requirements for notation on certificates and not the general requirements in Article Nine for filing financing statements.

D. *Perfection of Security Interest*

If the security interest is in a vehicle, other than inventory held for sale, thus excluded from the filing requirements of the Uniform Commercial Code by the Iowa adopted version, section 9-302(4) states the security interest can be perfected only by indication of a security interest on a certificate of title or duplicate. There is a parallel phrase in the exclusion from the "conclusiveness" provisions of subsection 321.45(2) for the case of perfection by notation as provided in section 321.50. There is a slight inconsistency between this and the revised version of section 321.50 which states there is a perfection by *delivery* of an application for certificate, or application for notation of security interest signed by the owner[46] (note that this will be the buyer under a conditional sale), or a certificate from another jurisdiction showing security interest and delivery of the certificate if the owner or secured party is in possession of it. This does not positively define notation as the time of perfection. However, where simultaneous delivery of the certificate is not required there is more possibility of controversy. Subsection 321.45(2) requires the county treasurer to notify the holder of the certificate to deliver for notation within five days and says that the holder of the certificate is liable to anyone harmed by his failure if he fails to deliver within five days. Does this further support a conclusion that the crucial time of perfection is notation rather than simply time of delivery of an application?[47] Otherwise would there be any harm by the failure to note on a certificate? Of course, the harm referred

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45 *See* appendix, note 3 *supra*.

46 Note that in accordance with the definition of "owner" in IOWA CODE § 321.1(36) (1966) this will be the debtor.

47 GILMORE § 20.8, at 576, in discussing a comparable problem of meshing Article 9 with the Uniform Certificate of Title Act, believes that the time of perfection should be governed by the title act and that "indication" of interest is only the ultimate act on which perfection is conditioned. However, in the Iowa certificate of title act the reference is not crystal clear in itself as to time of perfection.

to could be that to someone other than the person delivering the application who was misled by the failure of notation.

The modified re-enactment of subsection 321.45(2) suggests some doubt about the validity of security agreements, even between the parties themselves, and *a fortiori* as against other parties as creditors of the debtor, if there has not been compliance with the perfection provisions, thus adding requirements for enforceability to those of possession or of security agreements signed by the debtor as required in section 9-303, even though section 9-201 does state that "Except as otherwise provided by this chapter a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors." In a prior article this writer discussed the question of whether or not the security interest would be valid between the parties if there were no compliance with notation requirements.[48] At that time, although the basic provision of subsection 321.45(2) was that no court at law or equity was to recognize any right, title, claim or interest not indicated on a certificate (very broad language which would extend to enforceability between the parties) it was concluded that a security interest should be valid between the parties because subsection 321.45(2) contained a general exclusion of section 321.50, and that section, while not positively answering the question, referred only to priorities as to other persons than the debtor and creditor. Under the revised version it is not believed the same escape can be argued. The general exception for section 321.50 is removed and the only applicable exceptions to the "conclusiveness" provisions are in case of *perfection* of a security interest in inventory for sale as provided in Article Nine or the *perfection* of a lien or[49] security interest by notation on the certificate. The conclusion, that security interests are not to be recognized, even between the parties, unless perfected, is further reinforced by the fact that one of the new exceptions specifically refers to a dispute between the parties and does not include the problem of enforceability by the creditor of a security interest. The reference in the revised subsection 321.45(2)(e) is only to disputes between buying and selling dealers or failure to deliver or procure a certificate of title as promised. The special provisions of the certificate law should control over the general references in the Uniform Commercial Code even though subsection 9-203(2), which states that a transaction subject to the Code is also subject to other listed statutes which control, does not, in the Iowa version, include the certificate law.[50]

It should also be noted here that the traditional pledge device is clearly

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48 Hudson, *Iowa Motor Vehicle Certificate of Title Law*, 3 DRAKE L. REV. 3, 12 (1953). French v. Universal C.I.T. Credit Corp., 254 Iowa 1044, 120 N.W.2d 476 (1963) held admissible in an action between the creditor, which was attempting to repossess, and the debtor, a certificate showing no lien.

49 There is no explanation as to what is meant by the added language of "lien or security interest" in the excluded cases in § 321.45(2), rather than the language of "security interest" used in § 321.50.

50 J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 5204 (3d ed. F. Horach 1943). Green v. City of Mt. Pleasant, 256 Iowa 1184, 131 N.W.2d 5 (1964); Smith v. Newell, 254 Iowa 496, 117 N.W.2d 883 (1962).

preserved for the case of inventory held for sale, governed by Article Nine, because possession is a method of perfection sanctioned for goods by section 9-305; whereas for vehicles not held for sale it is unclear because the only exception to the "conclusiveness" provisions in subsection 321.45(2) is where there has been perfection by notation on a certificate.[51]

E. *Waiver and Estoppel*

The reference to waiver or estoppel in the revised version of subsection 321.45(2) is changed. In the former version the phrase, "nor shall any waiver or estoppel operate in favor of any person claiming title to or interest in any vehicle against a person having possession of the certificate of title or manufacturer's or importer's certificate for such vehicle for a valuable consideration," followed the first part of subsection 321.45(2), was preceded by a semicolon and was followed by a period. This was apparently expanding the idea that no person could acquire an interest except by a certificate. Although there was doubt, this writer expressed the opinion in a prior article that a creditor holding a lien could not use the "no waiver or estoppel" idea to protect himself, without notation on the certificate, just by holding the certificate, except where a manufacturer's certificate was involved (and no notation was required under the statute), or a notation was not required because there was no lien or security interest to be noted.[52] In the new version the former phrase "Except for . . . " (exclusions from the "conclusiveness" provisions) have been switched from the front and added to the end of the first section of subsection 321.45(2) so that now literally no waiver or estoppel operates in favor of a person claiming an interest in a vehicle against a person having possession of a certificate except in the case of perfection of the security interest. On the face of the language, this might be interpreted to mean that no waiver or estoppel would apply against the possessor of a certificate in the case of an unperfected security interest. But it would seem to be absurd[53] to conclude that this means an unperfected security interest may be protected solely by holding a certificate, because the apparent purpose of providing in the revised subsection 321.50(5) that "[t]he Uniform Commercial Code chapter 554, Article Nine, shall apply to all transactions intended to create a security[54] in vehicles except as provided in this chapter," was, in part, to incorporate the system of priorities referred to in Article Nine (as section 9-301, unperfected security interest subordinate to certain lien creditors and purchasers, and section 9-312, certain specialized rules of priority). This is especially true because the new version of section 321.50, unlike the former, contains no provisions as to priorities, and because of the argument referred to above—

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[51] *See* discussion in GILMORE §§ 20.5, 20.8 about the possibility of a possessory security interest under the Uniform Certificate of Title Act.

[52] Hudson, *Iowa Motor Vehicle Certificate of Title Law*, 3 DRAKE L. REV. 3, 13 (1953).

[53] J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION §§ 4508, 4508.1, 4706, 5505 (3d ed. F. Horach 1943).

[54] U.C.C. art. 9 refers to a "security interest."

that unperfected security interests in vehicles subject to registration are not enforceable even between the parties. Mere possession of the certificate if a security interest is involved should not be enough, for protection of that interest.

The provision that waiver and estoppel would apply to cases of perfection and that Article Nine shall apply to all transactions intended to create a security were presumably intended to be applicable even to perfected security interests. This is indicated by such sections as 9-307(1), which provides that a buyer in the ordinary course of business takes free of security interests created by his seller even though the security interest is perfected and even though the buyer knows of its existence; and subsection 9-307(2) which provides that in the case of consumer goods and farm equipment not in excess of one thousand dollars, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest for his own personal, family or household purposes, or his own farming operation, unless prior to the purchase the secured party has filed a financing statement.[55] "Estoppel" may go beyond these situations in view of section 1-103 which provides in part that "unless displaced by the particular provisions of this chapter, the principles of law and equity, including . . . estoppel . . . shall supplement its provisions."

F. *Security Interest Transactions*

The "no waiver or estoppel" provision should apply in cases which do not classify as a "security interest" under Article Nine, in view of the "conclusiveness" provisions to the effect that no court should recognize any interest except that on the certificate. However, there may be difficulty in classifying certain transactions as "security interests" within the province of Article Nine, or the notation requirements to certificates. Reference is made, for example, to the "cash" sale cases, where a check is given in what otherwise appears to be a noncredit sale, but the check never clears after possession is given. Under the pre-Uniform Commercial Code and pre-certificate of title law in Iowa, the Iowa Supreme Court decided in *Hull-Dobbs Motor Company v. Associates Discount Corporation*,[56] *supra* that a sales transaction, under which a title certificate was attached to a check given in Illinois for automobiles, to be delivered only upon clearance of the check, was a "sale on condition" within the meaning of the former provisions requiring recording, so that a company which lent money to the Iowa buyer on the cars purchased in Illinois and brought to Iowa, would prevail against the Illinois seller because the transaction was not recorded. Although the theory of the "cash sale" cases was that title was retained until the payment was made, in the check cases, until the

[55] Note that in non-inventory for sale cases under § 321.50 financing statements are not filed.

[56] 241 Iowa 1365, 44 N.W.2d 403 (1950). *See* discussion of this case and other Iowa cases involving bad checks in Hudson, *Iowa Motor Vehicle Certificate of Title Law*, 3 DRAKE L. REV. 3, 14 (1953).

check cleared, there was doubt that these cases were the kind of credit sales—extended deferred payment and immediate possession—contemplated by the recording statutes.[57] Under the Uniform Commercial Code and certificate of title provisions such a result as in *Hull-Dobbs* is even more likely. Article Nine is stated to apply to any transaction which is "intended to create a security interest in personal property" regardless of form, to "security interests created by contract including . . . conditional sale, trust receipt, bailment,[58] other lien or title retention contract and lease or consignment intended as security," and subsection 1-201(37) states: " 'security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation." Although subsection 321.45(2) broadly excludes from the "conclusiveness" provisions the case of perfection of a security interest by notation on the certificate of title as required by section 321.50, this is no doubt referring to the security interests which require filing of financing statements under Article Nine, because of the parallel reference to Article Nine with reference to vehicles held as inventory for sale and the general reference to Article Nine in section 321.50. The seller of goods for which he has taken a check would probably resist strongly any notion that he intended to take a security interest. However, subsections 1-201(37) and 2-401(1) state that the retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a security interest.[59] Interpreting the "cash sale" or other cases as at most a "security interest" under Article Two would not change the conclusion of requiring perfection because section 9-113 states that:

> A security interest arising solely under the Article on Sales (Article 2) is subject to the provisions of this Article except that to the extent that so long as the debtor does not have or does not lawfully obtain possession of the goods
>
> *a.* no security agreement is necessary to make the security interest enforceable; and
>
> *b.* no filing is required to perfect the security interest; and
>
> *c.* the rights of the secured party on default by the debtor are governed by the Article on Sales (Article 2).[60]

In most of the cases the debtor has possession.

In the circumstances in the *Vannoy* case, *supra*, the retention of the certificate on behalf of a guarantor, to insure performance of an obligation, should more clearly be held to be a "security interest" case under the Uniform

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[57] GILMORE §§ 3.2, 3.7; DUESENBERG & KING § 10.02(1); note *The "Cash Sale" Presumption In Bad Check Cases: Doctrinal And Policy Anomaly*, 62 YALE L.J. 101, 109 (1952).

[58] The word "bailment" is added to the Iowa version, apparently to tie in with the phrase added in the Iowa version of U.C.C. § 1-201(37), definition of "security interest" that: "The term also includes any interest of an owner of farm products whose possession is entrusted to a person engaged in farming operations."

[59] *See* DUESENBERG & KING § 10.06(1), at 10-43 emphasizing that retention or reservation of title by a seller is what happens in a "cash sale."

[60] *See* discussion of U.C.C. § 9-113 in GILMORE § 11.3; DUESENBERG & KING § 13.03(4), at 13-27. *See also* COOGAN, HOGAN & VOGTS, SECURED TRANSACTIONS UNDER U.C.C. 1871 *et seq.* (1966).

Commercial Code and thus subject to a requirement of perfection for protection against the innocent purchaser.

G. *Effect of not Classifying Transactions as Security Interests*

If these transactions, as the "cash sale," or lease, or consignment, or others, are not classified as "security interests" and subject to requirement of perfection in some way as indicated in Article Nine or section 321.50, there are some sections in Article One and Two of concern in discussing whether the seller, or other party, may rely on holding the certificate and rely on the "conclusiveness" provisions and the section as to no waiver or estoppel to protect him. There is no specific phrasing in the complementary amendments to the Uniform Commercial Code relating to the certificate of title law specifically preserving the applicability of Article One and Article Two, as there is in section 321.50 preserving applicability of Article Nine to all transactions intended to create a security interest except as otherwise provided. Of concern in Articles One and Two are subsection 1-201(37) which provides that unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest," but a consignment is in any event subject to the provisions on consignment sales in section 2-326, which purports to give rights under certain circumstances to creditors of a person in possession of the goods on "consignment" even if not "intended as security"[61] if there is no filing under Article Nine or compliance with other requirements; and section 2-403 which provides that where goods have been delivered under a transaction of purchase, the purchaser has such power (to transfer a good title to a good faith purchaser for value) even though the delivery was in exchange for a check which is later dishonored, or if it was agreed that the transaction was to be a cash sale, that entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in the ordinary course of business (defined in subsection 1-201(9)). Although there may be a disagreement, it is believed a purchaser could be a good faith purchaser without obtaining a certificate.[62] Also see subsection 2-507(2) which provides: "Where payment is due and demanded on the delivery to the buyer of goods or documents of

[61] *See* discussion in DUESENBERG & KING § 11.03 as to whether a "consignment" is intended as security and thus demands compliance with Article 9 and of U.C.C. § 2-326 with its specialized requirements for consignments even if not intended as security, one of which may be complying with the filing requirements of Article 9. *See* GILMORE §§ 3.5, 11.2 on consignments.

[62] *But see* the announcement in some of the cases discussed in Hudson, *Iowa Motor Vehicle Certificate of Title Law*, 3 DRAKE L. REV. 3, 14 (1953) in which an argument of not being an innocent purchaser was used as an alternative basis for denial of the third party claim. *See also* DUESENBERG & KING § 10.06(1), at 10-48 to the effect that there is nothing in the U.C.C. which requires that the jurisdiction protect the innocent buyer over the defrauded seller if the innocent buyer failed to get a certificate at the time.

Humphrey Cadillac & Oldsmobile Co. v. Sinard, 229 N.E.2d 365 (Ill. App. 1967) protected a purchaser, who did not obtain a certificate, as a good faith purchaser from a retailer, as against a wholesale auto dealer whose agent had turned the car over to a retail dealer in violation of instructions.

title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due;" subsection 2-511(3) which provides: "Subject to the provisions of this chapter on the effect of an instrument on an obligation [section 3-802], payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment." In the 1962 edition of the Uniform Commercial Code, published by the sponsoring organization, Comment 3 to section 2-507 states:

> These words [right as against the seller] are used as words of limitation to conform with the policy set forth in the bona fide purchase sections . . . . Should the seller [of the vehicle] after making such a conditional delivery fail to follow up his rights, the condition is waived. The provision of this article for a ten day limit within which the seller may reclaim goods delivered on credit to an insolvent buyer [section 2-702 is also applicable here].

As to the latter sentence it is not apparent from section 2-702 which provides that where the seller discovers that the buyer has received goods on credit while insolvent, he may reclaim the goods upon demand made within ten days after receipt, unless misrepresentation is made of solvency in writing within 3 months, subject to the rights of a good faith purchaser or lien creditor, and which provides, except as in this subsection (2), that the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or intent to pay, why that would be so, that the rule on sale on credit would apply to the sale for cash unless the very period of delay in check clearance is considered to make it a sale on credit. Such a consideration would be inconsistent with Comment 6 to section 2-511, which states: "where the instrument offered by the buyer is not a payment but a credit instrument such as a note or a check postdated by even one day, the seller's acceptance of the instrument insofar as third parties are concerned, amounts to a delivery on credit and his remedies are set forth in the section on buyer's insolvency."[63] In any event, regardless of what interpretation[64] might be placed on these sections generally, it is believed that the special[65] provisions of the certificate law should prevail over the general provisions of the Uniform Commercial Code and that if the transaction is not classified as a security interest, the "conclusiveness" provisions of, and the "no waiver or estoppel" provisions, of subsection 321.45(2) should control and prevent recognition of interests of third party purchasers from, and creditors of the buyer,[66] as against the seller in possession of a certificate which

[63] DUESENBERG & KING § 13.02(1)(b), at 13-6 n.2, points out that U.C.C. § 2-702(3) deals only with an insolvent buyer and that its provisions would be inapplicable where a seller asserts rights to cancel and reclaim under § 2-507(2) [and § 2-703(f)] and that there is nothing about the rights of lien creditors as to reclamation under § 2-507(2). Rights of purchasers would be controlled by § 2-403.

[64] *See* discussion of problems in GILMORE § 3.2 n.2-4; Shanker, *Bankruptcy and Article 2 of The U.C.C.*, 40 REF. J. 37 (1966); Braucher, *Reclamation of Goods From a Fraudulent Buyer*, 65 MICH. L. REV. 1281 (1967).

[65] J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 5204 (3d ed. F. Horach 1943).

[66] Similarly purchasers and creditors of a seller in possession should prevail as against

does not disclose the interest of the buyer in spite of the provision of the certificate law for delivery of certificate on a sale.[67]

H. *Problems of Interstate Vehicle Transaction*

Attention is now given to the interaction of the Uniform Commercial Code version of the certificate of title law on the problems involved in vehicles moving from state to state,[68] as in the *Northern Insurance* case (the stolen car from Illinois) and *Merchants and Farmers State Bank* case (the Texas chattel mortgage), *supra.* Consideration must still be given to the strong language preserved in subsection 321.45(2) that no court in law or equity shall recognize any right, title, claim or interest of a vehicle subject to registration in this state except in case of perfection by notation on the certificate as provided in section 321.50 or perfection of a security interest in new or used vehicles held as inventory for sale as provided in the Uniform Commercial Code, Article Nine, subsection 321.50(1), applicable to vehicles not held as inventory for sale which states: "If a vehicle is subject to a security interest when brought into this state, the validity of the security interest and the date of perfection is determined by the Uniform Commercial Code, section 554.9103." Section 9-103 contains several pertinent provisions: Subsection 9-103(2) refers to validity and perfection of goods normally used in more than one jurisdiction (such as automotive equipment and rolling stock) and uses, in general, a chief place of business as the controlling jurisdiction; and subsection 9-103(3), in other cases, provides that if personal property was subject to a security interest when it was brought into the state as quoted above, validity and perfection[69] are determined in accordance with certain rules; for example, protecting a perfection in one state only for four months in another state into which the property was brought. However, in subsection 9-103(4) it states that, notwithstanding the prior subsections, if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which required indication on a certificate of title of any security interest on

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a buyer only if the certificate situation reflects the interest of the seller and not the buyer, in spite of such sections as U.C.C. § 2-402 (rights of seller's creditor against sold goods) and U.C.C. § 2-403(3) (entrusting includes acquiescence in retention of possession with consequences from entrustment to a merchant in § 2-403(2)). It should be noted that the former provisions of the Iowa recording statute, IOWA CODE § 556.3 (1962), which protected purchasers and creditors of a seller in possession if there was no recording, has been repealed along with repeal by enactment of the U.C.C.'s recording sections. Note further that the only exclusion from the "conclusiveness" provisions of the certificate law, of pertinent application herein, is § 321.45(2)(c) as to actions between the buyer and seller when the seller fails to deliver the certificate. There is no reference to actions against third persons. *See* discussion of the former situation in Hudson, *Iowa Motor Vehicle Certificate of Title Law*, 3 DRAKE L. REV. 3, 19 (1953).

67 IOWA CODE §§ 321.45(1), 321.48, 321.67 (1966).

68 *See* GILMORE §§ 22.2-.9 for general discussion of problems created by removal of collateral from one state to another. *See* discussion of the Federal Motor Vehicle Lien Act in GILMORE §§ 13.7, 23.1-.4 setting rules for perfection of security interests in vehicles owned or operated by carriers holding certificates of convenience and necessity under the Interstate Commerce Act.

69 *See* discussion in GILMORE § 10.10 about uses of the words "validity and perfection."

the property as a condition of perfection, the perfection is governed by the jurisdiction which issued the certificate.

Note that these provisions do not refer at all to the situation of the "stolen car" referred to in the *Northern Insurance Company* case, *supra*. This is not a "security" case. The provisions of section 2-403 have not been extended to protect a purchaser from a thief but do protect a bona fide purchaser in the case of a voidable title, a transaction of purchase (as where fraud and bad check) or entrustment (to a merchant where a buyer in ordinary course of business wins). Despite this it is concluded that the re-enactment of the "conclusiveness" provisions of the certificate of title law with a listing of specific exceptions, not including the situation of the stolen car as in *Northern Insurance*, re-enforces the opinion previously expressed by this writer that the Iowa holder of a certificate should be preferred to the Illinois interest. A specific listing of exceptions should exclude all others.[70] This should apply both to inventory held for sale and all others.

As to security interests and the situation in the *Merchants and Farmers State Bank* case, *supra*, where the vehicle came from a state where there was a certificate on which a lien was noted and was brought to Iowa where a certificate was issued without notation of the Texas lien, the solution of the problem is a little more difficult. An initial difficulty is that the provisions of the Uniform Commercial Code apparently do not contemplate the case of two conflicting certificates.[71] The amendments to the Iowa certificate of title law are helpful. As indicated above, subsection 321.50(1) provides in part that if a vehicle is subject to a security interest when brought into this state, the validity of a security interest and date of perfection are determined by section 9-103, subsection 321.50(5) provided that Article Nine shall apply to all transactions intended to create a security interest in vehicles "except as provided in this chapter." The reference to section 9-103 must include a reference to subsection 9-103(4) which states that, notwithstanding the prior subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, perfection is governed by the law of the jurisdiction which issued the certificate. Subsection 9-103(4) refers to the law of *this* state, or any other jurisdiction. The "conclusiveness" provisions of the certificate law have exceptions only in case of perfection in new or used vehicles held

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70 J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION §§ 4915-17 (3d ed. F. Horach 1943).

71 Vernon, *Recorded Chattel Security Interests In The Conflict of Laws*, 47 IOWA L. REV. 346, 379 (1962); *see* discussion of U.C.C. § 9-103(4) in GILMORE § 22.7, at 622, § 10.10 at 326. *See* case comment in 47 B.U.L. REV. 430 (1967) on First Nat. Bank of Stamper, 93 N. J. Super. 150, 225 A.2d 162 (1966), critical on the result there for the reason that under U.C.C. § 9-103(4) the "indication" on the title certificate is that situation as of the time of entrance of the vehicle into the state, so that, where a vehicle came from a state where no indication of a security interest was required on a certificate into a state where such a requirement was present, the interest in the entered state was lost where a new certificate in the entered state was procured.

as inventory for sale as provided in Article Nine, or in case of perfection by notation on the certificate as provided in section 321.50 (non-inventory), which language is not the exact equivalent of the language in subsection 321.50(1). Despite this in the interest of resolving the conflict between the law of this state and another state, especially where two certificates are issued, and in the interest of furthering the apparent desire, in the certificate law by the similarity of language in subsection 321.50(1) and section 9-103, to treat non-inventory and inventory cases alike as to security interests from other states, this reference to the law of *this* state (Iowa) should be interpreted to mean that the issuance of an Iowa certificate without a reference to the security interest from the other state would not be "conclusive" as to that other interest. For example, if the vehicle had been covered by a certificate in a jurisdiction requiring indication on the certificate, as in the *Merchants and Farmers State Bank* case, *supra*, this certificate and security interest should prevail for an indefinite period in Iowa unless there is something in the other state's law against such a conclusion. If the vehicle is not covered by a certificate from a jurisdiction requiring indication on the certificate as a condition of perfection, then subsection 9-103(4) would not apply and the answer to the conflict would be in subsection 9-103(2) or (3). For instance, under subsection 9-103(3), if the security interest was perfected under the law of the jurisdiction where the security interest attached, and before being brought into this state, the security interest should continue perfected for four months and thereafter if within four months there is perfection in this state. In both cases this should be the conclusion, even though an Iowa certificate is issued, and whether or not the vehicle in Iowa is treated as inventory held for sale.

APPENDIX

Certain complimentary amendments to sections of the Iowa Code were included in the law enacting the Uniform Commercial Code.[1] Certain[2] pertinent sections of the certificate of title law are reproduced here for easy reference in parallel columns, on the left are statutes effective to July 4, 1966 and on the right are statutes effective on and after July 4, 1966 as a result of the enactment of the complimentary amendments. Also included in the right-hand column are certain pertinent provisions of the Uniform Commercial Code to security interests.

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1 Ch. 413, § 10105 *et. seg.*, [1965] Iowa Acts 791 *et. seg.*

2 Ch. 413, § 10109, [1965] Iowa Acts 792 amended IOWA CODE § 321.47 (1962) essentially to substitute the "security interest" langage of the U.C.C. Ch. 413 § 10111, [1965] Iowa Acts 794 amended IOWA CODE § 321.47 (1962) to eliminate a prior amendment commented on in Hudson, *Iowa Motor Vehicle Certificate of Title Law II*, 4 DRAKE L. REV. 86, 91 (1955), about acknowledgment of a lien by a spouse.

§ 321.1(36)

Effective To July 4, 1966	Effective On And After July 4, 1966
"Owner" means a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right or possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.	"Owner" means person who holds the legal title of a vehicle, or in the event a vehicle is the subject of a security agreement with an immediate right of possession vested in the debtor, then such debtor shall be deemed the owner for the purpose of this chapter.

§ 321.45(2)

Except as provided in section 321.50 and except for the purpose of section 321.493 no person shall acquire any right, title, claim or interest in or to any vehicle subject to registration under this chapter from the owner thereof except by virtue of a certificate of title issued or assigned to him for such vehicle or by virtue of a manufacturer's or importer's certificate delivered to him for such vehicle; nor shall any waiver or estoppel operate in favor of any person claiming title to or interest in any vehicle against a person having possession of the certificate of title or manufacturer's or importer's certificate for such vehicle for a valuable consideration. Except as provided in section 321.50 and except for the purpose of section 321.493, no court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title or manufacturer's or importer's certificate duly issued or assigned in	No person shall acquire any right, title, claim or interest in or to any vehicle subject to registration under this chapter from the owner thereof except by virtue of a certificate of title issued or assigned to him for such vehicle or by virtue of a manufacturer's or importer's certificate delivered to him for such vehicle; nor shall any waiver or estoppel operate in favor of any person claiming title to or interest in any vehicle against a person having possession of the certificate of title or manufacturer's or importer's certificate for such vehicle for a valuable consideration except in case of a. the perfection of a lien or security interest by notation on the certificate of title as provided in section 321.50, or b. the perfection of a security interest in new or used vehicles held as inventory for sale as provided in Uniform Commercial Code, chapter 554, Article 9, or c. a dispute between a buyer and the selling dealer who has failed to

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accordance with the provisions of this chapter.

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deliver or procure the certificate of title as promised, or

d. except for the purposes of section 321.493. Except in the above enumerated cases, no court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title or manufacturer's or importer's certificate duly issued or assigned in accordance with the provisions of this chapter.

§ 321.50

The provisions of chapter 556 shall never be construed to apply to or permit or require the deposit, filing or other record whatsoever, of a chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument, or any copy of the same covering a vehicle subject to registration under the laws of this state, except trailers whose empty weight is two thousand pounds or less and wagon box trailers subject to a registration fee of five dollars or less. Provided, the inclusion of a motor vehicle in a chattel mortgage describing other property as security shall not deprive said chattel mortgage of eligibility for filing or recording in the office of the county recorder. Any mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract or similar instrument covering such vehicle, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of the same by the holder of said instrument or, in the case of the certificate of

1. A security interest in a vehicle subject to registration under the laws of this state, except trailers whose empty weight is two thousand pounds or less, and wagon box trailers subject to a registration fee of five dollars or less, and new or used vehicles held by a dealer or manufacturer as inventory for sale, is perfected by the delivery to the county treasurer of the county where the certificate of title was issued or, in the case of a new certificate, to the county treasurer where the certificate will be issued of an application for certificate of title which lists such security interest, or an application for notation of security interest signed by the owner, or a certificate of title from another jurisdiction which shows such security interest, and a fee of one dollar for each security interest shown. If the owner or secured party is in possession of the certificate of title, it must also be delivered at this time in order to perfect the security interest. If a vehicle is subject to a security interest when brought into this state, the validity of the security interest and the date of per-

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title, if a notation of same has been made by the county treasurer on the face thereof, shall be valid as against the creditors of the mortgagor, whether armed with process or not, and subsequent purchasers, mortgagees and other lienholders or claimants, but otherwise shall not be valid against them. The county treasurer shall note upon the certificate of title all liens shown in the application for such certificate of title, upon the payment of a fee of one dollar for each lien appearing on such application. All liens, mortgages and encumbrances, noted on a certificate of title, shall take priority according to the order of time in which the same are noted thereon by the county treasurer. Exposure for sale of any such vehicle by the owner thereof, with the knowledge and consent of the holder of any lien, mortgage or encumbrance thereon, shall not render the same void or ineffective as against subsequent purchasers or the creditors of such owner or holder of subsequent liens, mortgages or encumbrances upon such motor vehicle or trailer. The holder of a chattel mortgage, trust receipt, conditional sales contract, or similar instrument, upon presentation of such instrument or certified true copy thereof, to the treasurer of the county where such certificate of title was issued, together with the certificate of title and fee of one dollar and fifty cents, may have a notation of such lien made on the face of such certificate of title. The county treasurer shall enter said notation and the date thereof over the signature of such officer or deputy and the seal of office, and he shall also note such lien and the date thereof on the duplicate of same on file, and on

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fection is determined by the Uniform Commercial Code, section 554.9103.

2. Upon receipt of the application and the required fee, the county treasurer shall notify the holder of the certificate of title to deliver to the county treasurer, within five days from the receipt of notice, the certificate of title to permit notation of the security interest. If the holder of the certificate of title shall fail to deliver it within the said five days, he shall be liable to anyone harmed by his failure.

3. Upon receipt of the application, the certificate of title, if any, and the required fee, the county treasurer shall note such security interest, and the date thereof, on the certificate over the signature of such officer or deputy and the seal of office. He shall also note such security interest and the date thereof on the duplicate of same on file. On that day he shall notify the department on forms provided by the department, which shall note such security interests on the duplicate title in its file. The county treasurer shall then mail the certificate of title to the first secured party as shown thereon.

4. When a security interest is discharged, the holder thereof shall execute a release within fifteen days after payment is received, such release to contain the certificate of title number, the date of the notation thereof, and the name and address of the person to whom the title shall be delivered when such delivery is requested as hereinafter provided. The holder shall also note a cancellation of same on the face of the certificate of title over his, her or its signature, and deliver the release and certificate of title to the county treasurer where title

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that day shall notify the department on forms provided by the department, which shall note such liens on the duplicate title in its file. The county treasurer shall also indicate by appropriate notation on such instrument itself or certified true copy thereof, the fact that such lien has been noted on the certificate of title. The county treasurer upon receipt of a lien duly executed in the manner prescribed by law governing such lien instruments, together with the fee prescribed for notation of lien, shall mail a notification to the first lienholder at the address of such first lienholder as indicated by records of the county treasurer, to deliver to the county treasurer, within five days from the receipt of notice, the certificate of title to permit notation of such junior lien. After such notation of lien the county treasurer shall deliver the certificate of title to the first lienholder. The holder of a certificate of title who refuses to deliver a certificate of title to the county treasurer for the purpose of showing the junior lien on such certificate of title within five days from the date when notified to do so by the county treasurer, shall be liable for damages to such junior lienholder for the amount of damages such junior lienholder suffered by reason of the holder of the certificate of title refusing to permit the showing of such lien on the said certificate of title. When a lien is discharged, the holder thereof shall execute a notarized release within fifteen days after payment is received, such release to contain the certificate of title number, the amount of the lien, the date of the notation thereof and the name and address of the person to whom the title shall

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was issued. The county treasurer shall immediately note the cancellation of said security interest on the face of the certificate of title and on the duplicate of same on file in his office. On the same day he shall notify the department, which shall note such release on the duplicate title in its file. The county treasurer shall on the same day deliver the certificate of title to the then first secured party or, if there is no such person, to the person as directed on the lien release or, if there is no such person designated, then to the owner. Said cancellation of the security interest shall be noted on certificate of title by the county treasurer without charge. The holder of a lien discharged by payment who fails to release such lien as herein provided within fifteen days after being requested in writing to do so shall forfeit to the person making such payment the sum of twenty-five dollars. Such request shall be on the release form as prescribed by the department and shall contain a statement signed by the owner setting forth the name and address of the person to whom the title shall be delivered.

5. The Uniform Commercial Code, chapter 554, Article 9, shall apply to all transactions intended to create a security in vehicles except as provided in this chapter.

§ 554.9302

3. The filing provisions of this Article do not apply to a security interest in property subject to a statute.

* * *

b. of this state which provides for central filing of security interests

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be delivered when such delivery is requested as hereinafter provided. The holder shall also note a cancellation of same on the face of the certificate of title over his, her, or its signature, and deliver the release and certificate of title to the county treasurer where title was issued who shall immediately note the cancellation of said lien on the face of the certificate of title and on the duplicate of same on file in his office, and on the same day shall notify the department, which shall note such release on the duplicate title in its file. The county treasurer shall on the same day deliver the certificate of title to the then first lienholder, or, if there is no such person, to the person as directed on the lien release or, if there is no such person designated, then to the owner. Said cancellation of lien shall be noted on the certificate of title by the county treasurer without charge. The holder of a lien discharged by payment who fails to release such lien as herein provided within fifteen days after being requested in writing to do so shall forfeit to the person making such payment the sum of twenty-five dollars. Such request shall be on the release form as prescribed by the department and shall contain a statement signed by the owner setting forth the name and address of the person to whom the title shall be delivered. The provisions of chapter 556 shall continue to apply to the deposit, filing, refiling or other record whatsoever of a chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument, or any copy of same, made prior to October 1, 1953, and covering a motor vehicle, semi-trailer or trailer.

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in such property, or in a [motor][3] vehicle which is not inventory held for sale for which a certificate of title is required under the statutes of this state if a notation of such a security interest can be indicated by a public official on a certificate or duplicate thereof.

4. A security interest in property covered by a statute described in subsection 3 can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

§ 554.9103

3. If personal property other than that governed by subsection 1 [accounts] and (2) [general intangibles and goods normally used in more than one jurisdiction] is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the

[3] Original provision was amended by 2 Iowa Leg. Serv. 156 (1967) (commonly referred to as Senate File 560), to remove the word "motor," apparently to conform to provisions of the certificate of title law which require certificates for other than motor vehicles because they are "subject to registration" under ch. 321. Pertinent sections of IOWA CODE (1966) are § 321.1(1), (2), (9), (10), (68); § 321.18 (subject to registration); § 321.45(1) (inclusion of mobile home, travel trailer and camping trailer); § 321.122 (registration fees of tractor and semi-trailer); § 321.123 (trailers and mobile homes). Note that the general provision of § 321.18 is that every motor vehicle, trailer and semi-trailer when driven or moved on a highway shall be subject to registration but § 321.123 provides for a registration fee for mobile homes, travel trailers and camping trailers whether used on the highway or not.

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security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within thirty days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into the state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into the state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

4. Notwithstanding subsections 2 and 3, if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which required indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.