

Whose car is it?

by Agitarox@banet.net

Lots of people wind up in traffic court at one time or another. Most people just pay their tickets to avoid going there in the first place, most of the rest wind up paying no matter what their defense might be. However, an obstinate few will bring up their rights recognized by the Constitution as a part of their defense – sometimes in relation to the actual charge, sometimes in relation to the way the court handles the case itself.

My advice?

Don't bother bringing up the Constitution in traffic court.

Why? Because in my opinion, the Constitution is irrelevant. More than once I've heard people tell stories of exasperated judges warning the "hose-ees" appearing in that court that if they mentioned the Constitution one more time, they'd be found in contempt of court.

How could the Constitution *not* be relevant in a court, you ask? Well, if the case at hand was a matter of *law*, and it involved *your* property, and you weren't involved in a star chamber/extortion mill proceeding, the Constitution might be relevant. Unfortunately for you, traffic cases don't involve law, it don't involve your property, and when entering traffic court, you've stepped onto a conveyor belt designed and operated to part you from your money.

The astute observer will have noticed at least two issues in that last statement that don't jibe with conventional thought. Allow me to examine them in a little detail.

Are you sure it's your car?

The first issue is whether this traffic incident actually involves what you *think* is your property – "your" car. But are you sure it's *your* car?

You bought the car brand, spanking new from your local dealer and finally paid off the bank note. What a nice feeling to get that envelope in the mail with that "Certificate of Title" marked "PAID."

Ahhhhhhhhh . . . it's Miller time!

But before you get too comfortable and break out the potato

chips, let's look at what happened over the last 48 months.

When you bought the car what did you do? You wrote a check for the down payment. When the car arrived at the dealer's lot, you wanted to drive it NOW so you let the dealer title it with the state. Naturally, since you still owe a lot of money on that car, the bank got the "Certificate of Title" until you paid off the loan.

STOP. Think about what just happened.

What's a FRN?

First, you cut a down payment check to be "paid" in Federal Reserve Notes. Since I started talking about the Constitution let's examine what FRN's are.

First I'll tell you what they aren't. They aren't money. They may be "legal tender for all debts public and private" but they aren't money. Debts can only be *paid* with money; lawful money, i.e., gold and silver coins of the united States of America per 12 USC 152.

So you didn't really PAY off that loan, you merely *discharged* that debt with a negotiable instrument of debt (FRNs). So you didn't really *pay* that debt, you merely *discharged* it.

If you didn't really pay for "your" car, how can you claim to own it?

It was your car . . . sort of . . .

The next thing you did was let the dealer "title" your car since you wanted to drive that new car off the lot NOW – not later.

What exactly happens there? The dealer took the Manufacturer's Statement of Origin (MSO), which was the first piece of paper constituting legal evidence of ownership of the car and *gave it to the state!*

Think about that. Here you are, authorizing the dealer to take the only evidence of "ownership" associated with that car and *donate* it to the government.

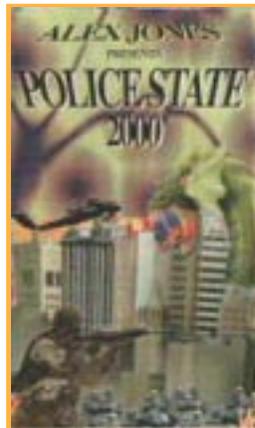
What does the state give the dealer in return for that document of ownership? They give him a "certificate of title" – evidence that a "title" *exists* – but not the "title" itself and not a document showing that *you* have the actual absolute right, title, and interest in that car.

Huh? You got a piece of paper that has your name on it, THEIR name on it, and the word "owner" is next to your name. You own it, right?

WRONNNNG!!!

The "*certificate of title*" is merely *evidence* that a title exists. Someone in the state government has signed a document that "certifies" that a title exists (somewhere). Hence, the document is called a "*Certificate of Title*" rather than a "Title".

There are a dozen different ways to legally define "ownership" but the one we're concerned with here involves the bare legal owner-



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ship in the form of a “possessory right.”

You may have physical *possession* of the car but that doesn’t necessarily mean you “own” it the way you think of the concept of ownership.

What is the true title for that car? The “Manufacturer’s Statement of Origin” (the “MSO”) – an actual attested legal document prepared by the manufacturer stating that they created the car (manufactured it) and therefore own it (until they sell it).

The next owner can prove his true ownership of the new car in law by possession of the MSO *and* a bill of sale. What was the document showing ownership or “title” of the car during the time between when the manufacturer built and owned it and the dealer sold it to you? The MSO.

If the MSO is only an indication of what type of car it is, what year it was made, or other sundry descriptive information, why would the state be so concerned with receiving and RETAINING it?

If the MSO is not the legal title, why wouldn’t simply showing the MSO to the state suffice? Why is the state so concerned that the “Certificate of Title” be printed on archival grade, fraud resistant, security-featured document paper - the kind normally reserved for legal documents like stock certificates, and titles to homes and land?

Why do they insist on the delivery and *retention* of the *original* MSO? Why wouldn’t a court certified copy do? Or an official notice from the manufacturer? Isn’t the point of the MSO to simply to show that the car that was delivered to you was new and that you own it? In fact, if you march down to a court reporter/notary public/judge with the dealer and have the reporter/authority certify under oath that the MSO that you hold is the original, have the dealer affirm under oath in an affidavit that he delivered the original MSO to you – and you then bring a court-certified copy of that MSO to the Department of Motor Vehicles to “title” it – they still won’t take it.

Why? Because they need the *original* MSO to effect a transfer of actual title to them, to the *state*. They then issue you a “Certificate of Title” which merely evidences that a transfer took place, that an actual title does exist, and that while they hold *actual* title and therefore legal ownership of they car, you have bare legal possession of the car. So who was it that really owns “your” car?

Your car goes into a trust

OK, so now the state owns your car. So what? Well, here’s what. What’s the first thing you let that dealer do after he got “your” car titled? He registered it.

What’s wrong with that? You have to understand how registration affects the status of property and you have to understand the concept of trusts. A trust is a situation where property is held by a legal entity for the “benefit” of another. That property may or may not be in the physical possession of a trustee of the trust. No matter who has physical possession of the property, it is subject to the terms of the trust. Anyone having physical possession of trust assets has a fiduciary duty to maintain or improve the assets of that trust for the benefit of whoever holds interest in the trust.

The terms of a trust are its “constitution.” While the Federal Constitution involves *law*, the terms of a trust involve private law or contract law that will be litigated in courts of equity. (Incidentally, who owns and operates the courts of equity? The same state that owns legal title to “your” car. Should we be surprised if the state’s courts routinely ruled in favor the state?)

What is required to create a trust? Massachusetts law is probably representative of most state’s law on trust creation. In Massachusetts, there are three legal requirements to create a trust:

1. A written transfer of the property to another “person” containing a description of the property.
2. The names of at least three parties involved
 - a. creator/transferor of the trust;
 - b. custodial trustee of the trust;
 - c. beneficiary of the trust.
3. An evidencing of the creation of a trust by a registration of the property.

Check it out. According to the Massachusetts General Laws,

2. Uniform Custodial Trust Act

§ 18:52 Generally; creation [14 Mass Jur DECEDENTS’ ESTATES AND TRUSTS]

A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer, executed in any lawful manner, naming as beneficiary, an individual who may be the transferor, in which the transferee is designated, in substance, as custodial trustee. 95 [Emphasis added]

If you read Section 18:52 carefully you’ll notice two terms that are easily misunderstood or overlooked: “person” and “individual.” The average person wouldn’t dream that the meanings of “person” or “individual” could include “government,” but the average person would be WRONNNNNNG!!!

Both “person” and “individual” can be used to identify a legal

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fiction such as corporate state government. Look them up in *Black's Law Dictionary* to see what I mean.

Notice also that the *creation* of the trust is “evidenced by *registration*” of the property. What did you do with that car after you gave the title to the state? You *registered* it. By *registering* the car, you effectively created a trust wherein the state owns legal title to the car and you merely retain equitable title (possession).

The Uniform Custodial Trust Act continues:

A person may create a custodial trust of property by a written declaration, evidenced by *registration* of the property or by other instrument of declaration executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant.

A registration or other *declaration of trust* for the sole benefit of the declarant will *not* constitute a custodial trust. 96

Title to custodial trustee property will be in the custodial trustee and the beneficial interest will be in the beneficiary. 97

Any person may augment existing custodial trust property by the addition of other property pursuant to the Act. 98

The Uniform Custodial Trust Act will not displace or restrict other means of creating trusts. A trust whose terms do not conform to the Act may be enforceable according to its terms under other law. 99 [Emphasis added]

Notice also this section:

C. 201C Sec. 1. Transfer to Statutory Custodianship Trustee.

An adult person may, during his lifetime, transfer any property owned by him, in any manner otherwise consistent with law, to one or more named persons designated, in substance, as a “Statutory custodianship trustee”.

Such *transfer* shall be sufficient to create a trust upon the terms set forth in this chapter as it is in effect at the date of the transfer *without any further trust instrument* or designation of terms and without appointment or qualification by any court, and shall be complete upon *acceptance* of the trust by the trustee or trustees manifested in any form. The trustee or trustees shall serve without giving bond or surety unless the transferor by written instrument, or the probate court upon the application of any person interested in the estate of the transferor and upon good cause shown, shall provide for a bond. All transfers in trust under this chapter shall be revocable by the transferor at any time he has legal capacity by a writing signed by him and delivered to the person, or if more than one to any person serving as trustee. [Emphasis added]

Thus, it appears to me that after donating the title (MSO) to “your” car to the state, a “constructive trust” is created.

But don't take my word for it. Look up the exact definition of

“constructive trust” in a law dictionary. You have unwittingly succumbed to the deceit of the manufacturer, dealer and state government and transferred title (MSO) to property *you* supposedly owned to the state or it’s agent. You then *registered* the property which is all that is necessary to *create* a trust. Remember that it says:

“A person may create a custodial trust of property by a written declaration, evidenced by *registration* of the property or by other instrument of declaration executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant.”

Remember that registration wouldn’t constitute the creation of a trust if the document only had your name on it. (See item “96,” above.) Usually, that “title” and “registration” application and document have:

- a) your name,
- b) the name of the state and motor vehicle agency representing the state you’re dealing with; and finally,
- c) the signature and/or seal of the head of that agency.

So there are the requisite number of entities or “person”(s) named on the documents to create a trust.

You unknowingly created the trust by transferring legal title – *but not possession* (equitable title) – of the property to the agency head named on the “Certificate of Title”/“Registration.” Usually, this person’s signature or seal is included on the document. Take a look at yours and see.

The state/DMV agency names you as “owner” although you only have “ownership” in the form of bare legal possession of the car. You don’t have all right, title, and interest in the car, just bare legal possession. As beneficiary to this auto-trust, you are also placed in a fiduciary capacity to make sure that “your” car is well-maintained and operated safely under the rules of the owner-state.

You go to court and . . .

So what happens when you get a ticket for a defective tail light? You start whining that nobody was hurt and, under the Constitution, the common law says that there has to be an injured party and you demand the state produce the injured party!

Whereupon, the judge says “Shut up and don’t mention that Constitution again or I’ll throw you in jail for contempt!”

You’re scratching your head but the judge is right. He’s enforcing the terms of a constructive trust that *you* helped to create. Trusts

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are private contractual agreements and operate outside of the law and generally have nothing to do with the Constitution. Thus, your constitutional defense was irrelevant.

You have a fiduciary duty to the owner-state to keep that car in tip-top shape and you screwed up when you let the tail light burn out on the car the state has been kind enough to let you use. It doesn't matter that nobody was hurt; and the judge *will* toss your butt in the can if you keep bringing up that damned common law and Constitution.

Homework

There's one last thing the sharper readers may have noticed. The end of C. 201C Sec. 1 reads:

"All transfers in trust under this chapter shall be *revocable* by the transferor at any time he has legal capacity by a writing signed by him and delivered to the person, or if more than one to any person serving as trustee."

Here's today's homework assignment. Figure out 1) what it means to have "legal capacity"; 2) what it is that you have to say in that writing; and 3) to whom

you have to present your legal "writing".

Hint: Search Am Jur 2.

If you could learn how to revoke the transfers under the auto-trust to "your" car, you might be able to regain legal title (and real ownership) to "your" car.

There's one other tactic that might defeat the judge's silent judicial notice and presumption of trust. Let's say you return your "Certificate of Title" to the state along with your registration utilizing the forms prescribed for that purpose. (You can't very well claim that *you* own "your" car when you're holding evidence that the *state* owns in your wallet! In truth, the "Certificate of Title" and registration don't prove you do own "your" car, they prove you *don't*.) What if you were to then to publish a legal notice, three times, over 3 consecutive weeks, in a newspaper of wide circulation in your area that looked something like this:

Parties claiming interest in property(ies): (1) 1984: AMC: Jeep: CJ7: VIN#: 1234567890987654321 and/or (2) 1987: Chev: Blazer: S-10: VIN#: 1234567890987654321 must state interest by March 30, 2001 by replying at Box 1234, Any county News, Anytown, TA.

According to *Black's Law Dictionary* 6th edition.

The term "**interest**" means, but is not limited to:

[1] an instrument of security by hypothecation,

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[2] claim: adverse, equitable, legal, marketable,
 [3] interest: adverse, equitable, legal,
 [4] ownership: adverse, equitable, legal, possessory,
 [5] right: adverse, equitable, legal, possessory,
 [6] presumption by statute,
 [7] subject by trust: constructive, de son tort, ex-delicto, ex-maleficio, implied, involuntary,
 [8] title: adverse, equitable, legal, marketable,
 [9] interest resulting by trust defined in law: private, public, International, Federal, General-Laws of the People's Republic of Taxachusetts, statute(s),
 [10] subject of bankruptcy,
 [11] interest by operation of law: private, public, International, Federal, General-Laws of the People's Republic of Taxachusetts, statute(s),
 [12] lien or encumbrance.

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Then, if you were stopped for a ticket, what would happen if you motioned a court for a declaratory judgement stating that by virtue of no claims of interest being stated pursuant by your notice, you have absolute right, title, and interest in those properties? Do you think they'd submit evidence that they actually own "your" (and everyone else's) car to refute your claim of ownership? They might, but would they?

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A final note for those annoying Constitutionalists

For all of those Constitutionalists who have the temerity to think they have a right to travel with their private property without first getting permission from the state, remember that the judge always takes silent judicial notice that you're "driving" one of the state's cars - regardless of whether the registration is current or even exists or whether you returned their "Certificate of Title."

Until you regain the MSO or get *their* court to recognize that "your" car is, in fact and in their law, *yours* - you're just whistling "Dixie."