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## OLD CARS IN LAW

# THE CONFISCATED CORVETTE

People view collector cars in many ways: as a work of art, a prudent investment, a source of enjoyment.

But how about as a *defendant in a lawsuit*?

Strange as it may seem, it is not unheard of for objects or even real estate (as opposed to persons or companies) to be defendants in litigation, particularly in lawsuits brought by the United States. Indeed, there have been cases with names such as *U.S. v. 55.22 Acres of Land*, *U.S. v. Thirty-Seven Photographs*, *U.S. v. Five Gambling Devices*, and *U.S. v. 88 Cases, More or Less, Containing Bireley's Orange Beverage*. Such cases often are actions by the government to seize property allegedly involved in or connected with the commission of a crime.

The case of *United States v. One 1963 Chevrolet Corvette* recently presented such a situation involving a collector car.

In June 1988, Arlington County, Virginia police arrested the owner of a 1963 Corvette after they discovered cocaine and drug paraphernalia in his automobile. The police impounded the Corvette. In 1989, the owner pled guilty to simple possession and was sentenced to probation.

The government brought an action in federal court against the Corvette based on a federal statute dealing with "forfeiture." "Forfeiture" here refers to the idea that, in some circumstances, one who uses property to commit a crime forfeits or gives up his or her rights to that property. The particular statute involved in this case subjected to forfeiture "vehicles... which are used, or are intended for use, to transport, or in any manner

to facilitate the transportation, sale, receipt, possession, or concealment" of a controlled substance.

The owner asked the court to dismiss the action, arguing that the government had not given him adequate notice of the forfeiture proceeding and had unreasonably delayed in bringing the lawsuit. The district court refused and, instead, granted summary judgment for the government, upholding the forfeiture of the Corvette. The owner appealed.

On May 14, 1991, the United States Court of Appeals for the Fourth Circuit, citing cases such as *One 1958 Plymouth Sedan v. Pennsylvania* (decided in 1965 by the United States Supreme Court), affirmed the trial court's ruling for the government.

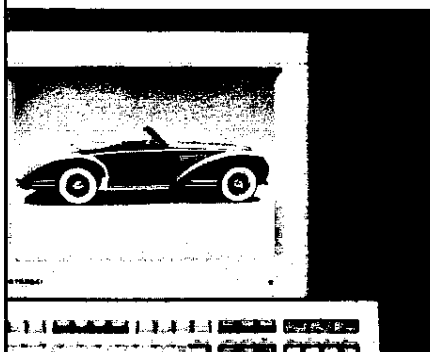
Another recent forfeiture case involving a collector car, this time a 1965 Pontiac GTO, was *United States v. Real Property in the Township of Charlton, Michigan*, decided by the United States District Court for the Eastern District of Michigan on May 8, 1991. In this case, the government filed a complaint which named the GTO as a defendant, alleging that the car had been purchased with proceeds from dealings involving controlled substances and was thus subject to forfeiture under another subsection of the same statute involved in the *Corvette* case.

This case focused on the fact that the statute provided that the government must accomplish forfeiture in one of two ways, by "administrative forfeiture" or by "judicial forfeiture."

*Administrative* forfeiture is begun by the governmental agency that seized the property, without the

LAWRENCE SAVELL

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involvement of the courts. The agency must publish notice of the seizure and of its intent to "forfeit" the property once a week for at least three successive weeks in a newspaper of general circulation in the judicial district where it brought the proceeding. In addition, the agency must give personal written notice of the seizure and information on applicable procedures to any party who appears to have an interest in the property. Under the customs laws, property valued at up to \$100,000 is subject to administrative forfeiture.

Property valued at more than \$100,000 must be (and property worth less than \$100,000 can be) *judicially* forfeited. To begin judicial forfeiture proceedings, the government need only properly seize the property and then file a complaint with the court in the judicial district where the property is.

The problem in the *GTO* case was that the government actually took *both* routes. The court ruled that, where the property was worth less than \$100,000, the government had to choose between the two methods. Since the government had begun the administrative forfeiture proceeding after it already had elected to go with judicial forfeiture, the court further ruled that the initial election was binding and that the subsequent administrative proceeding was void.

Of course, it is highly unlikely that the average car collector will ever have any contact with the forfeiture process — particularly at the early stages discussed in this article. But you might want to consider investigating one of the *last stages*, as government auctions of forfeited vehicles may provide yet another potential marketplace to consider if you are looking for the collector car of your dreams.

*Lawrence Savell is an attorney and writer in New York City. This column provides general information and is not intended as a substitute for consulting a lawyer.*

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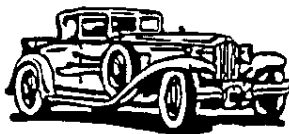
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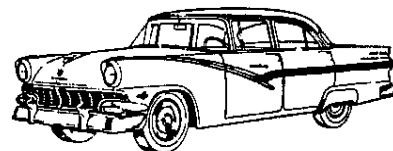
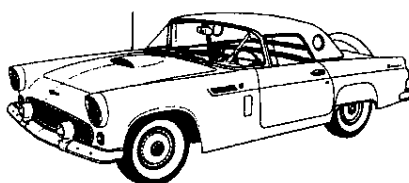
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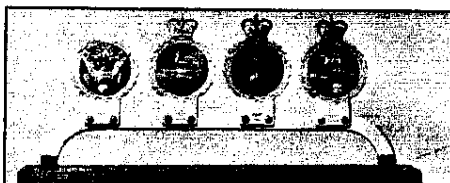
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