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## Torts—Replevin—Unlawful Detention of Property

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applies especially strongly when the statutes are enacted at the same session of the Legislature.<sup>22</sup>

## TORTS

### Replevin — Unlawful Detention of Property

In *Michalowski v. Ey*,<sup>1</sup> plaintiff, an individual with an "unsavory" police record, sought the return of and damages for the wrongful detention of an automobile seized by county police. Acting upon information that a fugitive was within their jurisdiction and that he was the owner of said vehicle, police found plaintiff in possession of the car and seized it in spite of his verbal protests of ownership. After the seizure, plaintiff presented documentary proof signed by the fugitive certifying to the sale of the vehicle to plaintiff. Five years later this action in replevin was commenced, in which plaintiff produced additional documentary evidence from the fugitive dated subsequent to the commencement of the trial.

The police have a right of seizure and detention of personal property where it is held as evidence, is the "fruit of a crime,"<sup>2</sup> or was used in the commission of a crime.<sup>3</sup> The Vehicle and Traffic Law, section 60(3), provides for the seizure of any motor vehicle by any policeman, state trooper, or peace officer where there is "good reason to believe" such motor vehicle has been stolen, but that the officer shall proceed to the most accessible magistrate or judge who shall examine the facts and give directions as to the vehicle's disposition. The validity of the seizure was upheld since there was good reason to believe the vehicle had been stolen. However, the vehicle was not taken before a magistrate or judge, as was required.

The Court of Appeals unanimously concluded that the only reasonable finding on the basis of the evidence was that plaintiff owned the car at the time of seizure. Any detention beyond the time necessary to determine if the vehicle had in fact been stolen was a wrongful detention.

The fact that an individual of "unsavory" criminal reputation attempts to prove ownership of personal property by producing documentary evidence of its sale signed by a fugitive known to have been the owner of property does not warrant an inference that the individual is attempting to assist the fugitive in avoiding apprehension. An individual's reputation will not affect his ability to own personal property.

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22. McKinney's Consolidated Laws, STATUTES §393; Board of Education v. Rogers, 278 N.Y. 66, 15 N.E.2d 401 (1938).

1. 4 N.Y.2d 277, 174 N.Y.S.2d 4 (1958).

2. Hofferan v. Simmons, 290 N.Y. 449, 49 N.E.2d 523 (1943).

3. Flegenheimer v. Brogan 284 N.Y. 268, 272, 30 N.E.2d 591, 592 (1942).