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## Personal Property - Certificate of Title in Transfer of Automobile

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## PERSONAL PROPERTY—CERTIFICATE OF TITLE IN TRANSFER OF AUTOMOBILE

The certificate of title for an automobile was registered in the name of the seller, who was absent from his place of business in Virginia when his agent delivered the automobile to the buyer. The agent and the buyer considered the sale consummated under an arrangement whereby transfer of the certificate of title from the seller to the buyer would occur upon the former's return. The buyer was arrested for the illegal sale and transportation of liquor, and the automobile was confiscated under federal law<sup>1</sup> before the prospective transfer was accomplished. *Held*, seller entitled to re-possession; the contract was merely executory and title remained in seller. *United States v. One Hudson Hornet Sedan*, 110 F.Supp. 41 (1953).

The court reiterated the principles previously set forth by the highest court of Virginia one-quarter of a century ago: "In order to complete the sale upon his part, it is essential that seller conform to the statutory requirement by delivering to the buyer a proper assignment of title." The court also stated: "The statute under consideration, while providing incidentally for the payment of certain fees, is not primarily a revenue raising measure. As interpreted and construed by the legislature, its general purpose is to make uniform the law of this State in so far as it affects the regulation of motor vehicles; the issuance of certificates of title to prevent larceny thereof; to define the duties of the commissioner; and to provide penalties for its infraction . . . The statute is essentially a police regulation, enacted primarily for the protection of the public and its provisions are mandatory in their terms."<sup>2</sup>

In *Sauls v. Thomas Andrews & Co.*<sup>4</sup> the Virginia court, relying tenaciously on *Thomas v. Mullins*, *supra*, proclaimed: "The mobile character of property of this kind makes registration of title and uniformity of registration doubly important. [Transferee] has no title to this car legal or equitable and his creditors cannot seize it. These statutes governing registration are essentially police regulations, and must be observed."<sup>5</sup> The court stated that, unless the certificate is transferred, the contract remains executory and title does not pass.

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1. 62 Stat. 840, 18 U.S.C.A. §3617; 53 Stat. 391, 26 U.S.C.A. §3253.  
2. *Thomas v. Mullins*, 153 Va. 383, 391, 149 S.E. 494, 497 (1929).  
3. *Id.* at 388, 391, 149 S.E. 494, 496, 497.  
4. 163 Va. 407, 175 S.E. 760 (1934).  
5. *Id.* at 415, 175 S.E. 760, 763.

The automobile, as an expensive, mobile, and common piece of property, is highly subject to theft and fraudulent conveyance. The certificate of title laws providing for central recordation of ownership have gone far to correct what otherwise would be an inequitable construction of the law were the automobile treated as other personal property with regard to transfer of title. The legislatures of at least thirty-three states, including Virginia, have passed certificate of title laws<sup>6</sup> which basically compare to the Torrens system of land registration.<sup>7</sup> Although Virginia has not gone so far, at least twelve states have expressly provided by statute that title can not pass if the certificate of title is not transferred at the time the automobile is sold.<sup>8</sup>

The statutory requirements in Virginia today are substantially the same as the original Certificate of Title Act of 1926 controlling the *Thomas* case, *supra*.<sup>9</sup> It is submitted that title to an automobile can not be transferred by any means, in and of itself, other than by proper assignment of certificate of title as specified by statute. Section 46-84 of the Code of Virginia<sup>10</sup> sets forth the proper procedure to be followed in the ordinary sale or transfer of an automobile. Section 46-85 requires that the transferee must immediately forward the certificate so endorsed to the Division of Motor Vehicles for recordation. Noncompliance with the aforesaid sections was the basis upon which the court in the principal case allowed seller recovery of the automobile from the Government.

An examination of Section 46-89<sup>11</sup> leaves little doubt that the General Assembly intended that title should pass *only* when the transfer of the certificate of title is perfected. More explicitly, appli-

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6. 36 Minn.L.Rev. 77 (1951).
  7. 48 Yale L.J. 1238 (1939).
  8. *Op. cit.*
  9. See Maryland Cas. Co. v. Powers, 113 F.Supp. 126 (1953).
  10. Virginia Code of 1950, §46-84 ("The owner of a motor vehicle...transferring or assigning his title or interest thereto shall endorse an assignment and warranty of title upon the reverse side of the certificate of title of the motor vehicle...to the purchaser thereof...shall acknowledge his signature thereto before a person authorized to administer oaths and shall deliver the certificate to the purchaser or transferee to the time of delivering the motor vehicle...").
  11. Virginia Code of 1950, §46-89 ("Except as otherwise provided in §46-92 in the event of the transfer by operation of law of the title or interest of an owner in and to a motor vehicle...registered under the provisions of this chapter, to anyone as legatee or distributee or by an order in bankruptcy or insolvency, execution sale, repossession upon default in the performing of the terms of a lease or executory sales contract or otherwise than by the voluntary act of the person whose title or interest is so transferred, the transferee or his legal representative shall make application to the Division for a certificate of title therefor, giving the name and address of the person entitled thereto, and accompany such application with the registration card and certificate of title previously issued for the motor vehicle...if available, together with such instruments or documents of authority, or certified copies thereof, as are required by law to evidence or effect a transfer of title or interest in or to chattels in such case. The Division when satisfied of the genuineness and regularity of the transfer shall cancel the registration of the motor vehicle...and issue a new certificate of title to the person entitled thereto.").

cation of Section 46-89 to a constructive trust indicate that, although it is recognized that transfer of title can be effected, the creation of the constructive trust does not in and of itself transfer ownership, that occurring only when the Commissioner of the Division of Motor Vehicles issues a new certificate of title to the person entitled thereto. The same would hold true in the event of a valid nuncupative will. The rights of a distributee by an order in bankruptcy, legatee, or any person with an interest of ownership in an automobile, are recognized by Section 46-89. Upon the establishment of the legal right to ownership by such persons, the Commissioner is required to issue the certificate of title. Cognizance of Section 46-92, expressly providing that upon the death of an owner of a registered automobile its registration will remain in force as a valid registration until the end of the year for which the license is issued or until the ownership of the motor vehicle is transferred before the end of the year as provided in Sections 46-89 and 46-90, further indicates the proposition that a transferee can not acquire title until the certificate of title is issued to him by the Commissioner after the recordation.

It is submitted that the courts are fully justified in maintaining this construction of the law. Because the automobile is a natural object of theft or fraudulent conveyance, innocent third parties should be granted protection through a means whereby determination of ownership may be conclusively established. A prospective transferee may ascertain whether or not a transferor alleging ownership is actually the legal owner by checking the records of the Division before a transfer is consummated. This protection could not be afforded if title could be transferred by various means other than the statutory method of certificate of title.<sup>12</sup>

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12. For further cases holding that title to an automobile can not be transferred other than by strict compliance with the Virginia statutory requirements see *Holt Motors v. Castro*, W.Va. —, 67 S.E.2d 432 (1951); *Maryland Cas. Co. v. Powers*, 113 F.Supp. 126 (1953).