

## “...A Writ of What?...”

The Georgetown Law Weekly describes it as “...a legal playground set in the wild, wild West...” Elsewhere described as “... the best movie, legally themed or not, that I have seen in a dogs’ age...” (Urso, “the Volokh Conspiracy”). I refer to the Cohen Brothers’ epic remake of the 1969 John Wayne classic “*True Grit*”, now starring Jeff Bridges as Rooster Cogburn. It is a long time since the old common law remedy of a “Writ of Replevin” has guest-starred in a Hollywood movie.

The film is a profound morality tale combining classical elements of Greek tragedy (the Oresteia trilogy), and a frontier quest for justice, or failing that, revenge (if I am not giving too much of the plot away.) This is not only thrilling, macabre, comic, occasionally surreal, superbly filmed and acted, it also includes richly observed entanglements with the law – “red in tooth and claw” on a deeply practical and philosophical basis.

The cut and thrust of the early court scene provides gripping “Cases and Materials” on laws of evidence and cross-examination. There follows a hilarious object lesson in contentious probate negotiation conducted by the wily 14 year old female protagonist, Mattie Ross who out-foxes the initially dismissive local horse dealer. She is quick on the draw with her impressive grasp of horse-trading technique and legal sparring, trumping her elder by threatening to serve him with a “Writ of Replevin” if he does not release her late Father’s horses and equipment to her as next of kin.

“...A Writ of What?...” he splutters, knowing he’d been out-gunned. She rides off triumphant, having secured a model full and final settlement, by Alternative Dispute Resolution. Lord Woolf would have been proud (if he’d been born by then - its set just after the American Civil War.)

The legal themes in the film continue, raising compelling issues for students of jurisprudence and any sentient citizen such as:

When does self defence (or reasonable force in an arrest) become excessive force/murder?

How do Natural Justice and law exist in a legal vacuum or interregnum i.e. “beyond the frontier?”

Who will guard the guards themselves? [Who watches the watchmen?] (lawyers? The people?)

How are the economics and cost benefit analysis of upholding the rule of law measured?

Whilst persuasive in every way, credulity was stretched in Mattie's discourse to an uncomprehending Rooster as to the difference between 'malum prohibitum' and 'malum in se'. Surely all US Marshalls of the day, in common with contemporary U.S. and U.K lawyers and politicians wouldn't need reminding of the fundamental principles of law referring to an act that is "*malum in se*", i.e. "wrong in itself," which in its very nature is illegal because it violates the natural, moral or public principles of a civilized society. In criminal law it is one of the collection of crimes which are core to civilised society and not just created by statute such as murder, rape, burglary, and robbery. (*Mozley & Whitely 9<sup>th</sup> Ed.*)

An offence "*Malum prohibitum*" is not naturally an evil, in contrast it relates to wrongs or violations which are for example created by Statute and become so in consequence of its being forbidden; as playing at games, which being innocent before, have become unlawful in consequence of being forbidden.

So far as the "*Writ of Replevin*" is concerned, this is an engaging and (with the Professor of Law U.S. President's address in the Palace of Westminster) topical reminder of the shared common law heritage between the American and the English legal systems, and how various aspects have evolved differently. In various U.S. States this is an every-day pre-judgment process for seizure and attachment of illegally taken or wrongfully withheld property, widely available in pre-emptive or interlocutory proceedings.

In England the Writ of Replevin (or "delivery up") has fallen into disuse, but generally refers to a tenant's remedy for recovery of his (or her) goods where the landlord has levied distress, or removed assets to discharge arrears.

In response, a tenant could apply to the County Court for replevin. The tenant is referred to as the "replevisor." In exchange for giving security, usually in money, for the debt alleged by the landlord, the court will order the return of the goods distrained. The giving of security is by way of a replevin bond.

References to replevin are now antiquated, the suit having been replaced by the right to call for interim delivery up under section 4 of the Torts (Interference with Goods) Act 1977. Actions for the recovery of goods or land are tortious in nature and are designed to reverse tortious interference. The question can arise in the context of a contract where the defendant's contractual right to hold the goods or enter the property has been set aside or terminated. (*Public Law Company*)

The leading case is [Gibbs v Cruikshank \(1873\) LR 8 CP 454](#)

For anyone wanting to commemorate the special (or is it "essential"?) relationship by emulating the founding Father's adherence to Anglo-Norman jurisprudence, some interesting precedents can be found as follows:

***Halsbury's Laws of England***

- replevin, [13 \(4th\), 1081](#)
- replevin bond, [13 \(4th\), 101](#)
- replevy, [13 \(4th\), 1081, 1083](#)

***Atkin's Court Forms***

- See generally [vol 14 Distress](#)
- [Vol 14 Distress Form 37](#) PARTICULARS OF CLAIM in replevin where taking was as distress for rent

#### [Vol 8 \(1\) Bonds Form 4](#) CLAIM

I look forward to the next Cohen Brothers block-buster proxy-fest featuring the sadly overlooked remedies of a writ of sequestration, a writ of praecipe, and the old favourite, (surely due for resurrection after recent collateral damage,) a writ of habeas corpus.

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#### Credits

Acknowledgements to informative pieces on this topic in:

The Blackbook Legal Blog: “True Grit, Olestra, and the Rule of Law”  
the Volokh Conspiracy Blog “True Grit and the Law”

The contents of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances