

Mea Culpa

To the Editor:

In March 2014, I had the privilege of publishing an article in this journal (“Statutory Conversion and Treble Damages: Puzzles of Statutory Interpretation”). In it, I offered some thoughts on *Aroma Wines and Equipment, Inc v Columbian Distribution Services, Inc*, a recent Court of Appeals decision; the matter has since been appealed

Articles and letters that appear in the *Michigan Bar Journal* do not necessarily reflect the official position of the State Bar of Michigan and their publication does not constitute an endorsement of views that may be expressed. Readers are invited to address their own comments and opinions to Inovak@mail.michbar.org or to “Opinion and Dissent,” *Michigan Bar Journal*, Michael Franck Building, 306 Townsend St., Lansing, MI 48933-2012. Publication and editing are at the discretion of the editor.

to the Michigan Supreme Court and is being argued this month.¹ In the event that my article comes up during argument, I want to admit to and clarify an unfortunate mistake: on page 36, I referred to “canons of statutory conversion,” but I meant to say “canons of statutory *construction*.” I regret the error.

To make up for the mistake, I would point interested parties to additional information I have run across since publishing the article. In *Lipman v Peterson*,² the court held that “‘conversion’ and ‘conversion to his own use’ are synonymous terms.”³ I believe this lends further support (albeit from outside Michigan) for my article’s argument. Although some commentary has disapproved this reasoning,⁴ that conclusion seems to be drawn from the presumption of a “difference in meaning normally attributable to a difference in language.”⁵ *Normally*, this is a safe assumption; here, however, I think it fails to confront the unique history that these particular words have in common-law pleading. The “own use” language I described as “a vestigial remnant of the legal fiction that was the foundation for the tort of conversion” has also been described as

“nothing more than sloppy surplusage”⁶ and “nothing but a carry over from common-law pleading in trover, and mean[ing] no more than that the converter deprived the rightful owner of his property.”⁷ “[I]n the context, ‘to his own use’ means simply ‘not to the use of the [true owner].’”⁸

I hope this information can be of some use to the bench and bar when *Aroma Wines* is argued this month.

**Adam D. Pavlik
Caro**

ENDNOTES

1. *Aroma Wines and Equip, Inc v Columbian Distribution Servs, Inc*, 303 Mich App 441; 844 NW2d 727 (2013), lv gtd 497 Mich 864 (2014).
2. *Lipman v Peterson*, 223 Kan 483; 575 P2d 19 (1978).
3. *Id.* at 486.
4. E.g., UCC § 7-204, official comment 4 (2014).
5. *Refrigeration Sales Co, Inc v Mitchell-Jackson, Inc*, 575 F Supp 971, 977 (ND Ill, 1983).
6. *United States v Hearn*, unpublished opinion of the United States District Court for the Southern District of Texas, issued March 21, 2011 (Docket No. H-10-500).
7. *Hubbard v United States*, 79 F2d 850, 854 (CA 9, 1935).
8. *United States v Harrelson*, 223 F Supp 869, 870 (ED Mich, 1963).



OUT OF SYNC?

Career

Self-Care

Recreation

Relationships

Community

Sometimes
it's hard
to keep all
the balls in the air.

LJAP can help (800) 996-5522

STATE BAR OF MICHIGAN
LAWYERS AND JUDGES ASSISTANCE PROGRAM (800) 996-5522

Build on your strengths and support your successes.

State Bar of Michigan
Lawyers & Judges
ASSISTANCE
PROGRAM

(800) 996-5522