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Property-Joint Bank Accounts-The Donee's Inter Vivos Interest

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COMMENTS

PROPERTY—JOINT BANK ACCOUNTS—THE DONEE'S INTER VIVOS INTEREST—The use of joint bank accounts has become widespread throughout the United States in recent years and has been the source of considerable litigation and comment.¹ The predominant importance of this type of account is that it allows funds remaining at the death of a co-depositor to pass to the survivor without the necessity of a will. This aspect of the account, causing it to be known sometimes as a "Poor Man's Will,"² has been the focal point of the attention given to the transaction; and today, after more than half a century of uneven treatment by the courts, all jurisdictions will uphold this survivorship feature. The majority of our courts give effect to the survivorship feature on the ground that the co-depositors had joint interests in the account during their lives. In two leading articles,³ however, Professor Kepner has urged that the joint account be regarded as a new type of valid testamentary disposition which should be upheld on its own merits, and not under the guise of traditional theories of joint ownership. Kepner states that in actuality our courts do not give both parties valid interests during their lives despite the joint tenancy language employed, and that the donee's interest is, as in a will, nothing more than an expectancy while the donor is still alive.⁴ It appears, however, that the question of the donee's interests during the lives of the co-depositors is far from settled.

The classic situation from which all the problems arise is generally as follows: Depositor *A* opens a bank account and signs a deposit card stating that the funds are to be payable to either *A* or *B*, balance to the survivor. The deposit card further states that this account is to be held by the co-depositors as joint tenants and not as tenants in common, and that both shall have the right to make

¹ See Jones, *The Use of Joint Bank Accounts as a Substitute for Testamentary Disposition of Property*, 17 U. PITT. L. REV. 42 (1955); Kepner, *The Joint and Survivorship Bank Account—a Concept Without a Name*, 41 CALIF. L. REV. 596 (1953); Kepner, *Five More Years of the Joint Bank Account Muddle*, 26 U. CHI. L. REV. 376 (1959) and articles cited therein at 404.

² *In re Edward's Estate*, 140 Ore. 431, 436, 14 P.2d 274 (1932), was one of the earliest decisions in which this phrase was used.

³ Kepner, *The Joint and Survivorship Bank Account—a Concept Without a Name*, 41 CALIF. L. REV. 596 (1953); Kepner, *Five More Years of the Joint Bank Account Muddle*, 26 U. CHI. L. REV. 376 (1959).

⁴ *Id.* at 396, 403.

withdrawals.⁵ Assuming that the money belonged solely to *A* prior to the deposit, *A* may thus be designated the "donor" and *B* the "donee" in the transaction. Inter vivos disputes between *A* and *B* may thereafter arise under any one or more of the following circumstances: (1) *A* cancels the account and substitutes *C* as a co-depositor, or orders the account to be held in *A*'s name alone;⁶ (2) *A* withdraws more than half of the funds for his own use;⁷ (3) *B* withdraws some of the funds for his own use;⁸ (4) a creditor of *A* or *B* levies on the account;⁹ (5) either *A* or *B* becomes incompetent and a guardian attempts to withdraw some of the funds.¹⁰ Any of these situations may necessitate a declaration by a court of the legal interests of the parties.

I. BASIC SOURCES OF DIFFICULTY

It might be expected that the courts would have some difficulty delineating the precise interests of the parties since the deposit agreement itself obviously does not spell them out with particularity. The major problem, however, has not been one of delineating the extent of the donee's interests, but rather one of deciding whether the donee has any interests in the account at all. Typically, *B* asserts that the form of the account should raise a conclusive presumption that he does have inter vivos interests in the account, while *A* maintains that the form is meaningless, or at most evidentiary, in this regard. As the law stands today there is virtually total confusion regarding these inter vivos interests as to the requirements for their creation, their relation to

⁵ Some cases draw a distinction between accounts held in the names of "*A* or *B*, or the Survivor" or similar language which does not further explain the ownership rights or right to withdraw, and those accounts which recite the joint tenancy and right to withdraw in the agreements themselves. In states that draw this distinction, the former type of account may be held to be unsuccessful to pass either survivorship or inter vivos rights to the donee. See *Berdar's Estate*, 404 Pa. 93, 170 A.2d 861 (1961); *Greener v. Greener*, 116 Utah 571, 212 P.2d 194 (1949).

⁶ *Medeiros v. Cotta*, 134 Cal. App. 2d 452, 286 P.2d 546 (1955); *Zander v. Holly*, 1 Wis. 2d 300, 84 N.W.2d 87 (1957).

⁷ *Paterson v. Comastri*, 39 Cal. 2d 66, 244 P.2d 902 (1952); *Tugaeff v. Tugaeff*, 42 Hawaii 455 (1958).

⁸ *Landman v. Landman*, 136 A.2d 392 (D.C. Munic. Ct. App. 1957); *Gaucher v. Planeta*, 338 Mass. 121, 153 N.E.2d 895 (1958).

⁹ *Tinsley v. Bauer*, 125 Cal. App. 2d 724, 271 P.2d 116 (1954); *Leaf v. McGowan*, 13 Ill. App. 2d 58, 141 N.E.2d 67 (1957).

¹⁰ *Howard v. Imes*, 265 Ala. 298, 90 So. 2d 818 (1956); *First Fed. Sav. & Loan Ass'n v. Savallisch*, 364 Mich. 168, 110 N.W.2d 724 (1961).

the survivorship feature of the account, and the very nature of the interests themselves.

Underlying the confusing status of the donee's interests are four somewhat interrelated sources of difficulty: (a) inconsistency in the willingness of the courts to draw inferences concerning the donor's intent from the form of the account alone; (b) the unsatisfactory results which flow from use of traditional joint tenancy law; (c) variance in theoretical approach by different courts; and (d) the effect of the status relationships of the parties.

Unfortunately, the courts do not recognize and deal with these factors as underlying problems, but typically decide each case by emphasizing one factor or another and ignoring the rest. Regardless of the particular factual setting, the ultimate issue of whether the court will recognize any inter vivos interest whatsoever in the donee seems to depend primarily upon a particular court's general outlook and the factors that it chooses to stress in deciding the case. The result is that there is no semblance of uniformity or clarity in the decisions so that no conclusion which could be considered satisfactory may be drawn from the cases which have made determinations on these inter vivos cases.

A. *Form and Intent: Judicial Inconsistency and the Survivorship Cases*

Normally, when one executes a document which affects his legal interests, it can be presumed, in the absence of fraud, mistake or incapacity, that the document is the best evidence of that person's intent. In joint account situations, however, the written deposit agreement may not be a valid indication of intent for two reasons. First, the terms themselves cannot be said to spell out any specific intent with any particularity. This same form of account has been held to have been employed by depositors with the different intents of giving to the donee: (a) survivorship rights *and* rights to appropriate funds from the account while the donor is living;¹¹ (b) survivorship rights only;¹² and (c) a power of withdrawal only, as an agent of the donor, with no inter vivos or survivorship rights.¹³

¹¹ *Kranjcec v. Belinak*, 114 Mont. 26, 132 P.2d 150 (1942).

¹² *In re Estate of Voegeli*, 108 Ohio App. 371, 161 N.E.2d 778 (1959).

¹³ *Landman v. Landman*, 136 A.2d 392 (D.C. Munic. Ct. App. 1957); *Estate of*

Secondly, many courts think it highly probable that the donor really did not intend to pass any inter vivos interests in the account despite the fact that he has employed the joint account form. To understand this it is necessary to understand the relationship between the survivorship and inter vivos decisions. In the survivorship cases the courts have been primarily concerned with the requirements of the statutes of wills. Traditionally, transactions which transferred interests in property from one person to another solely on the occasion of the donor's death were held to be void if not executed in accordance with the wills statutes. Thus, bank deposits held in the name of "*A*, payable at death to *B*" have uniformly been held to be ineffectual to pass any interest at all to *B*.¹⁴ All jurisdictions in the United States, however, have seen fit to allow funds to pass to the donee-survivor if the account is in the name of "*A* or *B*, or the survivor." The reason stated by the courts, generally, is that the donee had a "present interest" in the latter type of account during the donor's lifetime, and thus did not receive the funds solely because of the donor's death.¹⁵ The "present interest" is the distinguishing factor which has permitted the survivorship feature of the account to survive the challenge of the statute of wills.

When inter vivos disputes occur, therefore, the courts are faced with a dilemma. If they deny that the donee has a present interest in the account which he may assert against the donor, they will be denying the validity of the rationale by which they uphold the survivorship feature of the account. On the other hand, if they uphold the donee's "present interest" against the donor, they fear that they may be enforcing an inter vivos transfer that the donor did not really intend to make. The courts feel that the donor may have intended, and probably did intend, to give the donee only a survivorship interest based upon other considerations.

Schneider, 6 Ill. 2d 180, 127 N.E.2d 445 (1955); *Gaucher v. Planeta*, 338 Mass. 121, 153 N.E.2d 895 (1958); *Administrator v. Meyers*, 48 Ohio App. 131, 192 N.E. 540 (1934).

¹⁴ See, e.g., *Young v. McCoy*, 152 Neb. 138, 40 N.W.2d 540 (1950); *Tucker v. Simrow*, 248 Wis. 143, 21 N.W.2d 252 (1946).

¹⁵ See *Ball v. Forbes*, 314 Mass. 200, 49 N.E.2d 898 (1943); *Cleveland Trust v. Scobie*, 114 Ohio St. 241, 151 N.E. 373 (1926); *Beach v. Holland*, 172 Ore. 396, 142 P.2d 990 (1943).

B. *Problems in the Use of Joint Tenancy Concepts*

Although a joint tenancy interest may be considered a single interest in property, it is made up of two separate and distinct parts: (1) the right to ownership, enjoyment and control of the property while both tenants are alive, and (2) the right of the survivor to take the property at the death of his joint tenant. In the usual joint tenancy setting there is little need to distinguish these interests carefully, and they are often treated as one. Thus, if donor *A* were to make a gift of a joint tenancy interest in certain property to *B*, it might be said that *A* had the single intention of transferring the one composite interest; his one intention would be presumed to encompass both component parts.

In the joint bank account situation, however, as seen before, this simple logical inference may not hold true. A particular donor-depositor may utilize the joint account form in order to take advantage of the survivorship aspect of the account without intending to transfer any inter vivos rights in the funds to the donee. An analysis of this transaction in joint tenancy terms alone clearly would not be capable of giving effect to this intent. If our traditional concepts of joint tenancy are carried to their logical conclusion, the donee could not take a joint tenant's interest when the donor did not intend to give him either the one composite interest or the two component parts. Since most courts hold under their common law that the survivorship aspect of the account cannot stand by itself because of the statute of wills requirements, but must be supported by an underlying joint tenancy in order to be given effect, the intent to pass an inter vivos interest is extremely important in survivorship cases.

It is this basic point that serves as the analytical stumbling block in joint account litigation. Many courts treat both survivorship and inter vivos questions as opposite sides of the same coin, and decide both types of cases by determining the one question of whether or not an actual joint tenancy was created at the time the account was opened. Their conclusions in both survivorship and inter vivos cases are then drawn from that one consideration. An equivalent number of jurisdictions, however, do not follow through with the joint tenancy analysis. Whether with or without authority of statute, these jurisdictions depart from the common law of joint tenancy and uphold the survivorship interest without

necessarily upholding the concomitant "present interest" of the donee. In survivorship cases, either a strong or an irrebuttable presumption is invoked from the form of the deposit in favor of the donee, while in the inter vivos cases the evidentiary weight given to the form of the deposit may vary in different jurisdictions, but the end result is that outside evidence of the donor's intent is uniformly admitted and the donee must carry the burden of proving that the donor did intend to make a gift of present enjoyment of the funds. Furthermore, the inquiry in these cases is not whether the donee received a total joint tenancy interest with its resulting dual attributes, but whether the donor intended to transfer only the one interest in question in each type of case. There is no investigation in survivorship cases as to whether or not the donor intended to give the donee a right to present enjoyment, and there is similarly no inquiry in the inter vivos cases as to the survivorship interest.

C. *The Use of Differing Theories*

The search for the donee's interest is further complicated by the fact that the courts do not approach the problem uniformly. Each jurisdiction analyzes the question according to its own blend of the common-law theories which it deems applicable, as modified by the statute enacted in that particular state to deal with the problem. A brief explanation of the theories and statutes will be attempted here, with the pertinent points discussed in more detail where applicable in later portions of the text.

1. *Common Law Theories of Transfer: Gift and Contract*

There are two¹⁶ main theories employed by the courts to describe the means by which an interest in the account is said to be transferred from the donor to the donee—gift and contract. The courts which employ the gift theory analogize the joint account transaction to a traditional property law gift. The common-law requirements of delivery and relinquishment of control over the property are not demanded, however, since these requirements would be inconsistent with joint ownership of the funds in the

¹⁶ A third theory, trust, has been employed by the Maryland courts. The recent case of *Jones v. Hamilton*, 211 Md. 371, 127 A.2d 519 (1956), however, states at 380, "If the mechanics are adequate to effectuate the intent, the court will gratify the intent whether or not the trust form has been used."

account. The question of the donor's intent thus becomes the prime consideration under the gift theory, and the problem facing the court is whether the opening of the account in joint form is sufficient evidence on this question. Most cases decided on this theory hold that the form alone is insufficient for this purpose¹⁷ although some hold to the contrary.¹⁸

Under the contract theory, the donee acquires his interests through the medium of the written deposit agreement. Early cases regarded the contract as one between the depositors themselves,¹⁹ but the more recent theory is that the contract is between the donor and the bank with the donee as a third-party beneficiary.²⁰

Important problems are posed under the contract theory. Most courts which employ it hold that the contract is merely the method of transferring a joint interest to the donee, and regard the contract as merely a substitution for delivery to validate what is essentially a gift transaction.²¹ At least one jurisdiction, however, holds that the contract is not merely the means of acquiring a property interest through gift, but is the source of a purely contractual right against the bank.²² Such a contract right would not necessarily have any of the attributes of the property rights which are included under the heading "joint tenancy."

A second problem that arises under the contract theory is the possibility that the parol evidence rule may be asserted by the donee to preclude the search for evidence outside of the written deposit agreement.²³ Most courts which employ the contract

¹⁷ Some courts hold that the form of the account will be sufficient in the absence of any evidence to the contrary, but that the form alone will be insufficient if rebutting evidence is introduced. Compare *Adams v. Jones*, 258 S.W.2d 401 (Tex. Civ. App. 1953) with *Ottjes v. Littlejohn*, 285 S.W.2d 243 (Tex. Civ. App. 1955). Other courts hold, under the gift theory, that the form alone will not suffice even in the absence of contrary evidence. See *Imirie v. Imirie*, 246 F.2d 652 (D.C. Cir. 1957); *Chase's Estate*, 82 Idaho 1, 348 P.2d 743 (1960).

¹⁸ *Stanger v. Epler*, 382 Pa. 411, 115 A.2d 197 (1955) (unclear whether gift theory or contract theory is used); *Greener v. Greener*, 116 Utah 571, 212 P.2d 194 (1949).

¹⁹ See *In re Estate of Voegeli*, 108 Ohio App. 371, 161 N.E.2d 778 (1960); *Barbour v. First Citizens Nat'l Bank*, 77 S.D. 106, 86 N.W.2d 526 (1957).

²⁰ *In re Estate of Voegeli*, *supra* note 19; *Barbour v. First Citizens Nat'l Bank*, *supra* note 19.

²¹ See *Kepner*, *The Joint and Survivorship Bank Account—a Concept Without a Name*, 41 CALIF. L. REV. 596, 604 (1953).

²² *In re Estate of Voegeli*, 108 Ohio App. 371, 161 N.E.2d 778 (1960).

²³ See *Harvey's Estate v. Huffer*, 125 Ind. App. 478, 126 N.E.2d 784 (1955); *McManis v. Keokuk Sav. Bank & Trust*, 239 Iowa 1105, 33 N.W.2d 410 (1948); *Burns v. Nemo*,

theory do not invoke the rule in inter vivos disputes, but some do, with a telling effect on the results in these jurisdictions.²⁴

In many jurisdictions the contract theory analysis breaks down when applied to inter vivos cases. The courts do not attempt to construe the written agreement as a contract, but simply declare that the transaction is based on contract and announce that the realities of ownership may be shown by evidence of the donor's intent outside of the instrument²⁵ despite the terms of the agreement.

2. *Statutory Modifications: Bank Protection, Joint Tenancy, and Special Statutes*

All states except Kentucky have enacted statutes dealing with joint accounts.²⁶ These may be divided into three types: bank

105 N.W.2d 217 (Iowa 1960); *Commerce Trust Co. v. Watts*, 360 Mo. 971, 231 S.W.2d 817 (1950); *Connor v. Temm*, 270 S.W.2d 541 (Mo. Ct. App. 1954); *Stanger v. Epler*, 382 Pa. 411, 115 A.2d 197 (1955). See also *Close, Joint Bank Accounts in Ohio*, 11 W. RES. L. REV. 511, 519 (1960); Annot., 33 A.L.R.2d 569 (1954).

²⁴ The use of the parol evidence rule has been the primary means by which courts have given the donee strong presumptions of an inter vivos interest. The two jurisdictions that give the donee more than a rebuttable presumption in inter vivos cases, Pennsylvania and Utah, do so by employing the rule. See *Stanger v. Epler*, *supra* note 23; *Greener v. Greener*, 116 Utah 571, 212 P.2d 194 (1949).

²⁵ See *Fecteau v. Cleveland Trust Co.*, 171 Ohio St. 121, 124, 167 N.E.2d 890 (1960); *Campagna v. Campagna*, 337 Mass. 599, 150 N.E.2d 699 (1958); *Zander v. Holly*, 1 Wis. 2d 300, 84 N.W.2d 87 (1957).

²⁶ Bank protection statutes: ALASKA COMP. LAWS ANN. § 34-1-27 (1949); ARIZ. REV. STAT. ANN. § 51-516 (Supp. 1952); DEL. CODE ANN. tit. 5 § 923 (1953); D.C. CODE ANN. § 26-201 (1951); FLA. STAT. ANN. § 653-16 (1961); GA. CODE ANN. § 13-2039 (1933); IDAHO CODE ANN. § 26-1014 (1947); ILL. ANN. STAT. ch. 76, § 2(a) (Smith-Hurd 1961); IND. ANN. STAT. § 51-104 (1951); IOWA CODE § 528.64 (1950); KAN. GEN. STAT. ANN. § 9-1205 (1949); LA. REV. STAT. § 6.32 (1950); MD. ANN. CODE art. 11, § 102 (1957); MASS. GEN. LAWS ANN. ch. 167, § 14 (1959); MINN. STAT. § 48.30 (1957); MISS. CODE ANN. § 5205 (1942); MONT. REV. CODE ANN. § 5-528 (1947); NEB. REV. STAT. § 8-167 (1943); N.M. STAT. ANN. § 48-10-3 (1953); N.C. GEN. STAT. § 53-146 (1960); N.D. CENT. CODE § 6-03-66 (1959); OHIO REV. CODE ANN. § 1105.09 (Baldwin 1953); OKLA. STAT. tit. 6, § 1180 (1951); ORE. REV. STAT. § 708.515 (Page 1953); PA. STAT. ANN. tit. 7, § 819-903 (Supp. 1961); R.I. GEN. LAWS ANN. § 19-11-4 (1956); S.C. CODE § 8-171 (1952); S.D. CODE § 6.0414 (1939); TENN. CODE ANN. § 45-412 (1955); TEX. REV. CIV. STAT. ANN. art. 342-710 (1959); UTAH CODE ANN. § 7-3-45 (1953); VA. CODE ANN. § 6-55.1 (1958); WIS. STAT. § 221.45 (1957); WYO. STAT. ANN. § 13-29 (1957).

Joint tenancy statutes: ARK. STAT. § 67-521 (1947); CAL. FIN. CODE § 852; COLO. REV. STAT. ANN. § 14-13-6 (1953); HAWAII REV. LAWS § 178-91 (1955); MICH. COMP. LAWS § 554.43 (1948); MO. REV. STAT. § 362.470 (1949); NEV. REV. STAT. § 663.010 (1960); N.Y. BANKING LAW §§ 134(3), 171(3), 239(3); WASH. REV. CODE § 30.20.015 (1952); W. VA. CODE ch. 31, art. 8, § 3205 (1961).

Special statutes: ALA. CODE tit. 5, § 128(2a) (Supp. 1949); CONN. GEN. STAT. REV. § 36.3 (1958); ME. REV. STAT. ANN. ch. 59, § 19-G V.(B) (Supp. 1959); N.H. REV. STAT. ANN. § 384-28 (1955); N.J. STAT. ANN. §§ 17.9A-218B (Supp. 1958); VT. STAT. tit. 8, § 809 (1958).

protection, joint tenancy, and special. The bank protection type of statute, enacted in thirty-four jurisdictions,²⁷ states generally that the bank is authorized to pay the funds in the account to either of the two named co-depositors during their lives and to the survivor, without the bank thereby incurring liability to either party. All but two²⁸ of these statutes have been interpreted as not affecting the property interests in the funds as between the co-depositors, but as merely protecting the bank from liability. These states, therefore, must rely on their common-law theories in analyzing the joint account transaction; the bank protection type of statute offers no assistance.

The joint tenancy type of statute has been enacted in ten jurisdictions.²⁹ Generally, it provides that an account opened according to the statutory form will create a joint tenancy with the funds payable to the survivor. Giving the statutory words their plain meaning, these statutes would appear to decide the issue of the co-depositor's interests, and all joint tenancy statute jurisdictions do hold that there is a presumption of joint tenancy in the donee's favor in both survivorship and inter vivos cases. The presumption is of limited practical benefit to the donee in inter vivos disputes, however, since all but two of the states place the ultimate burden of persuasion on the donee and allow outside evidence of the donor's intent to be controlling.³⁰ Despite the

²⁷ See statutes cited note 26 *supra*.

²⁸ The Idaho and Nebraska courts have interpreted their statutes as creating a joint tenancy in the account if the statutory requirements are met. *Gray v. Gray*, 78 Idaho 439, 304 P.2d 650 (1956); *Slocum v. Bohuslov*, 164 Neb. 156, 82 N.W.2d 39 (1957). One other state, Mississippi, has interpreted its statute as providing for a right of survivorship. This interpretation does not necessarily affect the inter vivos rights of the co-depositors, but provides only for a strong presumption that the funds will pass to the survivor. *In re Lewis' Estate*, 194 Miss. 480, 13 So. 2d 20 (1943); *Leverette v. Ainsworth*, 199 Miss. 652, 23 So. 2d 798 (1945).

²⁹ See statutes cited note 26 *supra*.

³⁰ *Paterson v. Comastri*, 39 Cal. 2d 66, 244 P.2d 902 (1952); *Comastri v. Burke*, 137 Cal. App. 2d 430, 290 P.2d 663 (1955); *Tugaeff v. Tugaeff*, 42 Hawaii 455 (1958); *Marrow v. Moskowitz*, 255 N.Y. 219, 174 N.E. 460 (1931); *Munson v. Haye*, 29 Wash. 2d 733, 189 P.2d 464 (1948). The Missouri courts apparently give the donee strong presumptions in both survivorship and inter vivos cases, but do so in reliance on the contract theory and parol evidence rule, however, not the joint tenancy statute. *Commerce Trust Co. v. Watts*, 360 Mo. 971, 231 S.W.2d 817 (1950); *Connor v. Temm*, 270 S.W.2d 541 (Mo. Ct. App. 1954). Michigan, on the other hand, gives the donee a rebuttable presumption in both inter vivos and survivorship cases under its joint tenancy statute, and appears to place the ultimate burden of persuasion on the donor in both types of cases. *Jacques v. Jacques*, 352 Mich. 127, 89 N.W.2d 451 (1958) (dictum as to inter vivos rule). Arkansas does not give effect to the joint tenancy language of its statute, but treats it as though it were a bank protection type of statute. *Park v. McClemens*, 231 Ark. 983, 334 S.W.2d

statutory language that the co-depositors hold as joint tenants, therefore, the majority of the joint tenancy statute jurisdictions arrive at much the same result in inter vivos cases as do the majority of courts which must apply common-law theories. The basic question remains the donor's intent, and outside evidence on this question is readily admissible.

Special statutes have been enacted in six states.³¹ They differ from the other two types of statutes in that they specifically recognize the joint account as a method of transfer of funds to the surviving co-depositor. None of these statutes, however, makes any mention of the co-depositors' inter vivos interests.³² Thus, although the survivorship question is settled in these jurisdictions, the question of the donee's inter vivos interests is not answered, and the courts must once again look to their common law.

Although it might appear from a reading of individual cases that the result in each case is determined according to the theory and statute employed, an examination of the cases as a whole indicates that, with some exceptions, the particular theories and statutes actually have little or no bearing in determining the nature and extent of the donee's interests. The gift and contract theories are useful in that they supply the rationale by which joint accounts may be held to transfer any interest at all to the donee. With few exceptions, however, they do not have any bearing in determining the nature or extent of that interest. The use of a particular statute or theory does not compel or even indicate the holding that a court will reach in a given case. Those courts that have given the donee a strong presumption of a present interest in inter vivos cases have done so under all combinations of statutes and theories. As an illustration, Utah with a bank protection statute and gift theory, Iowa and Pennsylvania with bank

709 (1960). Colorado, Nevada, and West Virginia have not had sufficient litigation in this area to allow for conclusions.

³¹ See statutes cited note 26 *supra*.

³² As illustrative of the special statutes, the Maine statute, ME. REV. STAT. ANN. ch. 59, § 19-G V.(A-B) (Supp. 1961), reads: "A. When a deposit has been made or shall hereafter be made in any bank, savings bank or trust company . . . in the names of 2 or more persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or the interest or dividends thereon may be paid to any or either of said persons. . . . B . . . [and] shall, in the absence of fraud or undue influence, upon the death of any of such persons, become the sole and absolute property of the survivor or survivors, even though the intention of all or any one of the parties be in whole, or in part, testamentary and though a technical joint tenancy be not in law or fact created."

protection statutes and contract theories, and Missouri with a joint tenancy statute, all arrive at a strong presumption³³ in the donee's favor.³⁴ Similarly, those courts which employ weak presumptions or none at all in inter vivos cases, and demand that the form of the account give way to outside proof of the donor's intent, also do so under all types of statutes and theories.³⁵ Thus, it is clear that the policies underlying the inter vivos decisions cannot be identified by reference to the statutes and theories employed but must be based upon other considerations.

D. *The Status of the Parties May Control the Decision*³⁶

As long as the inter vivos disputes are between the donor and donee themselves, those courts which employ weak presumptions in these cases treat the joint account form as having a relatively minor significance in determining the parties' interests. The

³³ Although the presumptions in favor of the donee's interests are categorized as either "strong" or "weak" in this comment, the tests actually employed by the courts in a given case do not fall into such neat categories. At the extremes are the cases in which a court invokes an irrebuttable presumption in the donee's favor in absence of fraud, duress, or undue influence or holds that the form of the account is completely meaningless even as evidence for the donee. Most cases, however, do not employ such extreme tests, and many require considerable study and interpretation before it can be determined just exactly how much weight is being accorded to the joint account form in determining the donor's intent. For the purpose of establishing an arbitrary standard by which the cases may be classified, therefore, "strong" presumptions will be considered to be those which establish at least a prima facie case for the donee, and which can be overcome only by "clear, precise, and convincing" or "indubitable" evidence by the donor or those claiming in his behalf. "Weak" presumptions will be those where the donee must offer additional evidence of the donor's intent over and above the form of the account, and must sustain the burden of proof on this issue.

³⁴ *Burns v. Nemo*, 105 N.W.2d 217 (Iowa 1960) (applies to inter vivos interest by implication); *Williams v. Williams*, 251 Iowa 260, 100 N.W.2d 185 (1959) (applies to inter vivos interest by implication); *Commerce Trust Co. v. Watts*, 360 Mo. 971, 231 S.W.2d 817 (1950) (dictum as to inter vivos interest); *Connor v. Temm*, 270 S.W.2d 541 (Mo. Ct. App. 1954) (dictum); *Stanger v. Epler*, 382 Pa. 411, 115 A.2d 197 (1955); *Greener v. Greener*, 116 Utah 571, 212 P.2d 194 (1949).

³⁵ *Von Tungeln v. Chapman*, 343 S.W.2d 782 (Ark. 1961) (joint tenancy statute); *Imirie v. Imirie*, 246 F.2d 652 (D.C. Cir. 1957) (bank protection statute and gift theory); *Miller v. Higgins*, 188 Kan. 736, 366 P.2d 257 (1961) (bank protection statute and contract theory); *King v. Merryman*, 196 Va. 844, 86 S.E.2d 141 (1955) (bank protection statute—theory unclear).

³⁶ Disputes with guardians of one of the co-depositors as a party have not been given special treatment in this comment. The primary significance of the guardian cases is that those courts which give the donee a weak presumption will nevertheless not allow the donor's guardian to make withdrawals that are not necessary for the donor's support. *Howard v. Imes*, 265 Ala. 298, 90 So. 2d 818 (1956); *Abrams v. Nickel*, 50 Ohio App. 500, 198 N.E. 887 (1936); *Coolidge v. Brown*, 286 Mass. 504, 190 N.E. 723 (1934); *First Fed. Sav. & Loan Ass'n v. Savallisch*, 364 Mich. 168, 110 N.W.2d 724 (1961); *Boehmer v. Boehmer*, 264 Wis. 15, 58 N.W.2d 411 (1953).

donee has little equity in his favor, having given no consideration for the interest he now claims and basing his demand solely on the largesse of the donor. In these circumstances, the donor is granted a great deal of leeway in challenging and defeating the donee's claims.

1. *Creditors*

When creditors enter the picture, however, these same courts are less willing to allow the donor to disaffirm the donee's interests to the detriment of creditors who may not know of any particular relationships or agreements between the co-depositors, and who may have extended credit on the faith of the donee's apparent interest in the account. Thus, courts that would ordinarily deny to the donee any presumption of an inter vivos interest or would invoke only a weak presumption do just the opposite in creditor situations.³⁷ The donee is presumed to have a joint interest in the account, and the burden of proof is placed upon the party contesting the donee's interest.³⁸

Those courts which invoke a strong inter vivos presumption for the donee in the first instance need not change their presumption to accomplish the same result. The creditor, in both weak and strong presumption jurisdictions, can thus rely on the form of the account to raise a presumption that the donee does have an interest that is subject to attachment, and the co-depositors must sustain the burden of proving the donor's contrary intent in order to rebut the presumption.

2. *Husband and Wife*

In at least five states,³⁹ the fact that the co-depositors are husband and wife may result in a holding that a tenancy by the en-

³⁷ *Tinsley v. Bauer*, 125 Cal. App. 2d 724, 271 P.2d 116 (1954); *Leaf v. McGowan*, 13 Ill. App. 2d 58, 141 N.E.2d 67 (1957); *R.H. White Co. v. Lees*, 267 Mass. 112, 166 N.E. 705 (1929); *Park Enterprises, Inc. v. Trach*, 233 Minn. 467, 47 N.W.2d 194 (1951); *Sitomer v. North River Sav. Bank*, 194 Misc. 870, 95 N.Y.S.2d 402 (N.Y. City Ct. 1949). For decisions of states that employ strong presumptions for the donee, see *Staton v. Vernon*, 209 Iowa 1123, 229 N.W. 763 (1930); *Esposito v. Palovick*, 29 N.J. Super. 3, 101 A.2d 568 (1953); *Norcross v. 1016 Fifth Ave. Co.*, 123 N.J. Eq. 94, 196 Atl. 446 (1938); *American Oil Co. v. Falconer*, 136 Pa. Super. 598, 8 A.2d 418 (1939); *Neill v. Royce*, 101 Utah 181, 120 P.2d 327 (1941).

³⁸ See cases cited note 37 *supra*.

³⁹ *In re Griffith*, 33 Del. Ch. 387, 93 A.2d 920 (1953); *Hoyle v. Hoyle*, 31 Del. Ch. 64, 66 A.2d 130 (1949); *Winters v. Parks*, 91 So. 2d 649 (Fla. 1956); *Hagerty v. Hagerty*, 52 So. 2d 432 (Fla. 1951); *Feltz v. Pavlik*, 257 S.W.2d 214 (Mo. 1953); *Alcorn v. Alcorn*, 364 Pa. 375, 72 A.2d 96 (1950); *Berhalter v. Berhalter*, 315 Pa. 225, 173 Atl. 172 (1934);

tireties has been created. Once this decision has been reached, the interests of both donor and donee can be determined with certainty in accordance with applicable common-law principles governing ownership by entireties. The survivorship interest will be granted in all cases,⁴⁰ and both parties will be held to have inter vivos interests in the account.

In accordance with traditional theory, the use that may be made of the funds in the account while both are alive will be severely limited. Neither party will be able to withdraw any portion of the funds for his own use, nor will creditors of either party be able to reach the account to satisfy a debt owed by only one of them.⁴¹ Withdrawals are allowed only if the money is spent for the joint benefit of both spouses.⁴² Any funds that are withdrawn and not used for this purpose will be considered as still held by the entireties,⁴³ as will any property purchased with those funds.⁴⁴ Withdrawal for the use of only one party may be considered as an invitation to sever, however, and the tenancy may be destroyed if the other party acquiesces, each party then becoming a tenant in common of one half of the deposit.⁴⁵

Despite the agreement among jurisdictions as to the effect of finding that the account is held as an estate by the entireties, there are three separate approaches employed by different jurisdictions with regard to the requirements which must be met before a tenancy by the entireties can be said to arise. The Tennessee court uses identical legal theories for both non-spouse and husband-and-wife accounts. The intent of the parties is said to control the result in both situations,⁴⁶ and a contract theory is

Madden v. Gosztanyi Sav. & Trust Co., 331 Pa. 476, 200 Atl. 624 (1938); Sloan v. Jones, 192 Tenn. 400, 241 S.W.2d 506 (1951).

⁴⁰ See, e.g., *In re Griffith*, *supra* note 39; Madden v. Gosztanyi Sav. & Trust Co., *supra* note 39.

⁴¹ See, e.g., *Alcorn v. Alcorn*, 364 Pa. 375, 72 A.2d 96 (1950); *Bostrom v. National Bank*, 330 Pa. 65, 198 Atl. 644 (1938); Madden v. Gosztanyi Sav. & Trust Co., 331 Pa. 476, 200 Atl. 624 (1938).

⁴² See *In re Griffith*, 33 Del. Ch. 387, 93 A.2d 920 (1953); *Hoyle v. Hoyle*, 31 Del. Ch. 64, 66 A.2d 130 (1949); *Lerner v. Lerner*, 113 So. 2d 212 (Fla. 1959); *Feltz v. Pavlik*, 257 S.W.2d 214 (Mo. 1953); *Berhalter v. Berhalter*, 315 Pa. 225, 173 Atl. 172 (1934); Madden v. Gosztanyi Sav. & Trust Co., *supra* note 41; *Alcorn v. Alcorn*, *supra* note 41.

⁴³ See cases cited note 42 *supra*.

⁴⁴ *Ibid.*

⁴⁵ *Berhalter v. Berhalter*, 315 Pa. 225, 173 Atl. 172 (1934).

⁴⁶ See *Melhorn v. Melhorn*, 208 Tenn. 678, 348 S.W.2d 319 (1961); Sloan v. Jones, 192 Tenn. 400, 241 S.W.2d 506 (1950).

used to support both transactions.⁴⁷ Thus, the same considerations which would give rise to a joint tenancy between non-spouses will be held to give rise to a tenancy by the entireties when the parties are husband and wife.

The Florida court, on the other hand, draws a definite distinction between entireties and joint tenancy situations. The court is extremely reluctant to find that the account is held by the entireties, and will do so only upon conclusive evidence of an intent to hold by the entireties as opposed to joint tenancy. One Florida case has gone so far as to hold that a tenancy by the entireties was not created between a husband and wife even though it was clear that both parties intended the account to be constituted a joint and survivorship account.⁴⁸ Furthermore, the Florida court holds that an account in the name of husband "or" wife is not sufficient to give rise to any form of joint account at all.⁴⁹

The Pennsylvania court employs a third approach. The husband and wife cases are treated as separate from the non-spouse joint account cases, as in Florida, but instead of being more difficult to attain, they are readily found to exist. Any deposit by a husband or wife in both of their names will be presumed to give rise to a tenancy by the entireties.⁵⁰ There is no specific requirement as to the wording of the account, and an account in the name of husband "or" wife will be considered as sufficient.⁵¹ Furthermore, the Pennsylvania court does not find it necessary to deal with the account in terms of the joint account theories which it applies in non-spouse cases. The account is considered as just one form of a normal common-law tenancy by the entireties of personal or real property, with all of the ramifications of that type of interest.⁵²

⁴⁷ *Melhorn v. Melhorn*, *supra* note 46; *People's Bank v. Baxter*, 41 Tenn. App. 710, 298 S.W.2d 732 (1956); *Sloan v. Jones*, *supra* note 46.

⁴⁸ *Winters v. Parks*, 91 So. 2d 649 (Fla. 1956); see *Hagerty v. Hagerty*, 52 So. 2d 432 (Fla. 1951).

⁴⁹ *In re Estate of Lyons*, 90 So. 2d 39 (Fla. 1956).

⁵⁰ *Berhalter v. Berhalter*, 315 Pa. 225, 173 Atl. 172 (1934); *Bostrom v. National Bank*, 330 Pa. 65, 198 Atl. 644 (1938); *Madden v. Gosztonyi Sav. & Trust Co.*, 331 Pa. 476, 200 Atl. 624 (1938).

⁵¹ *Alcorn v. Alcorn*, 364 Pa. 375, 72 A.2d 96 (1950).

⁵² See cases cited notes 50, 51 *supra*.

II. THE JUMBLED PATTERN OF DECISIONS

Underlying the entire joint account problem are two fundamental questions: should a court allow a donor to utilize a joint bank account to pass only a survivorship interest to the donee? And, if so, can such a result be attained under existing law? Judicial answers to these questions have not been uniform. Of the fifty-one jurisdictions in the United States (including the District of Columbia), only twenty-nine⁵³ have had sufficient litigation in this area to permit meaningful statements regarding the status of their law. Of these twenty-nine, about half answer the first question in the affirmative, and about half in the negative, the latter fifteen jurisdictions⁵⁴ applying traditional joint tenancy law in both survivorship and inter vivos cases. The fourteen⁵⁵ jurisdictions that answer the first question in the affirmative, apply presumptions of differing strengths in the two types of cases. Of these fourteen, however, ten⁵⁶ have answered the second question in the negative, and have found it necessary to enact statutes to provide for the departure from the common law. Only four⁵⁷ jurisdictions answer both questions in the affirmative, and employ differing presumptions in the two types of cases without specific statutory authorization.

A. *Adherence to Joint Tenancy Concepts*

The fifteen jurisdictions which answer the initial question in the negative make the one issue in both types of cases the question of the donor's intent to transfer a joint interest equal to his own to the donee. Since the joint tenancy interest is considered to be a single, albeit composite, interest in property, the same tests and presumptions are applied by these courts regardless of which as-

⁵³ Alabama, Arkansas, California, Connecticut, District of Columbia, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, Wisconsin. These jurisdictions will each be discussed *infra*.

⁵⁴ Arkansas, District of Columbia, Idaho, Indiana, Iowa, Kansas, Massachusetts, Michigan, Missouri, Oregon, Pennsylvania, South Dakota, Texas, Utah, Virginia.

⁵⁵ Alabama, California, Connecticut, Hawaii, Maine, Minnesota, New Hampshire, New Jersey, New York, Ohio, South Carolina, Vermont, Washington, Wisconsin.

⁵⁶ Special statutes: Alabama, Connecticut, Maine, New Hampshire, New Jersey, Vermont. Joint tenancy statutes: California, Hawaii, New York, Washington. See note 26 *supra* for citations.

⁵⁷ Minnesota, Ohio, South Carolina, Wisconsin.

pect of the joint account is in question. The presumption drawn from the form of the account is thus either uniformly weak or uniformly strong in these jurisdictions, seven⁵⁸ of the fifteen states employing strong presumptions, while the remaining eight⁵⁹ invoke presumptions that are weak if present at all.

The result in these jurisdictions is that the courts that have chosen to establish a high degree of certainty in survivorship situations, by establishing a strong presumption from the form of the account, feel that they must also employ this same strong presumption against the donor in inter vivos cases. The account, thus, instead of resembling a will, which may be changed by the donor at any time up to his death, becomes an irrevocably executed property transfer. In the converse situation, if the court invokes uniformly weak presumptions, and bases its decisions on outside evidence of the donor's intent in survivorship as well as inter vivos cases, the transfer will remain open to attack even after the donor's death, and will give the donor little assurance that a final disposition has been made of his property.

1. *Uniformly Strong Presumptions for the Donee*

It may be said with certainty that in two states, Pennsylvania⁶⁰ and Utah,⁶¹ strong presumptions are invoked in the donee's favor in both survivorship and inter vivos cases. The rationale employed by the courts of both states is that the donor's intent controls in both types of cases, but that, in the words of the Utah court:

"[W]here . . . the parties have entered into and expressed in writing a complete agreement which is clear as to the intent and purpose of the deposit, the intent so expressed will be given effect unless the instrument is successfully attacked for fraud, mistake, incapacity, or other infirmity, or

⁵⁸ Indiana, Iowa, Michigan, Missouri, Oregon, Pennsylvania, Utah.

⁵⁹ Arkansas, District of Columbia, Idaho, Kansas, Massachusetts, South Dakota, Texas, Virginia.

⁶⁰ *In re Berdar's Estate*, 404 Pa. 93, 170 A.2d 861 (1961); *Furjanick Estate*, 375 Pa. 484, 100 A.2d 85 (1953); *Stanger v. Epler*, 382 Pa. 411, 115 A.2d 197 (1955).

⁶¹ *Greener v. Greener*, 116 Utah 571, 212 P.2d 194 (1949); *Neill v. Royce*, 101 Utah 181, 120 P.2d 327 (1941) (creditor case). The Utah cases pose a problem in classification, for although strong presumptions are invoked in both types of cases, the presumption in inter vivos cases can be rebutted by clear and convincing evidence, while the presumption in survivorship cases is conclusive. *Greener v. Greener*, *supra*; *Holt v. Bayles*, 85 Utah 364, 39 P.2d 715 (1934).

unless it is shown by 'clear and convincing proof' that the parties intended the instrument to have a different effect from that expressed."⁶²

Thus, although the form of the deposit alone, if in the name of "A or B, balance to the survivor," would apparently not suffice to show the donor's intent, the additional written agreement between the co-depositors serves to do so, even though this "agreement" is merely part of the bank's deposit-card form on which the account was opened.⁶³

Three more states, Missouri,⁶⁴ Iowa,⁶⁵ and Indiana,⁶⁶ would appear, from the rationale of their survivorship cases, also to employ a uniformly strong presumption in the donee's favor, although they have not had sufficient inter vivos decisions to settle the question. All three employ a contract theory of joint tenancy in their survivorship cases and invoke a strict parol evidence rule to exclude any evidence of the donor's intent outside of the written agreement. If this theoretical approach is applied consistently by these courts, parol evidence should be excluded in inter vivos cases as well, and the donee's interests should be determined solely by reference to the written deposit agreement as is done in Utah and Pennsylvania.

Michigan has a joint tenancy type statute,⁶⁷ but interprets it as raising only a rebuttable presumption in survivorship as well as inter vivos cases. The form of the account is held to serve as a prima facie case for the donee in both types of cases, although the donor may rebut this presumption of joint tenancy by competent evidence to the contrary.⁶⁸

Oregon arrives at the same result as does the Michigan court although under a bank protection type of statute. The donor's intent is said to be controlling in both types of cases, and all com-

⁶² Greener v. Greener, *supra* note 61 at 580.

⁶³ *In re Berdar's Estate*, 404 Pa. 93, 170 A.2d 861 (1961); Greener v. Greener, 116 Utah 571, 212 P.2d 194 (1949).

⁶⁴ Commerce Trust Co. v. Watts, 360 Mo. 971, 231 S.W.2d 817 (1950); Connor v. Temm, 270 S.W.2d 541 (Mo. Ct. App. 1954).

⁶⁵ Burns v. Nemo, 105 N.W.2d 217 (Iowa 1960); Williams v. Williams, 251 Iowa 260, 100 N.W.2d 185 (1959); Hill v. Havens, 242 Iowa 920, 48 N.W.2d 870 (1951); McManis v. Keokuk Sav. Bank & Trust Co., 239 Iowa 1105, 33 N.W.2d 410 (1948).

⁶⁶ Harvey's Estate v. Huffer, 125 Ind. App. 478, 126 N.E.2d 784 (1955).

⁶⁷ MICH. COMP. LAWS ANN. § 554.43 (1948). The Michigan statute was amended in 1937 to delete a clause providing for an irrebuttable presumption of survivorship.

⁶⁸ Jacques v. Jacques, 352 Mich. 127, 89 N.W.2d 451 (1958).

petent evidence is admissible on this issue.⁶⁹ The form of the account and written deposit agreement are considered to be valid evidence of the donor's intent, however, and once the donee has offered these, the burden of going forward with the evidence is placed upon the donor.⁷⁰

2. *Uniformly Weak Presumptions for the Donee*

Eight jurisdictions give little or no weight to the form of the deposit, and apply the rule that outside evidence of the donor's intent is controlling in survivorship as well as inter vivos cases. Of these eight, only the District of Columbia⁷¹ and Massachusetts⁷² have had sufficient inter vivos litigation to allow first-hand evaluation of their rules. The remaining six jurisdictions, Arkansas, Idaho, Kansas, South Dakota, Texas and Virginia, fall under this heading by necessary implication from the weak presumptions they employ in survivorship cases,⁷³ since it may be assumed that no court would employ a stronger presumption in inter vivos cases than is employed in survivorship actions. Thus, in none of these jurisdictions can the joint account be categorized as a "Poor Man's Will"; it cannot be relied upon with any certainty to pass a survivorship interest to the donee at the donor's death. Regardless of the form of the account, the donee's interest may be contested, and the question of intent will be for the jury to determine from the evidence as a whole. Furthermore, according to the traditional common-law concept of the single but composite nature of the joint tenancy interest, the donor must have intended to give both parts of this property interest to the donee before either aspect of the joint tenancy may be given effect. The donee will

⁶⁹ *State v. Gralowski's Estate*, 176 Ore. 448, 159 P.2d 211 (1945); *Beach v. Holland*, 172 Ore. 396, 142 P.2d 990 (1943); *In re Edward's Estate*, 140 Ore. 431, 14 P.2d 276 (1932).

⁷⁰ *Ibid.*

⁷¹ *Imirie v. Imirie*, 246 F.2d 652 (D.C. Cir. 1957); *Murray v. Gadsden*, 197 F.2d 194 (D.C. Cir. 1952).

⁷² *Campagna v. Campagna*, 337 Mass. 599, 150 N.E.2d 699 (1958); *Gaucher v. Planeta*, 338 Mass. 121, 153 N.E.2d 895 (1958); *Ball v. Forbes*, 314 Mass. 200, 49 N.E.2d 898 (1943).

⁷³ *Von Tungeln v. Chapman*, 343 S.W.2d 782 (Ark. 1961); *Park v. McClemens*, 231 Ark. 983, 334 S.W.2d 709 (1960); *Gray v. Gray*, 78 Idaho 439, 304 P.2d 650 (1956); *In re Chase's Estate*, 82 Idaho 1, 348 P.2d 743 (1960); *Idaho First Nat'l Bank v. First Nat'l Bank*, 81 Idaho 285, 340 P.2d 1094 (1959); *Shurrum v. Watts*, 80 Idaho 44, 324 P.2d 380 (1958); *Miller v. Higgins*, 188 Kan. 736, 366 P.2d 257 (1961); *Spark v. Brown*, 167 Kan. 159, 205 P.2d 938 (1949); *Barbour v. First Citizens Nat'l Bank*, 77 S.D.106, 86 N.W.2d 526 (1957); *Ottjes v. Littlejohn*, 285 S.W.2d 243 (Tex. Civ. App. 1955); *Adams v. Jones*, 258 S.W.2d 401 (Tex. Civ. App. 1953).

not be allowed to take the balance remaining in the account as survivor unless the jury finds that the donor intended to pass a full joint tenancy interest in the account at the time of its inception. An intent to transfer a survivorship interest alone will fail to give the donee any interest at all.⁷⁴

B. *Departure From Joint Tenancy Concepts*

1. *Under Special Statutes*

In regard to the fourteen jurisdictions that depart from traditional joint tenancy law, six jurisdictions, Alabama, Connecticut, Maine, New Hampshire, New Jersey and Vermont, have enacted special statutes that specifically allow the donee to take the balance remaining in the account by precluding any investigation of the donor's intent after the donor's death.⁷⁵ Such legislative action successfully solves one-half of the courts' dilemma, since they need no longer worry about theoretical inconsistency in the two different types of cases. The survivorship interest is settled by the statute and is no longer an issue in determining the inter vivos interests of the parties, which question may now be decided on its own merits.

The problem raised by inter vivos interests are not completely solved, however, since the court must still construe the essentially ambiguous joint account form and language. Unfortunately, the inter vivos decisions of these six states do not have any semblance of uniformity. A complete absence of decisions in Maine and Vermont precludes any conclusions as to the status of the donee's inter vivos interests in those jurisdictions. Alabama appears to hold that the donee receives no inter vivos interests at all.⁷⁶ Connecticut and New Hampshire may be presumed to give the donee a weak presumption at best in light of the fact that the presumptions accorded to survivorship cases before the statutes were enacted were weak or nonexistent.⁷⁷

The donee's interest in New Jersey is open to more doubt. Prior to the enactment of the special statute in 1958, the New

⁷⁴ See *Shurrum v. Watts*, *supra* note 73; *Barbour v. First Citizens Nat'l Bank*, *supra* note 73.

⁷⁵ See statute cited note 32 *supra*.

⁷⁶ *First Nat'l Bank v. Hammel*, 252 Ala. 624, 42 So. 2d 459 (1949).

⁷⁷ *Bachman v. Reardon*, 138 Conn. 665, 88 A.2d 391 (1952); *Driscoll v. Norwich Sav. Soc'y*, 139 Conn. 346, 93 A.2d 925 (1952); *Nashua Trust Co. v. Mosgofian*, 97 N.H. 17, 79 A.2d 636 (1951).

Jersey courts employed a presumption in favor of the donee in both types of cases which placed the ultimate burden of proof of the donor's intent on those opposing the donee.⁷⁸ This presumption could be overcome by the weight of the evidence, but nevertheless did serve to give the donee an appreciable advantage in establishing his interest. The New Jersey statute has not been construed as yet and no inter vivos decisions have been handed down since its enactment. The possibility thus remains that the court will continue to invoke the same presumption in the donee's favor even though the survivorship question will no longer have any bearing on the donee's interest. It should be interesting to note whether the removal of the survivorship issue will cause the court to modify its previous holdings in regard to inter vivos interests, thus giving a concrete example of the influence of the survivorship aspects on the inter vivos cases.

2. *Under Joint Tenancy Statutes*

Of the ten jurisdictions⁷⁹ that have joint tenancy type statutes, only four, California, Hawaii, New York and Washington can be said to depart from traditional joint tenancy concepts in that they apply dissimilar presumptions in the two types of cases. The other six states either apply the same presumption in both situations,⁸⁰ or have not squarely faced the problem.⁸¹

The New York Financial Code has three sections which deal with joint accounts, one for savings accounts and two for commer-

⁷⁸ *Goc v. Goc*, 134 N.J. Eq. 61, 33 A.2d 870 (1943) (inter vivos); *In re Perrone's Estate*, 5 N.J. 514, 76 A.2d 518 (1950) (survivorship); *Steinmetz v. Steinmetz*, 130 N.J. Eq. 176, 21 A.2d 743 (1941) (inter vivos); *Straut v. Hollinger*, 139 N.J. Eq. 206, 50 A.2d 478 (1947) (survivorship).

⁷⁹ See statutes cited note 26 *supra*.

⁸⁰ Missouri adheres to a strong presumption in the donee's favor in both types of cases through the use of the contract theory and a strict parol evidence rule. *Connor v. Temm*, 270 S.W.2d 541 (Mo. Ct. App. 1954); *Commerce Trust Co. v. Watts*, 360 Mo. 971, 231 S.W.2d 817 (1950). Michigan employs a presumption in both types of cases that is rebuttable but serves as a prima facie case in absence of evidence to the contrary. *Jacques v. Jacques*, 352 Mich. 127, 89 N.W.2d 451 (1958). The Michigan statute, MICH. COMP. LAWS § 554.43 (1948), was amended in 1937 to delete a clause providing for an irrebuttable presumption in survivorship cases. Arkansas, on the other hand, appears to have a uniformly weak presumption despite the joint tenancy statute. *Park v. McClemens*, 231 Ark. 983, 334 S.W.2d 709 (1960); *Black v. Black*, 199 Ark. 609, 135 S.W.2d (1940). In spite of the Arkansas statute's joint tenancy language, the court regards it as merely the equivalent of a bank protection statute, and holds that it does not affect the rights of the parties as between themselves. *Black v. Black*, *supra*.

⁸¹ Colorado, Nevada, and West Virginia have not had sufficient inter vivos litigation under their statute to allow for the drawing of valid conclusions.

cial accounts.⁸² The savings account section contains a clause making the form of the account conclusive evidence of the depositor's intent in survivorship litigation.⁸³ This clause does not affect inter vivos interests, however, and under all three sections of the statute there is in inter vivos litigation a presumption of joint tenancy in the donee's favor which stands only in the absence of evidence to the contrary. Outside evidence of the donor's intent is readily admissible, and the "realities of ownership" as shown by parol evidence will be controlling.⁸⁴ In regard to the savings account section of the statute, then, there is a departure from traditional joint tenancy law since the statute specifically provides for a conclusive presumption of the donor's intent in survivorship cases but is silent in regard to inter vivos questions. The other two sections of the statute do not contain the conclusive presumption clause for survivorship cases, and the decisions under these sections indicate that there is merely a rebuttable presumption in both types of cases.⁸⁵

The Washington statute is similar to the New York savings account statute in that it provides for a conclusive presumption of the donor's intent in survivorship litigation but does not provide for such a presumption in inter vivos disputes.⁸⁶ The presumption in inter vivos cases is held to be merely rebuttable.⁸⁷

California and Hawaii arrive at the same result as that reached under the New York savings account and Washington statutes, although they do so without benefit of a specific clause in their statutes making the presumption conclusive in survivorship situations.⁸⁸ Both states cite and follow the landmark New York case of *Moskowitz v. Marrow*⁸⁹ even though that case was decided under the savings account section of the New York statute which included the conclusive presumption clause. The end result is

⁸² N.Y. BANKING LAW § 239(3) (savings), §§ 134(3), 171(3) (commercial).

⁸³ N.Y. BANKING LAW § 239(3).

⁸⁴ *Marrow v. Moskowitz*, 255 N.Y. 219, 174 N.E. 460 (1931); *Moskowitz v. Marrow*, 251 N.Y. 380 (1929).

⁸⁵ *In re Dreschler's Estate*, 282 App. Div. 4, 121 N.Y.2d 128 (1953); *In re Kelly's Estate*, 259 App. Div. 1024, 20 N.Y.S.2d 689 (1940), *modified on other grounds*, 285 N.Y. 139, 33 N.E.2d 62 (1941).

⁸⁶ WASH. REV. CODE § 30.20.015 (1952).

⁸⁷ *Munson v. Haye*, 29 Wash. 2d 733, 189 P.2d 464 (1948).

⁸⁸ See CAL. FIN. CODE § 852; HAWAII REV. LAWS § 178-91 (1955).

⁸⁹ 251 N.Y. 380 (1929); *Comastri v. Burke*, 137 Cal. App. 2d 430, 435, 290 P.2d 663 (1955); *Tugaef v. Tugaef*, 42 Hawaii 455 (1958); *Woodward v. Auyong*, 34 Hawaii 597 (1938).

that these states invoke a conclusive presumption in survivorship cases without specific statutory authority to do so—all on the apparent authority of a case decided under a wholly dissimilar statute. As far as the presumption employed in inter vivos cases is concerned, however, all states with joint-tenancy type statutes appear to be consistent in giving to the donee a rebuttable presumption of joint tenancy which will stand in the absence of evidence to the contrary.

3. *By Judicial Innovation—Bank Protection Statutes*

Four states, Minnesota, Ohio, South Carolina and Wisconsin, employ a stronger presumption in survivorship cases than that used in inter vivos cases despite the fact that they have no statute which would call for this result. All four states have only a bank protection type of statute, which is normally regarded as not affecting the interests of the depositors as between themselves, but as merely protecting the bank from liability once it has paid money from the account to either of the depositors or the survivor.

The Minnesota statute reads that the deposit "may be paid to either of such persons or to the survivor of them . . . ."⁹⁰ The Minnesota court has construed this language as giving rise to a presumption in the donee's favor in survivorship cases.⁹¹ In the lone Minnesota inter vivos case, *Cashman v. Mason*⁹² (decided by a federal district court), however, it was held that where the donor withdrew the entire deposit "certainly no presumption in favor of the gift can arise."⁹³ In light of the terms of the statute in which no differentiation is made between survivorship and inter vivos situations, it is difficult to see how a presumption can be said to arise in one situation and not in the other. The different result in the two types of cases is clearly a court-engendered distinction.

It is not entirely clear whether South Carolina employs presumptions of the same strength in both types of cases. There is language in one South Carolina decision⁹⁴ that implies that the bank protection statute itself raises a presumption in survivorship situations that is not present in inter vivos litigation. The courts

⁹⁰ MINN. STAT. § 48.30 (1957).

⁹¹ *Dyste v. Farmers & Mechanics Sav. Bank*, 179 Minn. 430, 229 N.W. 865 (1930); *McLeod v. Hennepin County Sav. Bank*, 145 Minn. 299, 176 N.W. 987 (1920).

⁹² 166 F.2d 693 (8th Cir. 1948).

⁹³ *Id.* at 697.

⁹⁴ *Hawkins v. Thackston*, 224 S.C. 445, 450-51, 79 S.E.2d 714, 717 (1954).

do look to outside evidence to determine the donor's intent, however, in both types of cases.⁹⁵ The only conclusion that may be drawn, therefore, is that even though parol evidence of intent is admissible in both types of cases and the tests employed are similar in this respect, the form of the account carries more evidentiary weight in survivorship cases than it does in inter vivos decisions.

Wisconsin clearly employs a presumption for the donee in survivorship litigation that is not present in inter vivos disputes. *Estate of Pfeifer*,⁹⁶ a case in which the donor's heir contested the donee's right to a survivorship interest in a joint account, illustrates that in survivorship cases the burden of proof is placed on the party claiming in the name of the deceased donor, and that he must provide "clear and satisfactory proof that [the donor] did not intend the account which he created in joint form to have the usual incidents of such accounts."⁹⁷ *Zander v. Holly*,⁹⁸ on the other hand, a case in which the donee claimed a joint interest in the account after the donor had withdrawn all of the funds, illustrates that the Wisconsin court looks to all evidence of the donor's intent in determining the donee's inter vivos interests, and holds that the form of the account has little or no evidentiary value in this regard. In the *Zander* case, the testimony of both donor and donee was to the effect that both intended that the donee was to receive only a survivorship interest in the account. The lower court held, in light of previous survivorship decisions which stated that the donee received a "present interest" as a prerequisite to acquiring his survivorship interest, that the donee did acquire a present joint interest. The lower court apparently took the "present interest" language of the prior survivorship cases at face value. The Wisconsin Supreme Court, however, reversed and held that the donor's intention was clearly shown to be only that of giving a survivorship interest to the donee, and that the donee therefore had no present legal right to assert against the donor.

Wisconsin thus takes the best of both possible worlds. The court supports the survivorship aspect of the account by presuming without proof that the donee received a present interest at

⁹⁵ *Austin v. Summers*, 237 S.C. 613, 118 S.E.2d 684 (1961); *Hawkins v. Thackston*, *supra* note 94.

⁹⁶ 1 Wis. 2d 609, 85 N.W.2d 370 (1957).

⁹⁷ *Id.* at 614, 85 N.W.2d at 373.

⁹⁸ 1 Wis. 2d 300, 84 N.W.2d 87 (1957).

the inception of the account. When the donee attempts to assert that interest against the donor while he is alive, however, the court demands proof of a specific intent to pass the same "present interest" which was merely assumed in the survivorship situation. The Wisconsin court has clearly chosen to give certainty to the survivorship aspect of the joint account without sacrificing its ability to decide the related inter vivos issue on the particular merits of each individual case.

In Ohio, recent developments have opened the door to a new possible solution to the joint account problem. Prior to 1959, the Ohio courts adhered to a contract theory whereby the donee was said to acquire a "present interest"⁹⁹ in the account by means of the deposit contract, and the Ohio cases continually reiterated the idea that it was this "present interest" that allowed the survivorship feature of the account to be effective in the face of the statute of wills.¹⁰⁰ In all of these cases, the "present interest," although not precisely defined, appeared to be a traditional joint tenancy type of interest with its dual aspects of inter vivos ownership and survivorship.¹⁰¹ Alongside this basic theory, however, the Ohio courts also held that the donor retained an unalterable right to revoke the donee's interests by merely withdrawing all of the funds from the account or cancelling the account and placing the funds in his name alone.¹⁰² The donee's survivorship interest under this scheme was thus conditioned upon the donor's leaving funds in the account at the time of his death; his inter vivos interests were seemingly nonexistent, since he had no legal right to assert against the donor if the latter were to revoke the account. It would seem that the only way the donee could possibly assert an inter vivos right to the funds would be for him to withdraw funds from the account before the donor had revoked. This aspect of the Ohio law raises doubts both as to the validity of the court's characterization of the donee's interest as a "joint interest," and as

⁹⁹ *Cleveland Trust v. Scobie*, 114 Ohio St. 241, 151 N.E. 373 (1926); *Keyt v. Mitchell*, 106 Ohio App. 149, 153 N.E.2d 690 (1957); *Schwartz v. Sandusky County Sav. & Loan*, 65 Ohio App. 437, 30 N.E.2d 556 (1939).

¹⁰⁰ See cases cited note 99 *supra*.

¹⁰¹ *Cleveland Trust Co. v. Scobie*, 114 Ohio St. 241, 248, 151 N.E. 373, 377 (1926) ("a joint interest in the deposit, equal to his own"); *Keyt v. Mitchell*, 106 Ohio App. 149, 153, 153 N.E.2d 690, 695 (1957) ("a joint and survivorship account"); *Schwartz v. Sandusky County Sav. & Loan*, 65 Ohio App. 437, 441, 30 N.E.2d 556, 558 ("a present joint interest").

¹⁰² *E.g.*, *Cleveland Trust Co. v. Scobie*, *supra* note 101 at 247, 151 N.E. at 377.

to just what interests the donee did acquire in the account under the guise of "present interests." If the donee did obtain a joint interest at the time of the account's inception, the interest was something new to the common law of joint ownership if the donor could thereafter revoke it at will.

Into this state of the law entered the 1959 Ohio appellate court case of *In re Estate of Voegeli*,¹⁰³ a survivorship case in which the donor's administrator challenged the donee's right to take the funds remaining in the account at the donor's death. The court upheld the donee's survivorship interest, but in doing so came up with a wholly new theory of joint accounts. The court stated that "ownership of the funds . . . passes to the survivor by virtue of the contract. . . . The funds do not pass as an incident to joint tenancy (not recognized in Ohio) . . . , or necessarily upon the principle of survivorship."¹⁰⁴ The court thus used the contract theory not as a means of creating a joint interest in the donee, but rather as giving rise to a purely contractual claim against the bank under a third-party beneficiary contract. According to the *Voegeli* decision, the donee received a "then vested survivorship interest"¹⁰⁵ in the account at the time of its inception.

Such a theory places the joint account transaction in an entirely new light. The donee's "present interest" no longer is thought of in terms of a property interest in the account, but becomes a purely contractual right which is to take effect at a future date and is conditioned upon the presence of funds in the account at the donor's death. By definition, the donee can have no other inter vivos rights of ownership in the account against the donor, since the donee's only interest, his "present interest," is a presently vested survivorship interest having no enforceability until the donor dies. This characterization of the donee's interest as a presently existing contract right conditioned upon the occasion of the donor's death is not without precedent in other areas of the law. Contracts in which performance by one party is to be the payment of money by his estate after his death have been upheld as not in conflict with the statute of wills.¹⁰⁶

¹⁰³ 108 Ohio App. 371, 161 N.E.2d 778 (1959).

¹⁰⁴ *Id.* at 377, 161 N.E.2d at 783.

¹⁰⁵ *Id.* at 380, 161 N.E.2d at 785.

¹⁰⁶ See *In re Howe's Estate*, 31 Cal. 2d 395, 189 P.2d 5 (1948); *GaNun v. Palmer*, 216 N.Y. 603, 111 N.E. 223 (1916) (Cardozo, J.); *Atkinson, Wills* 194 (2d ed. 1953). *But see* *The American Univ. v. Conover*, 115 N.J.L. 468, 180 Atl. 830 (1935).

The revocable nature of the donor's obligation, however, is inconsistent with the *Voegeli* contract right theory as well as with the joint ownership theory of the joint account transaction. Normally, when the conditions precedent to one party's performance are wholly within that party's control the contract will be invalidated as illusory.¹⁰⁷ It can hardly be said that the donee's contractual survivorship interest in the account is anything but illusory if the donor can revoke it at will by merely withdrawing the funds. The only explanation that may be given for this revocability aspect of the joint account therefore is that the Ohio courts have chosen to recognize the joint account as a new way of transferring funds at death without the necessity of the formalities required by the statute of wills.¹⁰⁸ The revocability feature of the account is a direct borrowing from the law of wills which allows the testator to amend or revoke the disposition he has made of his property by will up to the time of his death.

The most important problem that arises in connection with the *Voegeli* theory, however, is its close similarity to the "payable at death" type of bank account which we have seen has uniformly been held to be invalid to pass a survivorship interest to the donee. If the donee's "present interest" under the *Voegeli* theory is merely a contract right for future enjoyment, the "payable at death" type of account should be equally capable of passing the same contractual interest to the donee. This is particularly true in light of the third-party beneficiary analysis which the court applied in the *Voegeli* case. It would seem that once the joint ownership issue is removed from the analysis of the transaction, as is done by the *Voegeli* court, the donee's present interest would be exactly the same in both types of accounts. It is quite doubtful whether such a "present interest," stripped of its aura of joint tenancy, would be upheld by the majority of courts in the United States when challenged as a testamentary disposition not made in accordance to the statute of wills.

III. NATURE OF THE DONEE'S INTEREST

Once a court decides that the donee does have inter vivos interests in the account, the question still remains of defining

¹⁰⁷ See 1 CORBIN, CONTRACTS § 16 (1950).

¹⁰⁸ See Kepner, *Five More Years of the Joint Bank Account Muddle*, 26 U. CHI. L. REV. 376 (1959).

just exactly what these interests are. There is no clear cut answer to this question. A state-to-state study of the case law indicates that the results reached cannot be attributed to the statutes or theories employed.

Jurisdictions with joint tenancy statutes are an exception to this generalization since these jurisdictions will quite naturally hold that the donee takes a joint tenancy interest. This goes far in settling the survivorship disputes in these jurisdictions, but does not illuminate the situation to any great degree in regard to the nature of the inter vivos interests. The joint tenancy created is not a common-law joint tenancy since the common-law requirements have not been fulfilled,¹⁰⁹ and the resulting characteristics of a statutory joint tenancy will therefore not necessarily be determined by common-law considerations.

The majority of courts in bank protection statute jurisdictions, as well as those in all the joint tenancy statute states, hold that the donor and donee have some type of joint ownership. In most states such a finding is used as a basis for upholding the donee's survivorship interest, and the exact meaning in an inter vivos context has not been litigated. In the states in which the question has arisen, the main problem has been determining the effect of a withdrawal of part or all of the funds from the account. Some cases hold that withdrawal is an invitation to sever the joint tenancy or is an actual severance in itself.¹¹⁰ The donor and donee thereby become tenants in common and are each entitled to one-half of the funds in the account.¹¹¹ Other cases hold that the withdrawal does not cause a severance but that the joint tenancy remains in effect despite the withdrawal and "follows" the withdrawn funds.¹¹² Under the latter doctrine the donor and donee retain their right of survivorship in the funds and can trace them into property purchased by the withdrawer, whereas if the joint tenancy is held to be severed

¹⁰⁹ See BURBY, REAL PROPERTY § 185 (2d ed. 1953).

¹¹⁰ *Goc v. Goc*, 134 N.J. Eq. 61, 33 A.2d 870 (1943); *Steinmetz v. Steinmetz*, 130 N.J. Eq. 176, 21 A.2d 743 (1941); *Berhalter v. Berhalter*, 315 Pa. 225, 173 Atl. 172 (1934) (tenancy by the entireties); *Stanger v. Epler*, 382 Pa. 411, 115 A.2d 197 (1955); *Austin v. Summers*, 237 S.C. 613, 118 S.E.2d 684 (1961).

¹¹¹ *Goc v. Goc*, *supra* note 110; *Steinmetz v. Steinmetz*, *supra* note 110; *Rapisardi v. Rapisardi*, 99 N.Y.S.2d 273 (Sup. Ct. 1950); *Sitomer v. North River Sav. Bank*, 194 Misc. 870, 95 N.Y.S.2d 402 (N.Y. City Ct. 1949) (creditor case).

¹¹² *American Trust Co. v. Fitzmaurice*, 131 Cal. App. 2d 382, 280 P.2d 545 (1955); *Daniels v. Harney*, 111 Cal. App. 2d 400, 244 P.2d 773 (1952); *Armbruster v. Armbruster*, 326 Mo. 51, 31 S.W.2d 28 (1930); *In re Dreschler's Estate*, 282 App. Div. 4, 121 N.Y.S.2d 128 (1953); *State v. Gralewski's Estate*, 176 Ore. 448, 159 P.2d 211 (1945).

by withdrawal, the right of survivorship perishes when the joint tenancy is converted into a tenancy in common.

There is a sprinkling of decisions¹¹³ that hold that both the donee and the donor have an unqualified right to the entire amount of money in the account. Whichever one withdraws the money first gets full title to it and cannot be held liable for any portion by the other party.¹¹⁴

Courts which conscientiously apply the contract theory to the joint account may uphold as the donee's inter vivos interest whatever is stated in the deposit agreement.¹¹⁵ In the absence of language in the agreement other than that the parties shall hold as joint tenants with right of survivorship, the same problems will be faced in these jurisdictions as are faced by the courts that hold that the parties hold as joint tenants as a matter of law.

As noted previously, the Ohio case of *In re Estate of Voegeli*¹¹⁶ holds that the parties do not hold as joint tenants but that the donee merely acquires a presently vested contract right to receive the balance of the funds when the donor dies. Such a holding is tantamount to a decision that the donee has no inter vivos interest at all if we define "inter vivos interest" as meaning an interest which the donee can assert against the donor during the donor's lifetime.

IV. SUMMARY

The great majority of problems that have arisen in the context of joint accounts have not been resolved with clarity or understanding because of the fact that almost all courts, in the absence of statute, insist upon analyzing the transaction along traditional joint ownership lines. A single workable theory for both survivorship and inter vivos aspects of the account cannot be reached under this traditional analysis because under this approach the two interests are not regarded as separate and distinct, but are considered to be necessary attributes of the overall joint ownership. Thus, a court cannot, with consistency, separate the two features

¹¹³ *Kranjcec v. Belinak*, 114 Mont. 26, 132 P.2d 150 (1942); *Ludwig v. Montana Bank & Trust Co.*, 109 Mont. 477, 98 P.2d 377 (1939) (dictum); *In re Whiteside's Estate*, 159 Neb. 362, 67 N.W.2d 141 (1954) (when co-depositor has knowledge of the withdrawal).

¹¹⁴ See cases cited note 113 *supra*.

¹¹⁵ See *Harvey's Estate v. Huffer*, 125 Ind. App. 478, 126 N.E.2d 784 (1955); *Hill v. Havens*, 242 Iowa 920, 48 N.W.2d 870 (1951); *McManis v. Keokuk Sav. Bank & Trust Co.*, 239 Iowa 1105, 33 N.W.2d 410 (1948); *Park Enterprises, Inc. v. Trach*, 233 Minn. 467, 47 N.W.2d 194 (1951) (creditor case); *Connor v. Temm*, 270 S.W.2d 541 (Mo. Ct. App. 1954).

¹¹⁶ 108 Ohio App. 371, 161 N.E.2d 778 (1959).

and give effect to the survivorship aspect of the account on a joint ownership rationale and still be free to determine the inter vivos controversies on a different theory. This is so despite the fact that in reality a particular donor may not intend to pass to his donee both the elements of joint ownership necessary under the traditional concepts.

The joint ownership analysis is thus simply incapable of solving the problems that arise in inter vivos settings and simultaneously giving to the donor any assurance that the funds will pass to the donee at his death. If a court does employ the traditional analysis, it must deal consistently with the survivorship and inter vivos aspects of the account.

In an attempt to solve this dilemma by allowing the survivorship aspect to be effective without giving increased status to the inter vivos aspect of the account, some states have enacted statutes guaranteeing the survivorship feature of the account (special statutes). Others have enacted statutes in which it is less than clear whether or not the survivorship aspect is intended to receive preferential treatment (joint tenancy statutes). In the absence of statute, however, relatively few jurisdictions have seen fit to follow Professor Kepner's advice and depart from joint ownership law by allowing the joint account to guarantee survivorship without similarly guaranteeing inter vivos interests to the donee.¹¹⁷

Despite the fact that the joint ownership analysis is clumsy and ill-suited to the problems that arise, the great majority of courts feel bound to adhere to it as the only available legal prop to support the survivorship feature. These courts feel that they cannot take just one aspect of the joint ownership principle and simply forget about the other. They also feel that if the survivorship feature of the account is to be allowed at all it must be done in a manner consistent with established legal principles. The question that is ultimately presented is whether a court should itself bring about a change in the law in order to effectuate what it may consider to be a particular need of society. As long as most courts continue to answer that question in the negative, and in the absence of specific statutory change, the problem of determining whether or not the donee has inter vivos interests in a joint bank account will remain incapable of conclusive determination.

David K. Kroll, S.Ed.

¹¹⁷ See text accompanying notes 2 and 3 *supra*.