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CREATION OF JOINT RIGHTS BETWEEN HUSBAND AND WIFE IN PERSONAL PROPERTY: I

R. Bruce Townsend*

Joint ownership of personal property in recent years has become a common practice—one to which husband and wife are especially addicted. The topic is worthy of more than academic concern as demonstrated by the public use of joint titles in the acquisition of all kinds of personal assets, particularly investment securities. A casual conversation with almost any banker would disclose that a very high percentage of accounts owned by married people are held jointly with their spouses. The current popularity of dual ownership, for example, is reflected in the marketing policy of the United States Treasury in the sale of savings bonds whereby a form of “co-ownership” is approved and encouraged. As a matter of fact, there is some indication that the family automobile often is registered or titled in the names of husband and wife. Joint ownership to husband and wife is as much a part of modern living as is the family automobile. The writer would estimate that in some states over one half of the total wealth accumulated by married persons is held jointly in one form or another. The widespread practice on the part of married people to acquire and hold property jointly demonstrates a deep-rooted public belief that the marriage relationship is both a social and economic venture. In working out the problems of joint ownership—particularly with reference to personal

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1 Unless otherwise indicated, the terms “joint” or “jointly” will be used in a generic sense to include tenancy in common, joint tenancy, tenancy by the entireties, and other relationships closely related to or associated with such estates.

2 See Appendix I, A.

3 See Appendix I, C.


5 See Appendix I, E.
property—most of our courts have been oblivious to this fact. A great mass of case law has produced a maze of technical concepts obstructing the creation of joint rights, and has made for unpredictability and an inordinate lack of uniformity. Legislative response to the situation has been miserly and sporadic. The end result is that people who contemplate dual ownership need legal advice and in advance, but get it only to resolve quarrels over ownership that arise subsequently between the parties or with their representatives after death. No member of the legal profession, however, could reasonably insist upon antecedent legal consultation as a solution to the difficulties for which the law here is responsible. Rights in personalty, including joint rights, most frequently originate in the course of business dealings where the law ordinarily does and should defer to usages and customs which make for efficiency, certainty, and informality without creating social objections. The law has not reacted favorably to this theme in characterizing and ascertaining claims of joint ownership. Here, then, is an area of jurisprudence begging for reform.

From a legal standpoint, the complexities surrounding the formation of joint rights may be attributed to a handful of common law conceptions or principles that have been subjected to the forces of legal and historical evolution. Almost every case involving the existence of joint ownership is formally resolved by a synthesis of all or some of these factors which serve as the major predicate for legal thinking upon the subject. An effort will be made to classify these components briefly, consider them in detail, and offer a solution by proposing that the subject is ripe for a uniform or model law.

First of these is the special treatment accorded to joint ownership by husband and wife who acquire property in their joint names. Here,

6 "There seems to be a growing disposition on the part of some to deplore the progressively increasing tendency of spouses to take title to real property in joint tenancy. The writer has heard it asserted on more than one occasion within the past year or more that there are literally thousands of these deeds in joint tenancy in Bernalillo County alone. So what? Maybe that is the way the grantee spouses have wished it ... Such would surely be a fair and natural assumption. . . .

"It becomes all the more important, then, that we do not by self-imposed conditions as to degree of proof essential to validity, applicable not only to deeds in joint tenancy to husbands and wives but as well to other forms of conveyance in which the wife's name appears as grantee, so magnify the burden resting on the wife as survivor in joint tenancy as to force a practical abandonment of use by spouses of this form of conveyance in taking title to property. If, indeed, the estates in joint tenancy of husbands and wives are as numerous as suggested in Bernalillo County and throughout the state, as for that matter, then, the law as declared today by the majority should be a matter of deepest concern to all spouses so holding, lest their intention in the creation of such estates be utterly defeated."

the common law projected the marital relationship into the less romantic sphere of property ownership by creating an extraordinary kind of partnership or closed corporation known to lawyers as tenancy by the entitites. The most significant incident attached to this estate was the right of survivorship. In the formative years of our common law it was confined largely to interests in real property for the apparent reason that substantial investments in personal property were rare to the economy of those times. The right to income and managerial powers were merged in the husband who represented the unity of ownership. An unfounded belief arose many years later that entitites could not exist in personal property because of the wife's incapacity over personalty which she brought to, or which came to her during the marriage. As a consequence, a group of states today favor entitites ownership in real estate but refuse to apply the same rule to personal property. It was not until the time of the industrial revolution that joint ownership of personalty by husband and wife became the subject of extensive litigation. Shortly thereafter, the married women's property laws added confusion to the problem. In England and a few of the states, entitites in all kinds of property was washed out by judges expressing their beliefs as to the policy of this legislation by holding that its purpose was to separate the single entity concept attached to marriage from property ownership. In other jurisdictions, either by statute or decision, tenancy by the entitites continued as a favorite of the law, but was properly modified by the new freedom given to married women in that it took from the husband his exclusive management over the property. Little thought, however, was given to the philosophy of family economic security lying at the root of this estate, as it has with respect to other similar interests characterized by the law as dower, curtesy and, in the civil law, community property.

A second principle of the common law affecting the rights of joint owners was that which favored joint tenancy where title was taken in

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7 Although Coke apparently treated joint ownership by husband and wife as a form of joint tenancy, Mr. Freeman took some considerable time to insist that joint tenancy and tenancy by the entitites were distinct classes of co-tenancies. Compare Coke Ltrr. *187b, with Freeman, Cotenancy and Partition §64 (1874).

8 Only Massachusetts, North Carolina and, to a limited extent, Michigan continue to recognize this incident of tenancy by the entitites. Splaine v. Morrissey, 282 Mass. 217, 184 N.E. 670 (1933) (income from entitites bank deposit subject to claims of H's creditors); Williams v. Williams, 231 N.C. 33, 56 S.E. (2d) 20 (1949) (income from entitites property belonged to H). Compare Arrand v. Graham, 297 Mich. 559, 298 N.W. 281, 300 N.W. 16 (1941) (husband retains rights to control, lease, and collect rents from entitites real estate, but his interest is not subject to claims of his individual creditors).

9 Freeman, Cotenancy and Partition §66 (1874); Miller, "Tenancy by Entitie in Personal Property in Oregon," 3 Ore. L. Rev. 163 at 165-168 (1924).
the names of two or more persons. For some reason or another, which
does not appear, a legislative prejudice in the nineteenth century against
the survivorship incident of joint tenancy swept over the country pre­
ferring tenancy in common as a rule of construction in the absence of
an affirmative expression of intent to create joint tenancy or survivorship
rights.\(^{10}\) Some of these laws literally apply to titles taken by husband
and wife. Some exclude husband and wife from their operation. A
few include entireties while a few more exclude the estate. Most of
the enactments fail to deal with the special matter of husband-wife
ownership. Many of the laws do not in terms apply to personal prop­
erty. Extraordinary constructions were given to the language of these
acts, but by and large they have had a most pronounced effect of leading
courts into repetitious expressions of policy against the survivorship
incident of joint tenancy and in some states tenancy by the entireties.
Thus was born a new body of law concerned primarily with semantics,
and the outcome of efforts on the part of the public to circumvent what
appears to have been the unpopular effect of the statutes. In recent
years legislation pertaining to the creation of joint bank deposits,\(^{11}\) and
in some cases to particular kinds of personal property,\(^{12}\) has been en­
acted to facilitate the creation of joint rights, but poor draftsmanship
has led to additional problems of interpretation.

The formal requisites of gift law constitute a third legal impediment
to the creation of joint rights in personalty. The gift problem arises
most frequently when an owner of property or funds has attempted to
establish or acquire joint rights in property with another. For example,
\(H\) may attempt to create a joint tenancy bank account simply by open­
ing or changing the account to read in the names of himself and \(W\).
Strict allegiance to the common law formality of manual tradition too
often has caused courts to illegalize the efforts of the donor if the chattel
or a written chose in action capable of tradition is not delivered to the
donee.\(^{13}\) Parol evidence is allowed—almost indiscriminately—to support
or impeach the donor's gift intent, and this rule may be exploited

\(^{10}\) A number of these laws purport to “abolish” joint tenancy or the incident of sur­

vivorship. The states with such statutes are Georgia, North Carolina, Pennsylvania, Ten­

nessee, Texas, Washington and possibly Oregon. See Appendix II, col. 3.

\(^{11}\) All of the states have statutes purporting to regulate joint bank deposits. See Appen­

dix III, and notes 214, 215.

\(^{12}\) See note 81. The latest addition to this collection of laws will be found in New

Jersey where a recent statute provides that mortgages running to husband and wife “shall


\(^{13}\) Typically, the problem arises where property is acquired by the donor in the name

of the donor and donee without manual delivery to the donee. Thus \(H\) may open a bank

account in the names of \(H\) and \(W\) and fail to give \(W\) possession of the pass book or
certificate of deposit. The cases are divided as to whether or not this meets the common law
to defeat the donor's purpose although it is clearly expressed in the
form of a writing signed or accepted by him. In some states the form of the transfer may be conclusive of gift intent. E.g., Matthew v. Moncrief, (D.C. Cir. 1943) 135 F. (2d) 645 (donor and donee signed signature card defining their rights as joint owners). In some states the form of the transfer may be prima facie evidence of gift intent. E.g., In re Staver's Estate, 218 Wis. 114, 260 N.W. 655 (1935). In still others the form of the transfer may be no evidence of gift intent, so that the donee must supply additional parol proof of the donor's purpose. E.g., Kelly v. Beers, 194 N.Y. 49, 86 N.E. 980 (1909). These and other distinctions with reference to the subject of gifts will be considered in a subsequent paper.

Inversely related to that of gifts is a fourth type of legal problem originating when both parties furnish consideration toward the joint ownership of personal property under an executory or executed agreement. While technical formalities of gift are eliminated in such cases, the law has had some trouble in working out the rights of the parties under executory agreements, and in enforcing claims against specific property. It sometimes is difficult to prove mutual assent where one
uses funds of both to acquire property, title to which is procured in joint tenancy or entireties form. Personal property, because of its fluid or movable character, is easily transferred with the rather peculiar consequence that the status of ownership often is preserved by tracing the rights of the parties to the proceeds. Take the case where H and W hold a joint tenancy bank account, and from this fund one or both of them purchase a camera. Except for proof of a contrary agreement, few courts would deny that the camera is held in joint tenancy. But legal difficulties are complicated if one purchases the camera without the other's assent or knowledge. A number of states recognize and favor entireties ownership of real property but refuse to favor and even deny that the estate can exist in personalty. The unsoundness of this dubious line of distinction is emphasized when entireties real estate is exchanged for personal assets. While it appears that these matters go somewhat beyond the issues associated with the formation and creation of joint rights (the subject of this paper), cumulatively they raise a type of question which has remained substantially unanswered, i.e., can husband and wife contract to hold present and future property in joint tenancy or entireties form, and if so to what extent does their ownership take on aspects similar to those of community property? For if joint ownership can be projected into the future, the law of community property furnishes the only significant analogy from which a solution to the matters of dual control can be resolved.

A fifth deterrent to those people choosing to acquire property jointly is a procedural one, but one which magnifies the significance of the other formalities governing the creation of such rights. This is the legislation prohibiting a party from testifying as to transactions with a deceased person—commonly referred to as the "dead man's"

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16 It is for this reason that so much trouble with joint ownership occurs in the community states. Where community funds are used to acquire property in a form which would create one of the common law forms of co-ownership both parties must assent to the transmutation. Therefore, unless the transfer instrument shows that both parties have assented thereto the effectiveness of the transfer may depend upon parol proof that both parties assented. Cf. Collier v. Collier, 73 Ariz. 405, 242 P. (2d) 537 (1952) (assent established by signed indorsement of both parties upon a joint tenancy deed); In re Trimble's Estate, (N.M. 1953) 253 P. (2d) 805 (W did not know that deed was taken in joint tenancy form—held, that property retained its character as community).

17 Hoyle v. Hoyle, 31 Del. Ch. 64, 66 A. (2d) 130 (1949).

18 This anomaly has sometimes led to queer results. Compare Turlington v. Lucas, 186 N.C. 283, 119 S.E. 366 (1923) (bonds received in exchange for entireties real estate held in common), with Place v. Place, 206 N.C. 676, 174 S.E. 747 (1934) (money received in exchange for entireties real estate held as tenants by the entireties). Comment upon these cases will be found in 13 N.C.L. Rev. 256 (1935).

19 The law proceeds upon the idea that a gift should be accompanied by a blaring of trumpets and a formal announcement in the public square. In truth gifts are often con-
The statutes operate with particular force to joint survivorship interests because the rights of the parties are most frequently disputed after one of them is dead. There is no need here to quarrel with the policy of these laws. But they dramatize, in a practical way, the deficiency in our substantive law which generally has failed to give conclusive and in some cases even presumptive effect to written evidence of gifts and other transactions showing that joint rights were intended. By excluding what is often the next best source of proof, litigation not infrequently is reduced to the level of a game of chance.

A sixth restriction upon the creation of joint rights is the statute of frauds. Unfortunately, it does not specifically contemplate some of the rather odd problems arising from the efforts of two or more persons to acquire joint interests in personal property. While the statute ordinarily does not apply to gifts, statutes interfering with the creation of joint survivorship rights on occasions have been construed as a kind of supplement to the statute of frauds. A lack of reliable authority dealing with contracts to hold chattels and choses jointly has left a number of problems unsettled.

A seventh legal formality having to do with the establishment of joint tenancy and tenancy by the entireties is the so-called “four unities” rule. This fantastic conception originated with Blackstone as a verbal description of something only partly supported by judicial authority. Its most significant effect in this country has been to prohibit the creation of joint tenancies and entireties by a direct transfer from an owner to himself and another. However, the rule in most states has been abandoned; in others it has been replaced by something which is not much better; and there are but few indications that the rule is applicable to transactions involving personal property. Because it serves no useful purpose, it is no compliment to the legal profession that the rule has not long disappeared from the law books.

summated in the utmost of humility and in circumstances where the donee is the only available witness. Since the donee is disqualified by the “dead man’s” statute the gift may fail because of opposing proof or because the donee cannot meet the burden of proof. E.g., compare Flanagan v. Nash, 185 Pa. 41, 39 A. 818 (1898); In re Hounsell’s Estate, 252 Wis. 138, 31 N.W. (2d) 203 (1948).

Few cases will be found where the statute of frauds was applied to joint ownership agreements. In some states joint tenancy statutes have been construed as requiring acquisition of joint tenancy rights in personalty to be in writing. E.g., Harvey v. United States, (7th Cir. 1950) 185 F. (2d) 463; In re Horn’s Estate, 102 Cal. App. (2d) 635, 228 P. (2d) 99 (1951). Compare the statutory provisions set forth in Appendix II, col. 6.

These are the so-called unities of “interest, title, time and possession.” For an example of an application of the rule to acquisitions of personal property, see Rigby v. Rigby, (Del. 1952) 88 A. (2d) 126. For statutory modifications see Appendix II, col. 7.
1. The English Experience

The common law segregated joint ownership by husband and wife from the other joint estates by characterizing the relation separately, and ultimately as "tenancy by the entireties." This common law experience has had a terrific impact upon current legal notions and beliefs. Most important has been the supposition that the common law estate of tenancy by the entireties was confined to interests in real estate. It is true that the estate ordinarily arose by operation of law where real estate was conveyed or devised to husband and wife. It was not unlike joint tenancy in that survivorship was its most important incident, but it differed materially because the relation could not be terminated by one of the parties. The husband, however, retained control over the property with the right to rents and profits during his lifetime. Aside from some of the technical troubles arising out of the

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22 A few common law authorities will be found to the effect that husband and wife could own property jointly only as tenants by the entireties. This, if it ever gained a substantial foothold in the law (and this is doubtful), has long since been repudiated. See notes 241-243.

23 It is the habit of authors and judges to follow a conventional and almost rhythmic pattern of reviewing common law principles controlling the rights of joint owners. A further review of the common law authorities at this late date would be unnecessary except for two reasons: (1) Seldom has careful thought been given to the common law cases involving joint ownership of personal property by husband and wife. (2) No explanation has been forthcoming as to why the social reasons underlying the common law customs regulating marital ownership should be ignored or summarily cast aside—as so many courts have done.


25 Co. Litt. *187a. One of the peculiar effects of the rule occurred where property was conveyed to the husband, wife, and a third person. Here husband and wife took but one moiety by the entireties. E.g., Bricker v. Whatley, 1 Vern. 233, 23 Eng. Rep. 435 (1684); Kolker v. Gorn, 193 Md. 391, 67 A. (2d) 258 (1949) (deed to F, H and W as "joint tenants" reformed to create tenancy by entierties as to one half). Compare Mauser v. Mauser, 326 Pa. 257, 192 A. 137 (1937) (bank account in names of "H or W or son" held by parties as tenants in common), with Heather v. Lucas, 367 Pa. 296, 80 A. (2d) 749 (1951) (deed to "X, H and W his wife" created tenancy by entireties in one-half of the property—court indicated that had the conveyance not referred to the marital status of the parties they would have held in three equal shares). Subsequent marriage of a man and woman holding property by joint tenancy did not create an entireties relation, but the joint estate continued. Co. Litt. *187b. The origin of tenancy by the entireties is obscure. See 3 Holdsworth, History of English Law 128 (1927).


rigid formalities governing the creation of the estate, relatively few disputes concerning the relation found their way into litigation.

But as applied to personal property there is some indication from the authorities supporting the belief that the estate was a legal impossibility. This followed logically from the judicial fiction that merged the identity of the wife in the husband who in turn acquired almost full control over her personal assets. The married woman, for most practical purposes, was incapable of owning personal assets. She was barred from a fair economic share in the personal estate of the husband as well as her own both during the marriage and upon his death. Thus for a considerable period of common law history gifts between the parties were ineffective. However, several mitigating developments came to permit the wife to hold a separate or qualified interest in personal property. Choses in action owned by the wife before marriage or coming to her thereafter passed to her where she survived the husband, providing he had not theretofore received payment, or, as the cases put it, caused them to be "reduced to possession." It was upon this theory, too, that

If it was binding on the wife, she was entitled to the rent. Temple v. Temple, Cro. Eliz. 791, 78 Eng. Rep. 1021 (1601).


31 If he chose to do so, the husband could disinherit his wife and family from any share in his personal estate. However, by special custom in some parts of England this was not permitted. 3 Holdsworth, History of English Law 552 (1927). By the Family Provision Act of 1938, "reasonable provision for maintenance" must be allowed to the surviving spouse and children. 1 & 2 Geo. 6, c. 45. The common law, of course, required the husband to maintain his wife during his lifetime. Thompson v. Hervey, 4 Burr. 2177, 98 Eng. Rep. 136 (1768); 3 Holdsworth, supra, at 530.

32 With few exceptions, the husband was given full control over the personal property of the wife. Co. Litt. *300a. This right could not be defeated by the wife's will, unless the husband assented to it. Marlborough v. Godolphin, 2 Ves. Sr. 61, 28 Eng. Rep. 41 (1750).

the husband could not defeat the wife's future interests in personal property which could not vest in possession during his lifetime.\textsuperscript{35} Where personality was retained or given to the wife for her separate use, equity enforced her separate rights upon a use or trust theory,\textsuperscript{36} binding the husband as trustee in cases where none was named.\textsuperscript{37} Upon this basis gifts from husband to wife ultimately became effective.\textsuperscript{38} These events added flexibility to estate planning of the English people and combined to demonstrate a popular reaction against a legal system which approved impoverishment of the married woman. It fostered the marriage settlement or jointure which may have been beneficial to the wife, for it was through this device that the married woman often acquired a separate estate in personality.\textsuperscript{39}

Out of this legal evolution which gave the wife at least a limited capacity to enjoy rights of ownership in personal property came the further recognition that she could hold property in her own right, so that decisions were compelled by the force of logic to hold that the wife could


\textsuperscript{36}Although some of the earlier cases cast doubt upon the subject, it came finally to be settled that the wife exercised unfettered control over property settled to her own use. E.g., Pybus v. Smith, 3 Bro. C.C. 340, 29 Eng. Rep. 570 (1791) (assignment of future earnings from bank annuities by wife for the purpose of paying debts of husband enforced).


\textsuperscript{38}Lucas v. Lucas, 1 Atk. 270, 26 Eng. Rep. 172 (1738). A legal gift from husband to wife was technically difficult since her possession was his, thus making delivery fictionally impossible. In re Breton's Estate, 17 Ch. Div. 416 (1881); Grant v. Grant, 34 Beav. 623, 55 Eng. Rep. 776 (1865). Hence gifts from husband to wife were enforced in equity where it could be found that the husband had declared himself trustee for the wife. Baddeley v. Baddeley, 9 Ch. Div. 113 (1878). Cf. Simmons v. Simmons, 6 Hare. 352, 67 Eng. Rep. 1202 (1847) (gift effective on basis of equitable estoppel).

acquire an entireties interest with her husband in personality—an interest which could not wholly be defeated by him. Hence, the idea that the wife retained a survivorship right to choses in action brought by her to the marriage left no doubt that contract rights held by husband and wife in their joint names passed to the survivor. 40 Equity, which enforced the separate rights of the wife to personality settled to her own use, carried this policy over to all types of personal property taken in their joint names by giving effect to the survivorship incident of the entireties estate. 41 In fact the great majority of the decisions validating

40 Low v. Carter, 1 Beav. 426, 48 Eng. Rep. 1005 (1839); Draper v. Jackson, 16 Mass. 480 (1820); 13 Iowa L. Rev. 108 (1927). While this proposition is incapable of positive proof, the great bulk of the cases giving a right of survivorship to choses in action held in the names of husband and wife apparently proceeded upon this theory. Drew v. Martin, 2 H. & M. 130, 71 Eng. Rep. 411 (1864) (contract to purchase realty in names of H and W passed to surviving wife); Laprimaudaye v. Teissier, 12 Beav. 205, 50 Eng. Rep. 1038 (1849) (stock dividends carried in the joint names of H and W); Costes v. Stevens, 1 Y. & C. Ex. 66, 160 Eng. Rep. 28 (1834) (stock placed in names of H and W by husband passed to surviving wife); Norton v. Glover, Noy 149, 74 Eng. Rep. 1110 (1869) (debt held by husband and wife passed to surviving wife); Becket v. Becket, 1 Dick. 340, 21 Eng. Rep. 301 (1760) where the court in applying the latter principle spoke as follows: "But if it be specific, and not reduced into possession, the husband and wife will be considered as joint tenants, and it will go to the survivor." 41

41 "I think I must take it that this was a trust created by the testator for his wife." Gosling v. Gosling, 3 Drew 335, 61 Eng. Rep. 931 (1855) (upholding survivorship rights of wife to promissory note which the husband caused to be changed to names of H and W). Equity favored the right of survivorship between husband and wife in any case where the court acquired jurisdiction over property held in their joint names. In re Eykyn's Trusts, 6 Ch. Div. 115 (1877) (husband transferred stock and debentures to names of H, W and trustees of family settlement—held trustees retained property in trust for surviving wife); Lannoy v. Lannoy, Sel. Cas. t. King 48, 25 Eng. Rep. 216 (1725) (wife's survivorship right to stock purchased by husband with funds inherited by wife sustained on equitable principle that property came through her). Cf. Re Crump, 34 Beav. 570, 55 Ch. 755 (1865) (equity sanctioned transfer of wife's separate property under marriage settlement to joint names of husband and wife); Smith v. Warde, 15 Simm. 55, 60 Eng. Rep. 537 (1845) (survivorship defeated upon proof of intent to create an express trust for third party which failed); Teral v. Teral, 212 Ark. 221, 205 S.W. (2d) 198 (1947). See Coomes v. Elling, 3 Atk. 676, 26 Eng. Rep. 1188 at 1190 (1747). See also the cases in chancery cited in note 40. That entireties ownership was favored by equity is reflected in several decisions which created this relation in awarding a settlement to the wife out of her separate property. Bond v. Simmons, 3 Ark. 20, 26 Eng. Rep. 815 (1743); Steed v. Calley, 2 My. & K. 52, 39 Eng. Rep. 864 (1833). Since equity protected the wife's reversionary interests in personal property, which could not vest during coverture, a large number of cases will be found where survivorship interests were sustained under transfers to husband and wife for their joint lives. E.g., Moffatt v. Burnie, 18 Beav. 211, 52 Eng. Rep. 83 (1853); Smith v. Oakes, 14 Sim. 122, 60 Eng. Rep. 304 (1844); Townley v. Bolton, 1 My. & K. 148, 39 Eng. Rep. 637 (1832); Cowper v. Scott, 3 P. Wms. 119, 24 Eng. Rep. 993 (1731). Cf. Attorney General v. Burnie, 3 Y. & J. 531, 148 Eng. Rep. 1290 (1830) (holding that husband and wife each held a life estate in a separate moiety for tax purposes).
the joint or entireties relation came out of chancery. Consequently, where stock, mortgages, bank annuities, a bank account or a promissory note were procured by the husband in the names of both parties, where they both obtained a judgment in their joint names, and where husband and wife were named as beneficiaries by will, trust, or family settlement, equity awarded the property to the survivor. It is significant, however, that the common law courts until relatively modern times failed to classify entireties ownership of chattel property as such. Moreover, no clearly defined principles governing the rights of the parties inter se or as against third persons will be found in the early decisions. The uncertainty engendered by the

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42 See cases cited in notes 40, 41. An opinion has been expressed to the effect that entireties ownership in personal property, if it existed at common law, was confined to interests held by mortgagees under the theory that the mortgagee held legal title to the real estate. Stout v. Van Zante, 109 Ore. 430, 219 P. 804, 220 P. 414 (1923) (no primary authorities cited). This opinion is wholly without foundation. E.g., Doe dem. Freestone v. Parratt, 5 T.R. 652, 101 Eng. Rep. 363 (1794) (indicating that husband and wife would hold mortgage in their joint names as tenants by the entireties either at law or in equity); Miller, "Tenancy by the Entirety in Personal Property in Oregon," 3 Ore. L. Rev. 163 at 172-174 (1924). Compare cases cited in note 91.


46 Williams v. Davies, 3 Sw. & Tr. 437, 164 Eng. Rep. 1344 (1864); In re Young, 28 Ch. Div. 705 (1885).


48 That the wife could create an entireties interest in husband and wife with her separate personal property compare In re Young, 28 Ch. Div. 705 (1885), with Darkin v. Darkin, 17 Beav. 578, 51 Eng. Rep. 1159 (1853) (husband held under an express trust for wife).


51 In re Eykyn's Trusts, 6 Ch. Div. 115 (1877).

52 See note 39.


54 The cases were in hopeless conflict concerning the husband's right to transfer entireties personally. Where husband and wife held as mortgagees jointly by devise it was held that the husband could not defeat the wife's survivorship right by conveyance. Doe dem. Freestone v. Parratt, 5 T.R. 652, 101 Eng. Rep. 363 (1794). But cf. Grute v. Locroft, Cro. Eliz. 287, 78 Eng. Rep. 541 (1790) (lease by husband of term held as "joint tenants" binding upon surviving wife). On the other hand cases will be found where the husband effectively encumbered entireties property. Watts v. Thomas, 2 P. Wms. 364, 24 Eng. Rep. 767 (1726) (husband mortgaged term—held equity of redemption passed to
conflicting authorities upon this point was resolved in 1849 by the case of *Atcheson v. Atcheson*, where equity intervened to bind the husband as trustee of funds held by husband and wife in their joint names. The husband, however, was given rights to the income and use of the property during his lifetime. The force of this decision, which preserved the corpus of the estate through the trust device and awarded full control of use, rents and profits to the husband, was subsequently confirmed by *Ward v. Ward* and *In re Bryan*. Creditors of the husband were permitted to reach the income from joint property by these

his creditors). Cf. Paschall v. Thurston, 2 Brown, 10, 1 Eng. Rep. 759 (1734). The cases which allowed the husband to defeat the wife's survivorship right were based upon the theory that the husband exercised full control over the wife's personal assets. As a matter of principle this was unsound in view of the decisions which recognized that the husband could not defeat the wife's reversionary interests in personal property which did not come into possession during his lifetime. *Purdew v. Jackson*, 1 Russ. 1, 58 Eng. Rep. 1 (1823); *Duberley v. Day*, 16 Beav. 33, 51 Eng. Rep. 688 at 691-692 (1852) (where analogy made to an interest held in property for their joint lives). That the surviving wife could trace jointly owned property which had been misappropriated by the husband, compare *Darkin v. Darkin*, 17 Beav. 578, 51 Eng. Rep. 1159 (1853) (evidence showed that husband agreed to make provision for wife in reality purchased with joint funds). The contrary was true where the wife consented. Cf. *In re Young*, 28 Ch. Div. 705 (1885) (holding that investments made in the name of the husband from a joint bank account upon which each had the power to draw did not pass to the wife—court rejected the argument that the power to withdraw was limited to ordinary household expenses).


56 14 Ch. Div. 506 (1880).

57 Id. at 516.
decisions, but only for the life of the husband in the event the wife survived.\textsuperscript{58}

From this background of events entireties finally emerged as a kind of family settlement affording economic security to the wife as well as the husband in all types of property. But in any event entireties in personal and real property disappeared in England with the Married Women's Property Act of 1882\textsuperscript{59} which had the effect of converting the relation into a joint tenancy.\textsuperscript{60} Consequently, the British experience is valuable to us principally because the common misunderstanding of the evolutionary process by which it emerged undoubtedly led to the divergent reception it has suffered in this country. It may be some evidence, too, that the marriage partnership has long been popularly regarded as an institution for working out social security for the mutual benefit of the partners.


In this country the legal attitude toward joint ownership by husband and wife has been vitally affected by legislation. Statutes of three different sorts either directly or indirectly have played a most important role. One of these was the married women's property laws which literally stripped from the husband and vested in the wife almost exclusive control over her separate property. By a process of judicial legislation in some states these acts were construed as destroying tenancy by the entireties.\textsuperscript{61} There was and is nothing in the general run of the legis-
lotion specifically commanding this result. Abolition was reasoned upon the assumption that the purpose of the married women's property laws was to divorce property ownership from the marriage relation—an assumption quite beyond the general movement which was to give women equality of rights with men. The common law precedents clearly repel the idea that the estate was dependent upon the wife's incapacity, since she could separately own realty and, in equity, personal property settled to her separate use. Moreover, the husband as well as the wife enjoyed and was bound by the major incidents attached to entireties ownership. In a majority of jurisdictions entireties as a favorite of the law remained unaffected, except that these provisions logically were construed as giving the wife equality in the control of entireties property. Thus both are necessary parties in actions against third persons for injury to the property. As a general rule the parties must join in a release or discharge of an obligation held by the entireties. Most courts now hold that rents and profits from entireties property can be controlled and transferred only with the assent of both

62 Tennessee and Wisconsin are the only states where joint ownership by husband and wife is given specific mention as a part of the married women's property legislation. Tenn. Code Ann. (Williams, 1934) §8461; Wis. Stat. (1951) §246.03.


A parallel difficulty arises in the community property states, where as a general rule the husband is given control over community assets. That the scheme of community property laws could be continued without this type of marital subjugation, see Horne, "Community Property—A Functional Approach," 24 So. Cal. L. Rev. 42 (1950).

64 Neither party could transfer his or her interest to defeat the other's right of survivorship. Green ex dem. Crew v. King, 2 W. Bl. 1212, 96 Eng. Rep. 713 (1778). Therefore, the contingent survivorship interest held by each was as valuable to the wife as to the husband. Baker v. Stewart, 40 Kan. 442, 19 P. 904 (1888).


spouses. With but few exceptions enjoyment of entireties property
has become a mutual affair. One would think that the married
women's property laws would have eliminated any doubt about the
(1941) (power to vote entireties stock must be exercised by both); O'Boyle v. Home Life
policy so as to defeat H's right of survivorship). Contra, Childs v. Childs, 293 Mass. 67,
199 N.E. 383 (1936) (power to receive payment of entireties contract vested exclusively in
the husband as at common law). Cf. Mann v. Etchells, 132 Fla. 409, 182 S. 198 (1938);
Merrill v. Adkins, 131 Fla. 478, 180 S. 41 (1938) (payment of entireties note to H
discharged obligation, but proceeds held by the entireties); McElroy v. Lynch, (Mo. 1950)
232 S.W. (2d) 507 (payment of entireties note to party in possession discharged obligation,
but payee accountable for proceeds); Hamrick v. Lasky, (Mo. App. 1937) 107 S.W. (2d)
201 (payment to one discharged obligation owned by entireties).

67 Morgan v. Finnegan, (D.C. Mo. 1949) 87 F. Supp. 274 (income from entireties
realty taxed to parties "50-50"); Hurd v. Hughes, 12 Del. Ch. 188, 109 A. 418 (1920)
(H had no interest that could be reached by his creditors); American Wholesale Corp. v.
Aronstein, 56 App. D.C. 126, 10 F. (2d) 991 (1926) (H had no interest that could be
reached by his creditors); Richart v. Rooper, 156 Fla. 822, 25 S. (2d) 80 (1946) (H could
not lease entireties realty alone); Ohio Butterine Co. v. Hargrave, 79 Fl. 458, 84 S. 376
(1920) (individual creditors could not sequester rent); Patton v. Rankin, 68 Ind. 245
(1879) (crops from entireties realty not subject to execution by H's creditors); Hoffman
v. Newell, 249 Ky. 270, 60 S.W. (2d) 607 (1932) (rents and profits could not be reached
by individual creditors); Annapolis Banking & Trust Co. v. Neilson, 164 Md. 8, 164 A. 157
(1933) (H's creditors could not garnish rent); McCubbin v. Stanford, 85 Md. 378, 37 A.
214 (1897) (H's mortgagee could not obtain possession by foreclosure); American State
property not subject to levy by H's creditors); Kingman v. Banks, 212 Mo. App. 202, 251
S.W. 449 (1923) (H's creditor could not attach rents from entireties realty); Winchester-
Simmons Co. v. Cutler, 199 N.C. 709, 155 S.E. 611 (1930) (H's judgment creditor
acquired no lien on entireties real estate); O'Malley v. O'Malley, 272 Pa. 528, 116 A. 500
(1922) (rents and profits from entireties property divisible only after divorce); Beihl v.
Martin, 236 Pa. 519, 84 A. 953 (1912) (individual creditors could reach only the non-
transferred contingency of survivorship); Bloomfield v. Brown, 67 R.I. 452, 25 A. (2d)
354 (1942) (H's creditors could not execute upon entireties realty); Sloan v. Sloan, 182
Tenn. 162, 184 S.W. (2d) 391 (1945) (H's grantee acquired no present interest); Cole
Mfg. Co. v. Collier, 95 Tenn. 115, 31 S.W. 1000 (1895) (individual creditors could not
reach rents and profits); Vasilion v. Vasilion, 192 Va. 735, 66 S.E. (2d) 599 (1951)
(creditors of H could claim no interest in entireties property). Contra: Splaine v. Morrissey,
282 Mass. 217, 184 N.E. 670 (1933) (transfer of H's bank deposit to himself and W
was not a fraudulent conveyance because interest of husband subject to execution); Lewis
v. Pate, 212 N.C. 253, 193 S.E. 20 (1937) (creditors of H allowed to execute upon
rehearing den. 300 N.W. 16 (1941) (H retains right to control lease, and collect rents
from entireties property as against wife).

68 The entireties relation cannot be severed by one of the parties with the result that
the estate cannot be partitioned without the mutual assent of the owners. Hoag v. Hoag,
213 Mass. 50, 99 N.E. 521 (1912) (involving real estate); Knott v. Knott, 244 Mich. 78,
221 N.W. 285 (1928) (court refused right to an accounting of proceeds from Pennsylvania bank account held by the entireties, and invested by wife in Michigan realty); Frost v. Frost, 200 Mo. 474, 98 S.W. 527 (1906) (court refused to divide proceeds from entireties property); Vollaro v. Vollaro, 144 App. Div. 242, 129 N.Y.S. 43 (1911); Jones
N.J. Eq. 199, 83 A. 968 (1912) (partition between transferee of one spouse and other
creation of entireties rights in personal property, in view of the fact that its common law existence usually was theoretically denied upon the ground that the wife lacked capacity to own personalty, and, therefore, could not share it with her husband. Removal of the wife's disability should have eliminated any technical obstacle to entireties ownership of personal property. This thought seems to have been overlooked in six states where entireties ownership of personal property is disfavored although the opposite rule prevails in the case of real estate.

Another variety of legislation interfering with the creation of joint rights between husband and wife are the community property laws. Coming as it does from the civil law, one might reasonably expect to find in community property a comprehensive substitute for the common law types of joint ownership available to husband and wife. However, most of the states with these laws recognize that community and separate property of the spouses may be transmuted into tenancy in common or joint tenancy. A lack of convincing authority has left open the question of whether or not tenancy by the entirety can exist. As will be seen, joint tenancy and tenancy by the entireties are not favored as a rule of construction. It appears, too, that some of the states prefer community ownership over tenancy in common. To a large extent the prejudice against the common law forms of co-ownership has been influenced by the preference for community in cases where the source of the consideration is not accounted for, or where community assets are

allowed as to inter vivos rights). A few states, however, treat the rights of each tenant by the entireties as severable—at least for some purposes. Franks v. Wood, 217 Ark. 10, 228 S.W. (2d) 480 (1950) (H could encumber one half rents and profits plus his contingency of survivorship); Zanzonico v. Zanzonico, 24 N.J. Misc. 153, 46 A. (2d) 565 (1946) (individual right of one spouse to possession, rents and profits passed on execution sale, but not the possibility of survivorship); Finnegan v. Humes, 252 App. Div. 385, 299 N.Y.S. 501 (1937), affd. 277 N.Y. 682, 14 N.E. (2d) 389 (1938) (on execution sale by H's creditor purchaser became tenant in common with W and also held a right of survivorship if H survived W); Ganoe v. Ohmart, 121 Ore. 116, 254 P. 203 (1927) (H's creditor allowed to reach one half of rents and profits plus his possibility of survivorship). Cf. Whitelock v. Whitelock, 156 Md. 115, 143 A. 712 (1928) (disagreeing spouses each awarded one half of income from entireties property which court ordered to be placed in trust). See White v. White, (Fla. 1949) 42 S. (2d) 710 at 711 (income from entireties adjusted in suit for separate maintenance). For an excellent analysis of the incidents of entireties ownership see Phipps, "Tenancy by Entireties," 25 Temple L.Q. 24 (1951).

69 The community property laws of three states affirmatively provide that husband and wife may own property in joint tenancy or as tenants in common. Cal. Civ. Code (Deering, 1949) §§161, 683; Nev. Comp. Laws (1929) §3362; N.M. Stat. Ann. (1941) §65-302. In Washington, agreements with respect to community property to take effect upon the death of either husband and wife are permitted by statute when in writing. Wash. Rev. Code (1951) §26.16.120. Louisiana is the only state which refuses to recognize the common law joint estates. See note 169.
employed to acquire property in the dual names of the parties.\textsuperscript{70} Hence, the character of the funds used to acquire joint property is of special importance in the community states.

The third kind of legislation, and undoubtedly the most important, is that which purports to disfavor or abolish joint tenancy or the survivorship incident attached to that estate. Statutes of this type have been adopted in all but five states\textsuperscript{71} and have been a powerful though often unheralded force in producing what may best be described as a judicial fetishism against the creation of survivorship rights in real and personal property and in many cases between husband and wife. This is a reversal of the common law rule which construed acquisitions in the names of two or more persons as presumptively creating joint tenancy.\textsuperscript{72} Although the language of these laws, with but few exceptions,\textsuperscript{73} does not literally encompass tenancy by the entireties, some courts nevertheless have expanded it to include this estate.\textsuperscript{74} In states where the married women's property laws were interpreted as displacing entireties the joint tenancy legislation was applied in pari materia so that tenancy in common was preferred in construing transfers to husband and wife.\textsuperscript{75} However, decisions have given only cursory attention to the wording of the joint tenancy legislation. For this reason a literal evaluation of the statutes as applied to personal property and to husband and wife may be of some usefulness.

\textsuperscript{70} For the special rules in the community states of Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington, see notes 114, 128, 155, 169, 129, 156, 157 and 158, respectively. A comparison of the case law in these jurisdictions will reveal many subtle and conflicting distinctions. Although the husband retains managerial powers over most of the community, both parties must join or assent to transfers of community into tenancy in common or joint tenancy. This leads to what might be termed an inordinate amount of litigation concerned with presumptions and parol proof of agreements between the parties. E.g., In re Baldwin's Estate, 50 Ariz. 265, 71 P. (2d) 791 (1937); Socol v. King, 36 Cal. (2d) 342, 223 P. (2d) 627 (1950); In re Trimble's Estate, (N.M. 1953) 253 P. (2d) 805 (an excellent decision upon this problem); August v. Tillian, 51 N.M. 74, 178 P. (2d) 590 (1947); Munson v. Haye, 29 Wash. (2d) 733, 189 P. (2d) 464 (1948).

\textsuperscript{71} See Appendix II. The five states are Connecticut, Louisiana, Nebraska, Ohio and Wyoming.


\textsuperscript{73} Tenancy by the entireties expressly is preserved only in Florida, Oregon and Tennessee. On the other hand entireties literally is disfavored only in Kentucky, Mississippi, Oklahoma and West Virginia.

\textsuperscript{74} E.g., Wait v. Bovee, 35 Mich. 425 (1877); Clark v. Clark, 56 N.H. 105 (1875); Stout v. Van Zante, 109 Ore. 450, 219 P. 804, 220 P. 414 (1923); Green v. Cannady, 77 S.C. 193, 77 S.E. 332 (1907). In England, where joint tenancy is favored, the married women's property laws had the effect of creating a preference for joint tenancy between husband and wife. See note 60.

\textsuperscript{75} E.g., Hoffman v. Stigers, 28 Iowa 302 (1869); Wilson v. Wilson, 43 Minn. 398, 45 N.W. 710 (1890).
Applicability of statutes to personal property. It is of interest to note that, of the general statutes establishing a constructional preference for tenancy in common or purporting to abolish joint tenancy, those in fifteen states apply to real estate or various interests in realty thus leaving an inference that personal property was excluded. 76 On the other hand, the laws in sixteen literally encompass both realty and personalty, 77 and by fair construction the enactments in the remaining thirteen states with such laws purport to include all classes of property rights. 78 However these statutes seem to read, it is quite clear that the policy of the legislation has been carried over to personal property in practically every state in the Union either upon a broad interpretation or upon reasoning by analogy. 79 It is now too late to suggest that the


78 Alabama, Arkansas, Georgia, Iowa, Maryland, Montana, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, South Dakota and Washington. See Appendix II, col. 2.

79 Illustrative cases from states with statutes applying only to real estate where it was assumed or held that the laws apply to personalty: Greenwood v. Commissioner, (9th Cir. 1943) 134 F. (2d) 915 at 921 (Arizona); Eisenhardt v. Lowell, 105 Colo. 417, 98 P. (2d) 1001 at 1002 (1940) (stock); Stetson v. Eastman, 84 Me. 366, 24 A. 868 (1892) (bequest); Goldsmith v. Barron, 288 Mass. 176, 192 N.E. 509 (1934) (lessees); Wait v. Bovee, 35 Mich. 425 at 429 (1877) (right of survivorship disfavored on the basis of “drift of policy and opinion, as shown by legislation and judicial decisions”); Semper v. Coates, 93 Minn. 76, 100 N.W. 662 (1904) (right of action on promissory note to H and W passed to survivor who was accountable to deceased’s estate); Nichols v. Denny, 37 Miss. 59 at 64 (1859) (legacy); Pierce v. Baker, 58 N.H. 531 at 532 (1879) (“usage” under statute applying to realty not to be an “estate” within the meaning of the joint tenancy statute). See Diehm v. Northwestern Mut. Life Ins. Co., 129 Mo. App. 256, 108 S.W. 139 (1908); Dupont v. Jonet, 165 Wis. 554, 162 N.W. 664 (1917). The Wisconsin statute exempts “devises.” Wis. Stat. (1951) §230.45. In Farr v. Trustees of Grand Lodge, 83 Wis. 446, 53 N.W. 738 (1892), this exemption was applied by analogy to legacies.

omission of personalty from a substantial number of these enactments may have been indicative of contrary legislative policy, and in fact there appears to be no reason for a distinction between the two classes of property. It is difficult to understand, however, why the judicial persistence in maintaining uniformity between the two types of property has been ignored by those states recognizing and favoring entitities ownership in real property but refusing to do so where personalty is concerned. 

Special legislation affecting the creation of joint rights in particular types of personal property will be found in some jurisdictions. Practically all of the states have acts purporting to regulate more or less comprehensively the rights of parties to joint bank accounts. Discussion of these laws will be deferred inasmuch as their importance arises from their effect upon the type of language necessary to create survivorship rights and their relation to the law of gifts. However, it is significant that the general statutes in eight states—Indiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey and Wisconsin—literally exclude joint mortgagees from the constructional preference for tenancy in common. The exact meaning of these excepting provisions has not been made entirely clear by the case law. In Massachu-

80 Indiana, Michigan, New Jersey, New York, North Carolina and Oregon. See notes 100-102, 136-138.

81 Statutes authorizing creation of joint tenancy in particular types of personalty: Colo. Stat. Ann. (Repl. 1952) c. 92, §17 (any “security” as defined by the “Blue Sky Law” in names of two persons “as joint tenants and not as tenants in common, or as joint tenants with right of survivorship and not as tenants in common” shall vest in the survivor); Mont. Rev. Code (Repl. 1953)§67-309 (“the right in two or more persons to use or occupy any safe or box . . . shall be a joint tenancy . . . and to pass to the survivors . . . under the terms of the agreement”); Ohio Rev. Code (Baldwin, 1953) §1701.34(3) (“corporate shares issued to two or more persons with the words ‘as joint tenants’ or ‘as joint tenants with right of survivorship and not as tenants in common’” will create “a joint estate with the incidents of a joint estate as at common law, including the right of survivorship”). Special legislation affecting husband-wife ownership in particular types of personalty will be found in Indiana, New Jersey and Michigan. See notes 89, 106, 108, 109. Compare the statutes cited in notes 214, 215.

82 The language of these laws is classified in Appendix III. The effect of these statutes upon the law of gifts will be considered in another paper.

Joint Rights in Personal Property

1954

799

setts\textsuperscript{84} and Michigan\textsuperscript{85} it has been held that the right to sue and collect upon a mortgage naming two or more persons as joint owners passes to the survivor, but that in equity the latter is under a duty to account to the deceased's personal representative. In other words, joint mortgagees presumptively hold as tenants in common except for procedural reasons to facilitate collection and discharge of the mortgage. The Wisconsin act has been construed as allowing parol proof to show whether or not joint tenancy was intended.\textsuperscript{86} Decisions will be found in Indiana\textsuperscript{87} and Minnesota\textsuperscript{88} where the statutory exemptions have been ignored and, in absence of language showing that joint tenancy or survivorship rights were intended, tenancy in common was preferred. Judicial construction of the laws apparently has not been made in Maine and Mississippi. The language of a recent New Jersey statute,\textsuperscript{89} which is applicable only as between husband and wife, leaves no doubt but that they are presumed to hold mortgages in personal and real property as joint tenants with right of survivorship. A plausible explanation for excepting joint mortgagees from the operation of the joint tenancy legislation does not appear. It is quite probable that the early statutes were adopted with an express purpose that they should be applied only to interests in real estate, and the exemption of joint mortgagees possibly served as an

\textsuperscript{84}Park v. Parker, 216 Mass. 405, 103 N.E. 936 (1914) (purchase money mortgage to "A, B and C" who were tenants in common of realty sold to mortgagor—held, executor of last survivor authorized to collect obligation, but accountable to estates of others). Cf. Rosenfeld v. Fine, 298 Mass. 356, 10 N.E. (2d) 265 (1937). Massachusetts favors tenancy by the entireties with the result that mortgagees who are husband and wife are presumed to hold as tenants by entireties. Pineo v. White, 320 Mass. 487, 70 N.E. (2d) 294 (1946) (W could not release mortgage owned by H and W); Boland v. McKowen, 189 Mass. 563, 76 N.E. 206 (1905).


\textsuperscript{86}See note 12.

\textsuperscript{87}Radabaugh v. Radabaugh, 109 Ind. App. 352, 35 N.E. (2d) 114 (1941) (note and mortgage to "H and W" created tenancy in common); Collyer v. Cook, 28 Ind. App. 272, 62 N.E. 655 (1902) (note to "H or W", mortgage to "H"—one half interest passed to wife on H's death). Cf. Anderson Banking Co. v. Gustin, 84 Ind. App. 102, 146 N.E. 331 (1925) (note and mortgage to "H and W"—H could not release wife's interest).

\textsuperscript{88}Cf. Delaney v. Fritz, 221 Minn. 190, 21 N.W. (2d) 479 (1946) (note and mortgage to "A and B"—payment to heirs of each discharged obligation).

\textsuperscript{89}See note 12.
expression of purpose to follow the "lien theory" of mortgages by treating the rights of joint mortgagees as personal property. This would indicate that the early statutes, which usually were limited to real estate, were not intended to govern joint ownership of personality, and that the common law rule favoring joint tenancy and entireties ownership in personal property was to control. Thus coherence in the law of property was maintained by the case law at the expense of evading what may have been a contrary legislative purpose.

Statutes exempting husband and wife. A sympathetic attitude toward marital joint ownership is reflected by legislation in nine states—Arizona, Florida, Indiana, Michigan, Missouri, Oregon, Tennessee, Vermont and Wisconsin. Transfers to husband and wife are excluded from the operation of the laws abolishing or disfavoring joint tenancy or the incident of survivorship. However, the statutes of Florida, Oregon and Tennessee are specific in that tenancy by the entireties

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90 An interesting problem arises where the obligation is made out to several persons in one form, and the mortgage securing it in another. Compare Collyer v. Cook, 23 Ind. App. 272, 62 N.E. 655 (1902) (note to "H or W"—mortgage to H); In re Abdulah's Estate, 214 Wis. 336, 252 N.W. 159 (1934) (note to "H and W"—mortgage to H), with Lober v. Dorgan, 215 Mich. 62, 183 N.W. 942 (1921) (note to "H or W"—mortgage to "H and W, his wife, as joint tenants, with sole right to the survivor"). In the two previous cases, the form of the note was controlling, while in the Lober case the form of the mortgage governed the rights of the parties. Compare also Garrett v. Ellison, 93 Utah 184, 72 P. (2d) 449 (1937) (mortgage to A and B as "joint tenants," note to "A and B"—rights of parties resolved by parol evidence).


92 See Appendix II, col. 4.

93 In Florida the estate of tenancy by the entireties is exempted from the statute creating a constructional preference against joint tenancy. Fla. Stat. (1951) §689.15.


expressly is preserved, whereas the remainder broadly purport to exclude husband and wife from provisions relating to joint tenancy. Judicial interpretation of these provisos has produced some amazing variations. Of the nine states only Florida,96 Missouri,97 Tennessee98 and Vermont99 favor entireties ownership in personal property. While entireties ownership of real estate is favored under the Indiana,100 Michigan101 and Oregon102 statutes, the same result has not been extended to personal property. Justification for this technical differentiation between personalty and realty seemingly is based on the fact that the statutes in these states are confined to real estate.103 Consequently, the decisions which prefer tenancy in common proceed upon a misconception that personal property could not be held by the entireties at common law.104 Cases in these jurisdictions contrast with those of Missouri

96 E.g., Hagerty v. Hagerty, (Fla. 1951) 52 S. (2d) 432 (checking account); Rader v. First Nat. Bank, (Fla. 1949) 42 S. (2d) 1 (U.S. Treasury bonds); Merrill v. Adkins, 131 Fla. 478, 180 S. 41 (1938) (note and mortgage); Bailey v. Smith, 89 Fla. 303, 103 S. 833 (1925) (bank deposits and mortgages).

97 E.g., Shields v. Stillman, 48 Mo. 82 (1871); State Bank of Poplar Bluff v. Coleman, (Mo. App. 1950) 231 S.W. (2d) 843 (automobile); Wills v. Shepherd, (Mo. App. 1951) 250 S. (2d) 1081 (1911), disapproving Johnston v. Johnston, 173 Mo. 91, 73 S.W. 202 (1903) (holding to the contrary where both H and W contributed to consideration).

98 E.g., Sloan v. Jones, 192 Tenn. 400, 241 S. (2d) 506 (1951) (bank deposit in names of "H or wife"); Campbell v. Campbell, 167 Tenn. 77, 66 S.W. (2d) 990 (1934); Smith v. Haire, 133 Tenn. 343, 181 S.W. 161 (1915) (bank account in the names of "H or W").


100 Koehring v. Bowman, 194 Ind. 433, 142 N.E. 117 (1924); Radabaugh v. Radabaugh, 109 Ind. App. 350, 35 N.E. (2d) 114 (1941) (note and mortgage payable to husband and wife); Coller v. Cook, 28 Ind. App. 272, 62 N.E. 655 (1902) (promissory note in names "H or W" held in common). However, property “directly derived from real estate held by that title, as crops . . . or proceeds arising from the sale of property so held” may be held as tenants by entireties. Patton v. Rankin, 68 Ind. 245 (1879) (crops); Vonvile v. Dexter, 118 Ind. App. 187, 76 N.E. (2d) 856, affd. on rehearing, 77 N.E. (2d) 759 (1948); Mercer v. Cooer, 32 Ind. App. 533, 69 N.E. 202 (1903).


103 See Appendix II, col. 2. Note that in Indiana transfers to husband and wife are excepted from the joint tenancy statute applying to real estate, but no such exemption is included in the statute applying to personal property.

104 Abshire v. State ex rel. Wilson, 53 Ind. 64 at 68 (1876) (court assured parties that thorough investigation made of authorities, and cited them without discussion); Stout v. Van Zante, 109 Ore. 430, 219 P. 804, affd. on rehearing, 220 P. 414 (1923); Miller, "Tenancy by the Entirety in Personal Property in Oregon," 3 Ore. L. Rev. 163 (1924)
and Vermont inasmuch as the statutes in both groups of states are limited to interests in real estate. There is some reason to believe that the restrictive effect given by the courts to the husband and wife exemptions in Indiana and Michigan have not been wholly approved. Recent Indiana legislation requires that contracts and options to purchase, and contracts to sell real estate in the names of husband and wife be construed to create tenancy by the entirety. These statutes were passed with the obvious purpose of nullifying the leading Indiana decision, Koehring v. Bowman, enunciating a judicial prejudice against entireties ownership of personal property and holding that an option to purchase real estate in the names of husband and wife made them tenants in common. Special acts in Michigan seemingly favor entireties in certain types of formal choses in action, including contracts and mortgages acquired in exchange for entireties land. A provision of the Wisconsin married women’s property law purports to give the wife equal control over real and personal property “held in joint tenancy with the husband.” This was construed as abolishing entireties ownership by judicial reasoning to the effect that the words “joint tenancy” generically included tenancy by the entireties thereby making the interest of both parties

(criticizing decision); 10 Ore. L. Rev. 388 (1931). The landmark decision in Michigan opposing entireties in personal property failed to consider the statute exempting husband and wife from the statute disfavoring joint tenancy in real estate. Wait v. Bovee, 35 Mich. 425 (1877).

105 Compare Appendix II, col. 2. The Michigan statute disfavoring joint tenancy applies only to real estate, but the policy of the statute was extended to personalty. Wait v. Bovee, 35 Mich. 425 (1877).

106 Ind. Ann. Stat. (Burns Repl., 1951) §§56-901, 56-903. These provisions were passed on March 1, 1951.

107 194 Ind. 433, 142 N.E. 117 (1924).

108 The statute provides: “All bonds, certificates of stock, mortgages, promissory notes, debentures, or other evidences of indebtedness... made payable to... husband and wife, or made payable to them as endorsee or assignee, or otherwise, shall be held... subject to the same... consequences... as are incident to the ownership of real estate held jointly by husband and wife.” Mich. Stat. Ann. (1937) §26.211. This statute has been construed narrowly upon the ejusdem generis principle, thus excluding simple contract rights. McMahon v. Holland, 260 Mich. 246, 244 N.W. 462 (1932) (bank account in names of “H or W” did not pass to survivor); Frank v. Patton, 251 Mich. 557, 232 N.W. 211 (1930) (furniture sold to H and W did not establish entireties in absence of other agreement); Hiller v. Olmstead, (6th Cir. 1931) 54 F. (2d) 5 (fire insurance policy in names of “H and W”). There is some indication that entireties rights may be created in property within the terms of the statute where the intent to do so is expressed. Frank v. Patton, supra. But see Scholten v. Scholten, 238 Mich. 679, 214 N.W. 320 (1927).


110 Wis. Stat. (1951) §246.03.
transferable and converting all "joint tenancies" into what was at common law a technical joint tenancy. Therefore the exemption of husband and wife from the statute disfavoring joint tenancy has had the effect of making Wisconsin the only state where joint tenancy between husband and wife openly is preferred. The rule applies to personal property although this provision of the joint tenancy statute refers only to "lands." The Arizona exemption in favor of husband and wife has been construed in the light of the community property system which has been adopted there. Transfers to husband and wife are presumed to create community ownership in preference to the common law estates of joint tenancy and tenancy by the entireties.

Statutes applicable to husband and wife. The diverse attitudes of the various legislatures is no better demonstrated than by the statutes relating to joint tenancy. In contrast to the laws of the states just considered, draftsmen were careful to include husband and wife within the operation of general statutory provisions against joint ownership in twelve jurisdictions—California, District of Columbia, Kansas, Kentucky, Massachusetts, Mississippi, Montana, Nevada, Oklahoma,


112 In re Houssell's Estate, 252 Wis. 138, 31 N.W. (2d) 203 (1948) (note and mortgage and savings account in names of "H or W" created joint tenancy); Central Wisconsin Trust Co. v. Schumacher, 230 Wis. 591, 284 N.W. 562 (1939) (various securities in names of husband and wife passed to survivor); In re Abdulah's Estate, 214 Wis. 336, 252 N.W. 158 (1934) (note payable to "H and W"). Cf. Fielder v. Howard, 99 Wis. 388, 75 N.W. 163 (1898) (note and mortgage in names of "H and W" passed to surviving wife to exclusion of husband's creditors).

113 See Appendix II, col. 2.

114 Blackman v. Blackman, 45 Ariz. 374, 43 P. (2d) 1011 (1935) (realty acquired in names of H and W with separate property). See La Tourette v. La Tourette, 15 Ariz. 200, 137 P. 426 (1914). Joint tenancy between husband and wife may be created where an intent to do so is stated by the transfer instrument and assent by the parties thereto is shown. Collier v. Collier, 73 Ariz. 405, 242 P. (2d) 537 (1952) (separate property of H deeded to H and W as joint tenants—assent established by indorsement signed by H and W that they intended to hold as "joint tenants with right of survivorship, and not as community property or as tenants in common"); Henderson v. Henderson, 58 Ariz. 514, 121 P. (2d) 437 (1942) (realty purchased with separate funds of wife); In re Baldwin's Estate, 50 Ariz. 265, 71 P. (2d) 791 (1937) (realty deeded to H and W as joint tenants purchased with community funds passed to surviving W only upon affirmative proof that H assented to instrument); Greenwood v. Commissioner, (9th Cir. 1943) 134 F. (2d) 915 (transfer of husband's property to joint savings account, checking account and safe deposit box created joint tenancy where both parties signed joint tenancy agreement).

115 See Appendix II, col. 4. Of these states the statutes of Kansas, Kentucky, Massachusetts and Mississippi apply only to interests in land. Appendix II, col. 2. California statutes expressly provide that husband and wife may hold property as joint tenants, tenants in common or as community, and that community may be transmuted into joint tenancy when "expressly declared in the transfer to be a joint tenancy." Compare Cal. Civ. Code
Rhode Island, Virginia and West Virginia. Most of the statutes make reference to property held by husband and wife as "joint tenants," and do not specifically apply to tenancies by the entirety. However, the laws of five states in words disfavor entireties ownership, but the language of these statutes (to be found in Kentucky, Mississippi, Montana, Oklahoma and West Virginia) either expressly or

(Deering, 1949) §§161, 683. A Nevada statute provides that husband and wife may hold real or personal property as joint tenants, tenants in common or as community. Nev. Comp. Laws Ann. (Supp. 1931-1941) §3710.

That entireties may be created by express language, see Wolfe v. Wolfe, 207 Miss. 480, 42 S. (2d) 438 (1949) (realty to "H and his wife, W and to the survivor of them") apparently created joint tenancy). There is some indication that joint tenancy may be favored between husband and wife in bank accounts. Shearin v. Coleman, 201 Miss. 193, 28 S. (2d) 841 (1947) (in names of "H or W").

"A tenancy by the entirety could be created only when the intention to create such tenancy was clearly and unmistakably expressed." In re Marsh's Estate, 125 Mont. 239 at 243, 234 P. (2d) 459 (1951) (holding that savings bonds in co-ownership form with right of survivorship were not held by the entireties); Emery v. Emery, 122 Mont. 201, 200 P. (2d) 251 (1948); Mont. Rev. Code Ann. (1947) §36-108 ("a husband and wife may hold real or personal property together, jointly or in common").

Previous to the recent Oklahoma statute it had been held that tenancy by the entireties was eliminated by the married women's property statutes. Helvie v. Hoover, 11 Okla. 687, 69 P. 958 (1902) (unless "upheld by special statute" entireties rejected). While entireties ownership is authorized by the Oklahoma statute, it provides, "Nothing herein contained shall prevent execution, levy and sale of the interest of the Judgment debtor in such estates and such sale shall constitute a severance." Okla. Stat. (1951) tit. 60, §74. This creates some doubt as to whether the parties separately can convey or terminate the relation other than by creditor's proceedings. There is some indication from the case law that joint tenancy is preferred over entireties. Kilgore v. Parrott, 197 Okla. 77, 168 P. (2d) 886 (1946) (deed to H and W "and in the event of the death of either, then the survivor" created joint tenancy). It is interesting to note that a policy favoring survivorship rights between husband and wife as to property acquired by their joint industry appears in the inheritance laws. Okla. Stat. (1951) tit. 84, §213. The statute may have some force in favoring joint tenancy between husband and wife. Cf. Royston v. Besett, 183 Okla. 643, 83 P. (2d) 874 (1938).

That entireties may be created by express language, compare Irvin v. Stover, 67 W.Va. 356, 67 S.E. 1119 (1910) (deed to H and W "as a homestead . . . and after them to their heirs" created entireties in them for life, remainder to their heirs—decided on the basis that a life estate was not an "estate of inheritance" to which the statute then applied), with McNeely v. South Penn Oil Co., 52 W.Va. 616, 44 S.E. 508 (1903) (indicating that married women's statute and prior statute abolishing the right of survivorship between husband and wife converted entireties into an estate of joint tenancy without survivorship). In any event it has been clearly determined that survivorship rights may be created by express language to that effect. Wisner v. Wisner, 82 W.Va. 9, 95 S.E. 802 (1918) (savings account in names of H or W "either or the survivor").
tacitly ratify the creation of the estate where an intent to do so is clearly manifested by the transfer. The Rhode Island court has given the term "joint tenancy" a common generic meaning to include tenancy by the entirety, but a clearly expressed intent to create the latter will be given effect.\(^{121}\) The legislative history preceding the adoption of the Kansas statute indicates that it will receive the same construction.\(^{122}\) The Virginia law specially provides that transfers to husband and wife shall be held as tenants in common unless a provision is included for survivorship.\(^{123}\) This has been interpreted as meaning that words of survivorship will establish an estate by entirety in preference to joint tenancy.\(^{124}\) On the other hand, the law of the District of Columbia\(^ {125}\) and Massachusetts\(^ {126}\) are read with technical nicety, so that the common law preference for tenancy by the entireties in both real and personal property has not been affected by the statutes which apply to "joint tenancy." Peculiarly, the esteem for entireties ownership in both of these states exceeds predictable expectations, inasmuch as a transfer to husband and wife "as joint tenants" is construed as making the parties tenants

\(^{121}\) Although the statute establishes a constructional bias against tenancy by the entireties, the estate may be created by language showing that intent. Bloomfield v. Brown, 67 R.I. 452, 25 A. (2d) 354, 141 A.L.R. 170 (1942). An intent to create "joint tenancy" also will be given effect. Lawton v. Lawton, 48 R.I. 134, 136 A. 241 (1927). It is quite probable that entireties rights may be created in personalty. Wilder v. Aldrich, 2 R.I. 518 (1853) (promissory note acquired in names of H and W passed to surviving wife before married women's property law).

\(^{122}\) See note of the Judicial Council, Kan. Gen. Stat. Ann. (1949) §58-501. Under a previous statute purporting to abolish tenancy by the entireties, the estate was not favored. Stewart v. Thomas, 64 Kan. 511, 68 P. 70 (1902). However, survivorship agreements between husband and wife were given effect. Asche v. Matthews, 136 Kan. 740, 18 P. (2d) 177 (1933) (bank account in W's name passed by parol agreement to surviving husband).

\(^{123}\) The present statute applies to "joint tenant(s)," but transfers to husband and wife are governed by a separate sentence providing that they hold "by moieties in like manner as if a distinct moiety had been given to each by separate conveyance." (Va. Code Ann. (1950) §55-20. Under a prior statute it had been held that transfers to husband and wife were not affected by legislation limited to "joint tenancy." Thorton v. Thorton, 3 Rand. (24 Va.) 179 (1825).

\(^{124}\) Burroughs v. Gorman, 166 Va. 58, 184 S.E. 174 (1936) (deed to H and W "as joint tenants with common law right of survivorship" created tenancy by the entireties). Express intent that the parties are to hold by the "entireties" will also accomplish the same result. Vasilion v. Vasilion, 192 Va. 735, 66 S.E. (2d) 599 (1951). In general see Ritchie, "Tenancy by Entireties in Virginia," 28 Va. L. Rev. 608 (1942). It is quite probable that personalty may be held by the entireties. McCleananach v. Siter, Price & Co., 2 Gratt. (43 Va.) 280 (1845).

\(^{125}\) Settle v. Settle, (D.C. Cir. 1925) 8 F. (2d) 911 (real estate); Flaherty v. Columbus, 41 App. D.C. 525 (1914) (personal property).

by the entireties.\textsuperscript{127} California\textsuperscript{128} and Nevada\textsuperscript{129} do not favor entireties, seemingly because a comprehensive substitute for marital ownership has been provided by the community property systems adopted there.

**Statutes making no provision for husband and wife.** Many of the general statutory provisions favoring tenancy in common over joint tenancy fail to make special provision for acquisitions by married people or tenancies by the entirety. Statutes of this kind will be found in

\textsuperscript{127} E.g., Settle v. Settle, (D.C. Cir. 1925) 8 F. (2d) 911; Childs v. Childs, 293 Mass. 67, 199 N.E. 383 (1936).

\textsuperscript{128} Entireties ownership is not favored. Swan v. Walden, 156 Cal. 195, 103 P. 931 (1909) (indicating that estate could not exist). The preference for community property coupled with the broad powers of husband and wife to convert separate property into community and vice versa, has led to some rather curious presumptions as to dual ownership. Property acquired by written transfer in which the parties are identified by marital status presumptively is held in community. Cal. Civ. Code (Deering, 1949) §164; In re Kane's Estate, 80 Cal. App. (2d) 256, 181 P. (2d) 751 (1947) (deed). Cf. Tompkins v. Bishop, 94 Cal. App. (2d) 546, 211 P. (2d) 14 (1949) (presumption rebutted by prior written agreement that property was to remain separate). It seems that written acquisitions with community funds in the names of husband and wife without designating their marital status presumptively are held one-half by the wife as tenant in common, and one-half by the husband as community. Cf. Dunn v. Mullan, 211 Cal. 583, 296 P. 604 (1931) (decided under prior statute); Caccamo v. Swanston, 94 Cal. App. (2d) 957, 212 P. (2d) 246 (1949) (automobile titled in names of \(H\) and \(W\)—decided only that \(W\) held one-half as tenant in common); 20 CALIF. L. REV. 546 (1932); 5 SO. CAL. L. REV. 144 (1931). Compare further, Trimble v. Trimble, 219 Cal. 340, 26 P. (2d) 477 (1933) (that property was held as community proved by parol). Property acquired by husband and wife other than by written instrument presumptively is held by community. Pacific T. & T. Co. v. Wellman, 98 Cal. App. (2d) 151, 219 P. (2d) 506 (1950) (automobile registered in names of \(H\) and \(W\)). An expressed intent to hold property as tenants in common will be given prima facie effect. Saunders v. Saunders, 98 Cal. App. (2d) 133, 219 P. (2d) 28 (1950) (promissory note to \(H\) and \(W\) "each an undivided one-half interest as separate property"). Where the transfer provides that the parties hold as joint tenants, joint tenancy will be presumed. E.g., Soclo v. King, 36 Cal. (2d) 342, 223 P. (2d) 627 (1950) (property purchased with joint tenancy funds presumptively held in joint tenancy); Sibereil v. Sibereil, 214 Cal. 767, 7 P. (2d) 1003 (1932); Cox v. Cox, 82 Cal. App. (2d) 867, 187 P. (2d) 23 (1947) (funds from joint tenancy realty); Wallace v. Riley, 23 Cal. App. (2d) 654, 74 P. (2d) 807 (1938). Parol, however, may be introduced to show that the property is held as common. Sandrini v. Ambrosetti, 111 Cal. App. (2d) 439, 244 P. (2d) 742 (1952) (real and personal property); Turknette v. Turknette, 100 Cal. App. (2d) 271, 223 P. (2d) 495 (1950); Perdelalis v. Perdelalis, 92 Cal. App. (2d) 274, 206 P. (2d) 650 (1949) (evaluating prior decisions); Luminoso v. Luminoso, 75 Cal. App. (2d) 472, 171 P. (2d) 516 (1946) (promissory note running to \(H\) and \(W\)). Parol evidence is admissible to show that property acquired in the names of husband and wife is separate property of one. Huber v. Huber, 27 Cal. (2d) 784, 167 P. (2d) 708 (1946) (parol admitted to impeach joint tenancy deed on theory of constructive trust—\(W\) was informed of \(H\)'s purpose not to create joint tenancy). Cf. Trimble v. Coffman, 114 Cal. App. (2d) 618, 251 P. (2d) 81 (1952) (no proof of resulting trust in \(H\) who furnished consideration from his separate property).

\textsuperscript{129} Survivorship rights in personalty must be designated by a written transfer or agreement. Newitt v. Dawe, 61 Nev. 472, 133 P. (2d) 918 (1943) (note to "\(H\) or \(W\)" held as tenants in common—decision not clear whether note purchased with community property). Separate property of one spouse invested in the names of both presumptively retains its character as separate property. Barrett v. Franke, 46 Nev. 170, 208 P. 435 (1922) (contract to sell husband's realty, and bank deposits—contention of gift, however, was not raised).
twenty-three states—Alabama, Arkansas, Colorado, Delaware, Georgia, Idaho, Illinois, Iowa, Maine, Maryland, Minnesota, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, South Carolina, South Dakota, Texas, Utah and Washington. Of this group, decisions in Arkansas, Delaware, Maryland, New Jersey, New York, North Carolina and Pennsylvania hold that the laws were not intended to encompass transfers to husband and wife thereby preserving the common law priority for tenancy by the entireties. Entireties ownership of personal property is favored in Arkansas, Delaware, Maryland and Pennsylvania where the estate has been elevated to a position of unquestioned popularity. However, New Jersey, New York and North Carolina limit


131 See notes 132-141.


133 E.g., Hoyle v. Hoyle, 31 Del. Ch. 64, 66 A. (2d) 130 (1949) (savings account); In re Giant Portland Cement Co., 26 Del. Ch. 32, 21 A. (2d) 697 (1941) (stock in names of husband and wife); Rauhut v. Reinhardt, 22 Del. Ch. 431, 180 A. 913 (1935) (mortgage).


137 That the joint tenancy statute does not apply to entireties in real estate, see Bertiles v. Nunan, 92 N.Y. 152 (1883). Although entireties is not favored in personality, the rule is not without exception. Thus proceeds received upon forced sale of entireties realty are held by the entireties. In re 115th and Vistula Avenues, 137 Misc. 358, 242 N.Y.S. 6 (1930); Stretz v. Zolkoski, 118 Misc. 806, 195 N.Y.S. 46 (1922). But cf. In re Blumenthal's Estate, 236 N.Y. 448, 141 N.E. 911 (1923) (bond and mortgage received from sale of entireties property held in common). Contracts to purchase realty are held by the entireties. Matter of Beecher, 151 Misc. 395, 271 N.Y.S. 446 (1934).

138 Although entireties is favored in real estate, the statute abolishing joint tenancy has been construed as applicable to acquisitions of personal property. Wilson v. Ervin, 227
the preference for entireties to realty upon the spoken, but questionable belief that the estate in personality did not exist at common law. A radical departure from this position appears in a recent New Jersey statute providing that mortgages held by husband and wife shall be held in joint tenancy. New York has accepted the odd principle that choses in action standing in the names of husband and wife pass to the survivor, but the rule is limited to cases where it is proved that the consideration was furnished by the husband. The precise characteristics of this relation differ from those of entireties and joint tenancy insofar as it seems that the husband retains the power to revoke the relation during his lifetime. Apparently, it is a peculiar kind of ownership which can be traced back to the common law right of the husband to reduce his wife's choses in action to his possession, and is confined to the boundaries of New York. Dual ownership is unaffected by the marital status of the parties in Alabama, Colorado, Georgia, Illinois, Iowa, Maine, Minnesota, New Hampshire, South

N.C. 396, 42 S.E. (2d) 468 (1947) (proceeds from entireties real estate presumptively held as tenants in common in absence of agreement to the contrary); 13 N.C.L. Rev. 256 (1935); 6 N.C.L. Rev. 342 (1928). Compare Motley v. Whitemore, 19 N.C. 537 (1837) (statute abolishing joint tenancy did not apply to tenancy by the entirety). It has been held that an intent to create tenancy by the entireties is a nullity. Winchester-Simmons Co. v. Cutler, 194 N.C. 698, 140 S.E. 622 (1927) (bequest to H and W "as tenancy by entireties" created tenancy in common). It is doubtful that the latter case would be respected in the light of other decisions holding that a right of survivorship may be provided for. Jones v. Waldroup, 217 N.C. 178, 7 S.E. (2d) 366 (1940) (stock); Taylor v. Smith, 116 N.C. 531, 21 S.E. 202 (1895) (oral survivorship agreement upheld between two payees of promissory note).

140 The leading cases are In re Blumenthal, 236 N.Y. 448, 141 N.E. 911 (1923); Matter of Albrecht, 136 N.Y. 91, 32 N.E. 532 (1892).
141 In re Kane's Estate, 246 N.Y. 498, 159 N.E. 410 (1927), aff'd on rehearing, 247 N.Y. 219, 160 N.E. 17 (1928). In general see notes 157-161.
142 See First National Bank v. Lawrence, 212 Ala. 45, 101 S. 663 (1924) (indicating that entireties eliminated by joint tenancy statute, but held that checking account in names of H and W, "either" to draw, passed to survivor).
144 Cf. Lott v. Wilson, 95 Ga. 12, 21 S.E. 992 (1894) (transfer to H and W held in common if made after "Woman's Law").
Carolina,150 South Dakota151 and Utah152 where tenancy in common is preferred, at least in the absence of a contrary intent expressed by the transfer. This result usually is justified by the policy inferred from the married women's property acts, although several courts have tended to include tenancy by the entirety within the generic meaning of "joint tenancy."153 Some of the statutes are literally restricted to interests in land but, as previously demonstrated,154 the practice has been to extend the language to include personal property. Hence, neither joint tenancy nor tenancy by the entireties in personalty is favored in these states.

148 Hoffman v. Stigers, 28 Iowa 302 (1869) (entireties rejected upon the policy expressed by both the joint tenancy legislation and the married women's property acts); 12 Iowa L. Rev. 415 (1927). Express language showing an intent to create entireties has been held ineffective. Fay v. Smiley, 201 Iowa 1290, 207 N.W. 369 (1926) (deed by H directly to H and W as tenants by entirety and not as "tenants in common" created tenancy in common—transfer contrary to "four unities rule"). This case, in effect, was overruled by Switzer v. Pratt, 237 Iowa 788, 23 N.W. (2d) 837 (1946), holding that deed from husband to husband and wife as "joint tenants" did not violate the "four unities" rule. The recent tendency of the Iowa court has been to liberalize the technical impediments interfering with the establishment of survivorship rights. E.g., O'Brien v. Biegger, 233 Iowa 1779, 11 N.W. (2d) 412 (1943) (parol evidence admissible to show that savings account in names of "H or W" held in joint tenancy).


150 Green v. Cannady, 77 S.C. 193, 57 S.E. 832 (1907) (realty held in common upon basis of married women's property legislation). In Davis v. Davis, 223 S.C. 182, 75 S.E. (2d) 46 (1953), a deed to husband and wife as tenants by the entirety created a life estate in both with a contingent remainder to the survivor.


152 While entireties ownership or joint tenancy are not favored, the latter may be created when provided for. Neill v. Royce, 101 Utah 181, 120 P. (2d) 327 (1941) (savings account held by husband and wife as joint tenants only where expressly provided for—upon basis of joint tenancy statute); Columbia Trust Co. v. Anglum, 63 Utah 353, 225 P. 1089 (1924) (survivorship rights to checking account in names of "H or W" established by parol).

153 See notes 141, 145, 147.

154 See note 79.
Idaho, New Mexico, Texas and Washington have had some difficulty in reconciling the various common law forms of co-ownership with community property. Joint tenancy and tenancy by the entireties, however, are not favored. The status of marital ownership apparently has not been resolved in North Dakota.

**States without joint tenancy legislation.** Five states, Connecticut, Louisiana, Nebraska, Ohio and Wyoming, are without legislation pertaining to joint ownership. Connecticut was probably the first state

155 Property taken in the names of husband and wife presumptively is community. Bear Lake State Bank v. Wilcox, 48 Idaho 147, 279 P. 1090 (1929) (contract to purchase realty in the names of H and W purchased with separate and community funds).

156 The New Mexico court has found it extremely difficult to reconcile the common law forms of co-ownership with community. In fact some of the decisions in that state are the best examples of creative nonsense to be found anywhere. As things now stand it appears that property acquired in the names of husband and wife (without other expressed intention) presumptively is held one half by the wife as tenant in common, the other half in community, except that if the transfer is by written instrument describing the parties as husband and wife presumptively the whole is held by community. N.M. Stat. Ann. (Supp. 1951) §65-401; August v. Tillian, 51 N.M. 74, 178 P. (2d) 590 (1947). Where property is acquired in joint tenancy form with community assets, "proof to support such transmutation must be clear, strong and convincing." Chavez v. Chavez, 56 N.M. 393, 244 P. (2d) 781 (1952). As a consequence it seems substantial proof is required to show that both parties assented to a transfer in joint tenancy. In re Trimble's Estate, (N.M. 1953) 253 P. (2d) 805 (admission by surviving W that she did not know that deed was taken in joint tenancy supported presumption that property was held in community—decided under a prior statute and over a very excellent dissenting opinion). What the law is or will be where property is purchased in the joint names of husband and wife with separate property is a mystery. Formerly, a transfer of separate property to husband and wife did not pass to the community, but was held in joint tenancy or in common “as the facts would warrant.” McDonald v. Lambert, 43 N.M. 27, 85 P. (2d) 78 (1938) (decided upon the basis that transmutation was legally impossible—since overruled by the Chavez case, supra). There is dictum to the effect that entireties cannot be created. McDonald v. Senn, 53 N.M. 198, 204 P. (2d) 990 (1949). This conclusion is weakened by the Chavez and Trimble cases, cited above.

157 Property taken in the names of husband and wife during marriage is community property. Tex. Rev. Civ. Stat. (Vernon, 1951) art. 4619. However, community property may be held in joint tenancy by express agreement. Shroff v. Deaton, (Tex. Civ. App. 1949) 220 S.W. (2d) 489 (savings and loan shares taken by H and W as "joint tenants" passed to surviving wife). Gifts to husband and wife by third persons, or transfers of separate property cannot be made to the community, but are held in common in absence of other intent. 28 Tex. L. Rev. 275 (1949); 18 Tex. L. Rev. 227 (1940).


159 That joint tenancy may be created by express language, compare First Nat. Bank & Trust Co. v. Green, 66 N.D. 160, 262 N.W. 596 (1935) (brother and sister).

160 Special statutes relating to joint bank accounts will be found in these states. See Appendix III. Joint tenancy in stock is authorized by an Ohio statute. Ohio Rev. Code (Baldwin, 1953) §1701.34.
by decision to repudiate the common law rule preferring joint tenancy,\textsuperscript{161} and transfers to husband and wife were and are included within this doctrine.\textsuperscript{162} In fact the judicial feeling reached such intensity that for a period in Connecticut legal history it was doubtful that the estate could be created at all. It has since been held that a common law joint tenancy can be created where an intent to do so is clearly expressed,\textsuperscript{163} but Connecticut has the dubious distinction of consistently construing survivorship language (without more) as establishing tenancy in common with a contingent remainder to the survivor.\textsuperscript{164} Nebraska\textsuperscript{165} and Ohio,\textsuperscript{166} likewise, disfavor joint tenancy and tenancy by the entireties, although joint tenancy or a right of survivorship may be provided for

\begin{footnotesize}
\textsuperscript{161} "By this decision the doctrine of survivorship between joint tenants, was exploded. . . ." Phelps v. Jepson, 1 Root (Conn.) 48 at 49 (1769).
\textsuperscript{162} Blodgett v. Union & New Haven Trust Co., 111 Conn. 165, 149 A. 790 (1930) (stock).
\textsuperscript{163} Peyton v. Wehrhane, 125 Conn. 420, 6 A. (2d) 313 (1939) (bequest to beneficiaries "as joint tenants and not severally nor as tenants in common, with the right of survivorship expressly vested in said joint tenants").
\textsuperscript{164} McLaughlin v. Cooper's Estate, 128 Conn. 557, 24 A. (2d) 502 (1942) (bank account); Blodgett v. Union & New Haven Trust Co., 111 Conn. 165 at 167-168, 149 A. 790 (1930) ("... a gift to A and B, the survivor to take the whole absolutely, will be construed to give A and B estates in common with a right in the survivor to take the whole as a remainder interest"); Houghton v. Brantingham, 86 Conn. 630, 86 A. 664 (1913) (bequest "on condition... that the goods... shall be delivered up and become the property of the survivors of them").
\textsuperscript{165} Entireties is disfavored under the married women's property law, so that tenancy in common is preferred. Kerner v. McDonald, 60 Neb. 663, 84 N.W. 92 (1900) (realty). An intent to create "joint tenancy" will be enforced. In re Vance's Estate, 149 Neb. 220, 30 N.W. (2d) 677 (1948) (stock issued to W and H); Sanderson v. Everson, 93 Neb. 606, 141 N.W. 1025 (1913) (deed to H and W "as joint tenants with right of survivorship"). Mere words of survivorship, however, will be construed as creating a joint life estate with contingent remainder to the survivor. Arthur v. Arthur, 115 Neb. 781, 215 N.W. 117 (1927) (partition of realty owned by H and W "and the survivor of them" did not affect the fee). Survivorship in bank accounts, however, is favored. Scriven v. Scriven, 153 Neb. 655, 45 N.W. (2d) 760 (1951) (deposit in names of "H or W").
\textsuperscript{166} Entireties rights in real and personal property are not recognized. Farmers & Merchants Nat. Bank v. Wallace, 45 Ohio St. 152, 12 N.E. 439 (1887) (realty); Kipp v. Kipp, (Ohio App. 1950) 101 N.E. (2d) 782 (joint bank account). Joint tenancy or survivorship rights between husband and wife are not favored. Gladieux v. Parney, 93 Ohio App. 117, 106 N.E. (2d) 317 (1951) (United States savings bonds in names of "H or W" did not pass to survivor—regulations establishing contract were not proved); Foraker v. Kocks, 41 Ohio App. 210, 180 N.E. 743 (1931) (certificate of deposit issued in names of H or W, and United States registered bond in joint names of parties held as tenants in common—"If a joint tenancy is expressed without words of survivorship, under the unbroken line of authorities in Ohio it will be considered as a tenancy in common"). But cf. In re Fulk's Estate, 136 Ohio St. 233, 24 N.E. (2d) 1020 (1940) (parol admitted to show that savings account in names of "H or W" acquired under survivorship agreement). A right of survivorship may be created by "contract," but the Ohio decisions seem to favor joint ownership with a contingent remainder to the survivor over a common law joint tenancy. E.g., compare Berberick v. Courtade, 137 Ohio St. 297, 28 N.E. (2d) 636 (1940) (surviving wife took survivorship deposits by force of "contract" and not by "gift" so that "half-and-half" statute did not apply); In re Hutchinson's Estate, 120 Ohio St. 542, 166 N.E. 687 (1929) (stock in names of H and W as "tenants in common remainder to survivor" created "vested remainder in the surviving wife"). See also Foraker v. Kocks, supra.
\end{footnotesize}
by express language. Entireties ownership of realty is preferred in Wyoming,\textsuperscript{167} but whether or not it will be favored or recognized in personal property has been left as an open question by the Wyoming court.\textsuperscript{168} The common law concepts of dual ownership have quite uniformly been rejected as incompatible with the civil law in Louisiana.\textsuperscript{169}

General effect of the legislation. The numerous occasions in which courts have had an opportunity to apply and construe the statutes opposing joint tenancy and to shape attitudes toward marital ownership enables one to predict with some degree of certainty the basic policy adopted by almost all of the states toward the problem. Of the forty-four states with joint tenancy legislation, husband and wife are exempted in nine, included within the scope of the laws of twelve, and are not mentioned in the remaining twenty-three. In the nine states exempting husband and wife, tenancy by the entireties is favored in seven (three of which do not extend the rule to personalty), joint tenancy is preferred in one, and acquisitions by husband and wife in the other, apparently, are presumed to be held in community. Of the twelve with statutes including husband and wife, two states hold that the statutes refer to the technical estate of "joint tenancy" thereby favoring entireties as it was at common law, and the preference for tenancy in common in the other two is affected by peculiar presumptions arising out of the community property system. Out of the twenty-three jurisdictions with laws failing to consider rights of husband and wife, seven indulge in the presumption of entireties ownership (three of which favor tenancy in common in personalty), eleven prefer tenancy in common, in four co-ownership has been affected by varying principles oscillating between common and community ownership, and no interpretation has been


\textsuperscript{168} Hill v. Breeden, 53 Wyo. 125, 79 P. (2d) 482 (1938) (promissory note payable to Hand W-held, that the right to discharge the obligation passed to the surviving wife, but the court did not decide whether or not she would be accountable to H's estate for any part of the proceeds).

\textsuperscript{169} A gift of joint survivorship rights in incorporeal rights has been denied on the ground that such is a testamentary disposition. Northcott v. Livingood, (La. App. 1942) 10 S. (2d) 401. If it is possible to create such interests, the survivor takes subject to the civil law rules of community and forced inheritance. Succession of Land, 212 La. 103, 31 S. (2d) 609 (1947) (United States bonds in co-ownership form passed to survivor, subject to rights of other heirs to collations and legitime). Cf. Winsberg v. Winsberg, 220 La. 398, 56 S. (2d) 730 (1952) (after-born child could not be defeated by donor who purchased savings bonds in the "P.O.D." form with his brother); Succession of Geagan, 212 La. 574, 33 S. (2d) 118 (1947) (widow traced community funds to bonds purchased by deceased husband with son as beneficiary). But cf. Succession of Tanner, (La. App. 1946) 24 S. (2d) 642 (co-ownership bonds purchased by H with community passed to surviving wife who was not required to pay inheritance tax).
made of the laws in one. Joint ownership, also, has received varied treatment in the five states without legislation upon the subject. Tenancy by the entireties is favored in one, tenancy in common in three, and dual ownership is affected by the sensitive rules of community property in the other.

This array of authority does more than provide a picture of predictability from which a lawyer can calculate his plans in draftsman-ship and litigation. It also furnishes a periphery for critical analysis. The general sweep of the legislation and case law presents a good example of non-uniformity in an area of property law where a legal student might expect to find some stability dictated by an accepted policy designed to maintain the marital unity. The conflict appears to have arisen out of two surging forces which spread across the country at approximately the same period in legal history. One of these was the legislation opposed to the survivorship incident of joint tenancy. The other was the legislation giving married women equal rights in the ownership and control of their property. Neither was deliberately intended to affect joint ownership by husband and wife, a fact which is demonstrated from the majority practice of excluding or omitting husband and wife from the terms of the joint tenancy statutes and the omission of joint tenancy or entireties from the married women's property laws. The failure of judges and even legislatures to settle upon a consistent solution of the joint ownership problem, therefore, may be attributed to a lack of information as to why dual ownership is such a common institution between husband and wife. The legal experience of the past hundred years provides evidence that the successful marriage relation is in some degree correlated to economic equality and security. This is witnessed by the large number of cases in which joint owner-

ship has been involved. Furthermore, in the overwhelming majority of decisions concerned with joint titles, language\textsuperscript{171} will be found indicating that survivorship is one of the compelling reasons why property is taken in the names of husband and wife. Why, then, should a rule of legal construction be opposed to this rule of practice? The fault it seems may be attributed to the legal profession. Problems of joint ownership ordinarily arise during the course of administering an estate of one of the deceased parties,\textsuperscript{172} and reaction to adverse rulings on technical matters of property do not incite the type of popular revolt that sometimes occurs in areas where the public are better informed and more uniformly affected by adverse decisions. Consequently, lawyers have the primary obligation of rectifying this conflict and settling upon a policy which will cultivate the use of joint ownership as a method of achieving marital security. The common law did this through the conceptual development of the estate known as tenancy by the entireties. In some technical respects this kind of ownership did not measure up to the standard of equality set by the married women's property laws, a defect remedied by judicial legislation in most of the states where it has been preserved.\textsuperscript{173} Other incidents of the estate may furnish a target for nominal\textsuperscript{174} objections, but on the whole it was keyed to the marital relations, thereby making it an inviting way in which to hold property today. A uniform or model law preserving entireties in such a form that it would not defeat the theme of equality which has been written into marital ownership should be placed upon the agenda for the Commissioners on Uniform Laws.

\textsuperscript{171} Outside of the entireties states litigation largely is concerned with transfers where an intent to create joint tenancy or survivorship rights appears from the language used. This problem of language will be explored in the material to follow. All but eight of the states with joint tenancy statutes allow the estate or survivorship rights to be created where expressly provided. See Appendix II, col. 3.

\textsuperscript{172} Cases involving inter vivos disputes between joint tenants and tenants by the entireties are relatively few. E.g., Goc v. Goc, 134 N.J. Eq. 61 at 63, 33 A. (2d) 870 (1943) ("This is the first occasion upon which this court has had presented to it a dispute between the original parties to a joint account").

\textsuperscript{173} See cases cited at notes 65-68.

\textsuperscript{174} A few writers criticize tenancy by the entireties for the reason that individual creditors cannot reach the property thus providing an opportunity for excessive exemptions. E.g., 29 MICH. L. REV. 788 at 789 (1931); 8 Mo. L. REV. 213 at 216 (1943); Wilkerson, "Creditors' Rights Against Tenants by the Entirety," 11 TENN. L. REV. 139 at 148 (1933); 17 N.C.L. REV. 157 at 160 (1939). Any respectable banker or businessman within an entireties jurisdiction takes the precaution of extending sizable credit over the joint names of husband and wife. Entireties property can be applied to the payment of joint obligations. E.g., Stanley v. Powers, 123 Fla. 359, 166 S. 843 (1936); First Nat. Bank of Goodland v. Pothuisje, 217 Ind. 1, 25 N.E. (2d) 436, 130 A.L.R. 1238 (1940); Poland v. Hoffman, 186 Md. 423, 47 A. (2d) 62 (1946); Edwards & Chamberlin Hardware Co. v. Pethick, 250 Mich. 315, 230 N.W. 186 (1930); 53 Harv. L. Rev. 1389 (1940). Unless there are grounds for estoppel, or unless the property contributes to the risk, it is difficult to find a
The prejudicial treatment accorded joint ownership of personal property deserves brief comment. Presently seventeen states construe transfers to husband and wife as creating tenancy by the entireties, and one state, Wisconsin, prefers joint tenancy. Of this group, six jurisdictions—Indiana, Michigan, Oregon, New York, New Jersey and North Carolina—draw the line at interests in real estate and disfavor joint survivorship rights in personal property. Lawyers would be well advised that the decisions responsible for this awful distinction deserve careful re-examination for several reasons. In the first place, most of them are predicated upon the supposition that entireties ownership of personal property did not exist at common law, a supposition which cannot be verified by the authorities. The British experience at the time when personal property began to occupy a significant place in society was exactly to the contrary. Furthermore, the common law impossibility of this type of ownership was reasoned from the exclusive control retained by the husband over the wife’s chattels and choses in action, a proposition which became moot with the married women’s property laws. If there was some doubt that the married woman lacked capacity to hold personalty by the entireties with her husband, this doubt should have been dispelled by the laws giving her equal rights with men. As a matter of fact, these laws have been interpreted as giving the wife a share in the control of entireties property in practically all of the states recognizing the estate today. Another factor of some significance is the treatment accorded the language of the joint tenancy legislation, which in many states was and is confined to interests in real estate. Almost unanimously the policy of these laws was extended to personal prop-

reason why a creditor should reach marital property. Hence a tort creditor whose cause of action arises out of the use of entireties property can make a reasonable argument that it should not be exempt. Hiller v. Olmstead, (6th Cir. 1931) 54 F. (2d) 5. Cf. 27 Minn. L. Rev. 536 (1943). On divorce the relation terminates. E.g., Townsend v. Townsend, 5 Harr. (Del.) 493, 168 A. 67 (1933); Tendrich v. Tendrich, (D.C. Cir. 1951) 193 F. (2d) 368 (court retained jurisdiction to partition entireties property upon granting limited divorce). See note 289.

The fact that neither party can transfer his or her interest in entireties property or otherwise terminate the relation without the consent of the other furnishes no real objection. Since the property may be transferred or the relation terminated by mutual assent the law does not sponsor a serious restraint upon alienation. E.g., Sheldon v. Waters, (5th Cir. 1948) 168 F. (2d) 483; Dodson v. Nat. Title Ins. Co., 159 Fla. 371, 31 S. (2d) 402 (1947). Failure of the parties to agree almost always is precipitated by causes leading to divorce. However, some judicial remedy should be provided for the resolution of genuine disputes as to how the property should be used. Cf. Baker v. Cailor, 206 Ind. 440, 186 N.E. 769 (1933) (entireties property could be reached by abandoned wife for support); Tendrich v. Tendrich, supra; 42 Harv. L. Rev. 580 (1929). For cases where equity has provided a remedy see note 68.

175 See notes 65-68.
property, apparently for the obvious reason that no effort was made to find policy reasons for differentiating the two kinds of property with respect to dual ownership. In any event the result of these decisions is in the record, and as such is some evidence that there is no substantial cause for treating joint ownership of personal property in a manner wholly different from realty. But pragmatically speaking there are more forceful reasons for favoring entireties ownership of personalty. Subsequent legislative activity in the field of joint ownership has been primarily concerned with joint rights in this kind of property, and on the whole has tended to recognize and facilitate the creation of joint survivorship rights. Unlike transfers of real estate, which usually are handled with the assistance of legal advice, acquisitions of personal property occur in transactions where a lawyer is lacking. Hence there is much greater need for a rule of property construction because of the technical unfamiliarity of laymen with the language necessary to create the various joint estates. Legal and extra-legal investigation would show that joint acquisitions of personalty in the names of husband and wife are made with the expectation that the property will pass to the survivor.

[To be concluded.]

176 See note 79.
177 This legislation (relating to bank deposits, stock, savings bonds and the like) on the whole was passed for the protection of third persons and for the purpose of facilitating gifts of joint survivorship rights from one of the parties to both. Only one statute was found obviously intended to impede the establishment of joint ownership in personal property. Cal. Civ. Code (Deering, 1949) §683.1 (invalidating joint tenancy contracts of safe deposit box contents). Cf. Mich. Stat. Ann. (1943) §23.1123.
178 E.g., Estate of Kwatkowski, 94 Colo. 222, 29 P. (2d) 639 (1934) ("preparation of wills and other legal documents by laymen having a mere smattering of law will continue to breed litigation"); Hammond v. Dugan, 166 Md. 402, 170 A. 757 (1934) (joint rights established by a series of complicated directions to depository bank); Sawyer v. National Shammut Bank, 306 Mass. 313, 28 N.E. (2d) 455 (1940) (banker and broker advised as to formalities for opening joint bank account); Peterson v. Lake City Bank & Trust Co., 181 Minn. 128, 231 N.W. 794 (1930) (stock salesman advised as to form for holding securities). A classic example of an effort by a father to do his own estate planning through the dual ownership of a bank account and savings bonds is Reynolds v. Reynolds, 325 Mass. 257, 90 N.E. (2d) 338 (1950). In that case the father wrote his son, "there is little sense in paying lawyers, etc. etc. and a few more et ceteras." Upon the father's death, the property became embroiled in litigation which ultimately defeated his probable intent both as to distribution and lawyer's fees. The records occasionally show that a person is steered to the joint ownership of personalty by his lawyer. Young v. Cockman, 182 Md. 246, 34 A. (2d) 428 (1943) (lawyer advised H to register transfer of stock to H and W with corporation—advice disregarded); McKenna v. McKenna, 260 Mass. 481, 157 N.E. 517 (1927). For a case involving the transfer of stock to the joint names of H and W upon the advice of an attorney but with the doubts of the corporate officers, and where the attorney apparently erred upon the effect of the transfer, see Manning v. United States National Bank of Portland, 174 Ore. 118, 148 P. (2d) 255 (1944). Cf. Roach v. Plank, 300 Mich. 43, 1 N.W. (2d) 446 (1942) (donor consulted with lawyer in creating joint tenancy in realty and personalty).
179 See Appendix I, F.
APPENDIX I
EXTRA-LEGAL INDICATIONS OF THE WIDESPREAD USES OF, AND ATTITUDES TOWARD, JOINT TITLES

A. Corporate Stock

A recent study of stock ownership in publicly owned corporations gives a fair picture of the relative importance of joint shareholdings. KIMMEL, SHARE OWNERSHIP IN THE UNITED STATES 67-68 (1952). On the basis of value (millions of dollars) distribution was as follows:

<table>
<thead>
<tr>
<th>Type of Ownership</th>
<th>Value (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>38,128.9</td>
</tr>
<tr>
<td>Women</td>
<td>33,368.1</td>
</tr>
<tr>
<td>Joint accounts</td>
<td>6,803.7</td>
</tr>
<tr>
<td>Other</td>
<td>53,787.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>132,087.8</strong></td>
</tr>
</tbody>
</table>

On the basis of numbers of shares (in thousands), distribution of ownership was as follows:

<table>
<thead>
<tr>
<th>Type of Ownership</th>
<th>Number of Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>1,264,361.7</td>
</tr>
<tr>
<td>Women</td>
<td>946,759.9</td>
</tr>
<tr>
<td>Joint accounts</td>
<td>267,454.3</td>
</tr>
<tr>
<td>Other</td>
<td>1,216,703.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3,695,279.0</strong></td>
</tr>
</tbody>
</table>

Informal interviews with ten Indianapolis stock brokers indicated that joint ownership between unmarried persons is relatively small. This is substantiated by figures (which may or may not be typical) furnished by an Indianapolis transfer agent upon the stock ownership of a publicly owned corporation, as follows:

<table>
<thead>
<tr>
<th>Type of Ownership</th>
<th>Number of Owners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of single owners</td>
<td>538 (78%)</td>
</tr>
<tr>
<td>Number of joint owners—husband and wife</td>
<td>126 (18%)</td>
</tr>
<tr>
<td>Number of joint owners—other</td>
<td>31 (4%)</td>
</tr>
<tr>
<td><strong>Total number of owners</strong></td>
<td><strong>695</strong></td>
</tr>
</tbody>
</table>

B. Real Estate

Joint ownership of real estate is very common. A random sampling of 1071 recent real estate transfers in Marion County, Indiana (Indianapolis) showed that in terms of numbers joint ownership between husband and wife overwhelmingly is preferred. The break-down was as follows:

<table>
<thead>
<tr>
<th>Type of Ownership</th>
<th>Number of Transfers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deeds to husband and wife</td>
<td>681</td>
</tr>
<tr>
<td>Deeds to joint owners whose relationship did not appear</td>
<td>52</td>
</tr>
<tr>
<td>Deeds to single grantees or trustees</td>
<td>225</td>
</tr>
<tr>
<td>Deeds to business, charitable and governmental institutions</td>
<td>113</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,071</strong></td>
</tr>
</tbody>
</table>

Note that over 76% of the transfers to individuals were in joint ownership. Joint ownership between husband and wife therefore is probably much higher. A house-to-house random study of 100 Indianapolis married couples indicated that 96% of those who owned their own homes held them jointly.

C. Bank Accounts

Personal interviews with 42 employees who regularly take deposits for 42 different or branch banking institutions (including building and savings and loan associations) in Indianapolis convincingly established that the joint bank account is extremely popular in this area. Estimates of the number of accounts held jointly in their institutions were as follows:

<table>
<thead>
<tr>
<th>Percentage of accounts held jointly estimating</th>
<th>Number of bank employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>70 or over</td>
<td>22</td>
</tr>
<tr>
<td>50 or over</td>
<td>14</td>
</tr>
<tr>
<td>under 50</td>
<td>5</td>
</tr>
<tr>
<td>no idea</td>
<td>1</td>
</tr>
</tbody>
</table>
As between husband and wife the estimates on the whole were higher, as follows:

<table>
<thead>
<tr>
<th>Percentage of accounts owned by married people held jointly with spouses</th>
<th>Number of bank employees estimating</th>
</tr>
</thead>
<tbody>
<tr>
<td>under 50</td>
<td>2</td>
</tr>
<tr>
<td>50 or over</td>
<td>5</td>
</tr>
<tr>
<td>70 or over</td>
<td>21</td>
</tr>
<tr>
<td>&quot;mostly&quot;</td>
<td>12</td>
</tr>
<tr>
<td>other</td>
<td>2</td>
</tr>
</tbody>
</table>

Because it was difficult to estimate the percentage of accounts owned or held by married people jointly with their spouses, the twelve employees who stated that "most" of such accounts were held jointly did so with the expressed idea that joint ownership is most common between husband and wife.

A house-to-house random study of 100 Indianapolis married couples indicated that joint ownership of bank accounts is high. In response to the question, "Do you own your bank account jointly?" the answers were as follows:

<table>
<thead>
<tr>
<th>Answer</th>
<th>Number answering</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>78</td>
</tr>
<tr>
<td>Yes, as to savings account, no as to checking account</td>
<td>3</td>
</tr>
<tr>
<td>No</td>
<td>12</td>
</tr>
<tr>
<td>No account</td>
<td>7</td>
</tr>
</tbody>
</table>

D. United States Savings Bonds

On June 30, 1952 individuals held 63.5 billion in federal securities. annual report of Secretary of Treasury 79 (1952). It is reasonable to suppose that a substantial portion of this tremendous investment is held jointly. In a house-to-house random study of 100 Indianapolis married couples the question was asked, "Do you own savings bonds jointly?" Answers were as follows:

<table>
<thead>
<tr>
<th>Answer</th>
<th>Number answering</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>77</td>
</tr>
<tr>
<td>No</td>
<td>14</td>
</tr>
<tr>
<td>No bonds</td>
<td>9</td>
</tr>
</tbody>
</table>

E. Automobiles

A random study of 1952 title cards in the Indiana Bureau of Motor Vehicles indicates that dual ownership of automobiles, while relatively small, may run into substantial figures. Out of 1000 title registrations of passenger automobiles owned by individuals the following information fairly appeared:

| Percent registered in dual names (34 out of 1000) | 3.4% |
| Fords (19 out of 500)                             | 3.8% |
| Chevrolets (15 out of 500)                         | 3.1% |

Percent registered in male and female names
(Probably husband and wife)
(12 out of 1000)                                  1.2%

Form of registration (out of 34)

| "A and B"                                           | 17   |
| "A or B"                                           | 5    |
| "A and/or B"                                       | 9    |
| "A, B," etc                                       | 3    |

In contrast to this was the information revealed by interviews with 100 Indianapolis married couples. Of this group 30 out of the 88 who owned automobiles asserted that the family automobile was owned jointly. This suggests a possibility that the rights of the parties lie in parol evidence inasmuch as joint ownership appears with much less frequency upon motor vehicle titles.
F. Attitudes Toward Survivorship

In the personal interviews with the 42 employees who regularly take deposits in Indianapolis financial institutions (above) all were asked, "Do people with joint accounts expect the account to pass to the survivor?" The answers were as follows:

<table>
<thead>
<tr>
<th>Answer</th>
<th>Number of employees giving the answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Yes&quot;</td>
<td>39</td>
</tr>
<tr>
<td>&quot;Most&quot;</td>
<td>1</td>
</tr>
<tr>
<td>&quot;More or less&quot;</td>
<td>1</td>
</tr>
<tr>
<td>&quot;Yes, in case of older people&quot;</td>
<td>1</td>
</tr>
</tbody>
</table>

These employees were asked the further question, "Why do people open accounts in joint form?" Answers to this question were more varied, as follows:

<table>
<thead>
<tr>
<th>Answer</th>
<th>Number of employees giving the answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convenience</td>
<td>16</td>
</tr>
<tr>
<td>Survivorship</td>
<td>9</td>
</tr>
<tr>
<td>Convenience and survivorship</td>
<td>5</td>
</tr>
<tr>
<td>Recommended by bank</td>
<td>4</td>
</tr>
<tr>
<td>To avoid probate</td>
<td>2</td>
</tr>
<tr>
<td>Convenience, and to beat taxes</td>
<td>1</td>
</tr>
<tr>
<td>Convenience, and to avoid probate</td>
<td>1</td>
</tr>
<tr>
<td>To evade inheritance taxes</td>
<td>1</td>
</tr>
<tr>
<td>Young men entering service</td>
<td>1</td>
</tr>
<tr>
<td>&quot;If you're married you're supposed to be one&quot;</td>
<td>1</td>
</tr>
<tr>
<td>As between married people it is a &quot;partnership proposition&quot;</td>
<td>1</td>
</tr>
</tbody>
</table>

In the interviews with 100 Indianapolis married couples (above) these people were asked what property was held jointly, and then, "Do you believe that it would pass to the survivor?" The replies were as follows:

<table>
<thead>
<tr>
<th>Answer</th>
<th>Number of persons giving such answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>84</td>
</tr>
<tr>
<td>No</td>
<td>3</td>
</tr>
<tr>
<td>Don't know</td>
<td>4</td>
</tr>
<tr>
<td>Yes, if parties have been true</td>
<td>1</td>
</tr>
<tr>
<td>No answer (because no property owned jointly)</td>
<td>8</td>
</tr>
</tbody>
</table>

These residents were asked the further question, "Why is your property held jointly?" Answers were quite varied, and fell in the following categories:

<table>
<thead>
<tr>
<th>Answer</th>
<th>Number of persons giving such answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Survivorship</td>
<td>26</td>
</tr>
<tr>
<td>No reason</td>
<td>20</td>
</tr>
<tr>
<td>Marriage is a partnership in which each shares</td>
<td>16</td>
</tr>
<tr>
<td>A good idea</td>
<td>11</td>
</tr>
<tr>
<td>Custom</td>
<td>8</td>
</tr>
<tr>
<td>Convenience</td>
<td>4</td>
</tr>
<tr>
<td>Advised</td>
<td>2</td>
</tr>
<tr>
<td>To avoid administration</td>
<td>2</td>
</tr>
<tr>
<td>Taxes</td>
<td>1</td>
</tr>
<tr>
<td>Comes natural</td>
<td>1</td>
</tr>
<tr>
<td>Put it that way when husband went into service</td>
<td>1</td>
</tr>
<tr>
<td>No joint property</td>
<td>8</td>
</tr>
</tbody>
</table>
### APPENDIX II

**GENERAL STATUTORY PROVISIONS**

<table>
<thead>
<tr>
<th>(1) Estate or incident disfavored in favor of tenancy in common</th>
<th>(2) Kind of property</th>
<th>(3) Language necessary</th>
<th>(4) Husband and wife mentioned</th>
<th>(5) Special exemptions</th>
<th>(6) Method of transfer contemplated</th>
<th>(7) Transfers from owner to himself and another sanctioned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ala. Code Ann. (Supp. 1953) tit. 47, § 19</td>
<td>no survivorship “when one joint tenant dies”</td>
<td>no specific designation</td>
<td>no</td>
<td>no</td>
<td>“instrument”</td>
<td>applicable to “instruments of conveyance” where intent to create survivorship</td>
</tr>
<tr>
<td>Ariz. Code Ann. (1939) §§ 39-110, 71-122</td>
<td>“not in joint tenancy” (§ 71-122); property held “jointly” shall not survive (§ 39-110)</td>
<td>“real property” (§ 71-122); “property” granted or devised (§ 39-110)</td>
<td>“by express words” provide for survivorship</td>
<td>excepted (§ 71-122)</td>
<td>“in trust or to executors”</td>
<td>“grants and devises”</td>
</tr>
<tr>
<td>Ark. Stat. Ann. (1947) §§ 50-411, 61-114</td>
<td>property held as “joint” (§ 50-411)</td>
<td>“every interest in real estate”</td>
<td>“unless expressly declared . . . to be a joint tenancy”</td>
<td>no</td>
<td>no</td>
<td>“Conveyance of realty between spouses construed to pass interest specified in the deed” (§ 50-413)</td>
</tr>
<tr>
<td>Cal. Clv. Code (Deering, 1949) § 683</td>
<td>joint tenancy</td>
<td>applies to all property interests</td>
<td>“expressly declared . . . to be a joint tenancy”</td>
<td>included (H and W may hold property as joint tenants in common, or as community, § 161)</td>
<td>“single will or transfer”; with respect to personal property, may be created by a written transfer, instrument or agreement</td>
<td></td>
</tr>
<tr>
<td>Colo. Stat. Ann. (Cum. Supp., 1953) c. 40, § 4</td>
<td>“no estate in joint tenancy”</td>
<td>“lands, tenements or hereditaments”</td>
<td>“not in tenancy in common but in joint tenancy”</td>
<td>no</td>
<td>no</td>
<td>applicable to “lands, tenements and hereditaments” when declared to be a Joint tenancy</td>
</tr>
<tr>
<td>Conn.</td>
<td>No statutory provision</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Del. Code Ann. (1953) tit. 25, §§ 701</td>
<td>“no estate in joint tenancy”</td>
<td>“lands, tenements or hereditaments”</td>
<td>“as joint tenants and not as tenants in common”</td>
<td>no</td>
<td>no</td>
<td>“grant, devise or conveyance”</td>
</tr>
<tr>
<td>D. C. Code (1951) § 45-816</td>
<td>“joint tenancy”</td>
<td>real and personal property (See § 45-823)</td>
<td>“expressly declared to be a joint tenancy”</td>
<td>included</td>
<td>“executors or trustees”</td>
<td>“granted or devised”</td>
</tr>
<tr>
<td>Fla. Stat. (1951) § 689.15</td>
<td>doctrine of “survivorship” as applied to “joint tenants”</td>
<td>“real estate and personal property”</td>
<td>“expressly provide for the right of survivorship”</td>
<td>entitities excepted</td>
<td>no</td>
<td>“instrument”</td>
</tr>
<tr>
<td>State</td>
<td>Code Ann.</td>
<td>Joint tenancy</td>
<td>Real and personal property (Cf. § 85-104)</td>
<td>shall not exist and shall be tenants in common</td>
<td>no</td>
<td>no</td>
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</tr>
<tr>
<td>Ga. Code Ann.</td>
<td>(1935) § 85-1002</td>
<td>Joint tenancy</td>
<td>&quot;every interest&quot; and &quot;every interest in real estate&quot;</td>
<td>&quot;declared to be a joint interest or otherwise&quot; (Cf. § 55-104 with § 55-508)</td>
<td>no; community property excepted from preference for tenancy in common</td>
<td>partnership and community; reality granted and devised to executors or trustees</td>
</tr>
<tr>
<td>Idaho Code Ann.</td>
<td>(1948) §§ 55-104, 55-508</td>
<td>tenancy in common preferred unless declared, a &quot;joint interest&quot;</td>
<td>&quot;personal property&quot;</td>
<td>&quot;intention to create a joint tenancy ... with the right of survivorship&quot;</td>
<td>no</td>
<td>executors and trustees</td>
</tr>
<tr>
<td>Ill. Rev. Stat. (1953)</td>
<td>c. 76, §§ 1, 1a, 1b, 2, 2.1</td>
<td>personality: &quot;incident of survivorship between joint tenants&quot;</td>
<td>&quot;lands, tenements or hereditaments and &quot;contracts to purchase real estate&quot;</td>
<td>&quot;expressly declared ... not in tenancy in common but in joint tenancy&quot;</td>
<td>no</td>
<td>executors and trustees</td>
</tr>
<tr>
<td>Ill. Rev. Stat. (1953)</td>
<td>c. 76, §§ 1, 1a, 1b, 2, 2.1</td>
<td>personality: &quot;in joint tenancy&quot;</td>
<td>&quot;unless otherwise expressed&quot;</td>
<td>&quot;entireties rights in land contracts and options favored (§ 56-901, 56-903)&quot;</td>
<td>&quot;inapplicable to &quot;mortgages, nor to conveyances in trust&quot; and executors (§ 56-112)</td>
<td>&quot;inapplicable to &quot;mortgages, nor to conveyances in trust&quot; and executors (§ 56-112)</td>
</tr>
<tr>
<td>Ind. Stat. Ann. (Burns Repl. 1951)</td>
<td>§§ 51-104, 56-111</td>
<td>personality: &quot;joint tenancy&quot;</td>
<td>&quot;joint tenancy and to the survivor of them&quot; or &quot;manifestly appear from the tenor of the instrument&quot; that joint tenancy was &quot;intended&quot;</td>
<td>&quot;instrument&quot;</td>
<td>&quot;inapplicable to &quot;mortgages, nor to conveyances in trust&quot; and executors (§ 56-112)</td>
<td></td>
</tr>
<tr>
<td>Iowa Code (1950)</td>
<td>§ 537.15</td>
<td>&quot;tenancy in common unless a contrary intent is expressed&quot;</td>
<td>&quot;conveyances&quot;</td>
<td>&quot;unless a contrary intent is expressed&quot;</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Kan. Gen. Stat. Ann. (1949)</td>
<td>§ 55-501</td>
<td>&quot;real or personal property&quot;</td>
<td>&quot;clear that a joint tenancy was intended&quot;</td>
<td>&quot;instrument&quot;</td>
<td>&quot;executors or trustees&quot;</td>
<td>&quot;grant or devise&quot;</td>
</tr>
<tr>
<td>Ky. Rev. Stat. (1953)</td>
<td>§§ 381.120, 381.130</td>
<td>&quot;joint tenants&quot;</td>
<td>&quot;real or personal&quot;</td>
<td>&quot;manifestly appears from the tenor of the instrument&quot; that survivorship was intended</td>
<td>no entireties in reality unless &quot;a right of survivorship is expressly provided for&quot; (§ 381.030)</td>
<td>&quot;executors or trustees&quot;</td>
</tr>
<tr>
<td>Louisiana</td>
<td>No statutory provision</td>
<td></td>
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</tr>
</tbody>
</table>

821
<table>
<thead>
<tr>
<th>State</th>
<th>(1) Estate or incident disfavored in favor of tenancy in common</th>
<th>(2) Kind of property</th>
<th>(3) Language necessary</th>
<th>(4) Husband and wife mentioned</th>
<th>(5) Special exemptions</th>
<th>(6) Method of transfer contemplated</th>
<th>(7) Transfers from owner to himself and another sanctioned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maine</td>
<td>Estates vested in survivors upon the principle of joint tenancy</td>
<td>&quot;land&quot;</td>
<td>&quot;unless otherwise expressed&quot;</td>
<td>no</td>
<td>conveyances &quot;in mortgages... excepted; reality or personally conveyed &quot;in mortgage or in trust... with power to appoint a successor&quot; (c. 154, § 19)</td>
<td>conveyances and devises</td>
<td>applicable to &quot;conveyances of real property... as joint tenants or with right of survivorship&quot; (Me. Laws, 1953, c. 301)</td>
</tr>
<tr>
<td>Maryland</td>
<td>&quot;joint tenancy&quot;</td>
<td>no specific designation</td>
<td>&quot;unless... expressly provided that the property... is to be held in joint tenancy&quot;</td>
<td>no</td>
<td>no provision</td>
<td>deed devise or other instrument of writing</td>
<td></td>
</tr>
<tr>
<td>Massachusetts</td>
<td>&quot;joint tenancy&quot;</td>
<td>&quot;land&quot;</td>
<td>&quot;jointly, as joint tenants, or in joint tenancy, or to them or the survivor of them... or manifestly appears from the tenor of the instrument that joint tenancy was intended&quot;</td>
<td>Included</td>
<td>&quot;except a mortgage or a devise or a conveyance in trust&quot;</td>
<td>&quot;instrument&quot;</td>
<td>applicable to real estate &quot;transferred by a person to himself jointly with another&quot; (c. 184, § 8)</td>
</tr>
<tr>
<td>Michigan</td>
<td>&quot;joint tenancy&quot;</td>
<td>&quot;lands&quot;</td>
<td>&quot;expressly declared to be in joint tenancy&quot;</td>
<td>excepted</td>
<td>inapplicable to &quot;mortgages, nor to devises or grants in trust or made to executor&quot;</td>
<td>&quot;grants and devises&quot;</td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td>&quot;joint tenancy&quot;</td>
<td>&quot;lands&quot;</td>
<td>&quot;expressly declared to be in joint tenancy&quot;</td>
<td>no</td>
<td>inapplicable to &quot;mortgages nor to devises or grants made in trust, or to executor&quot;</td>
<td>&quot;grants and devises&quot;</td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>&quot;joint tenancy or entirety&quot;</td>
<td>&quot;land&quot;</td>
<td>&quot;manifestly appears from the tenor of the instrument&quot; intent to create &quot;joint tenancy or entirety with the right of survivorship&quot;</td>
<td>Included (as well as estates by entirety)</td>
<td>&quot;mortgages or devises, or conveyances, made in trust&quot;</td>
<td>&quot;instrument&quot;</td>
<td></td>
</tr>
<tr>
<td>Missouri</td>
<td>&quot;joint tenancy&quot;</td>
<td>&quot;every interest in real estate&quot;</td>
<td>&quot;expressly declared... to be in joint tenancy&quot;</td>
<td>excepted</td>
<td>&quot;executors and trustees&quot;</td>
<td>&quot;grant or devise&quot;</td>
<td>conveyance of real estate creating joint tenancy, entities, tenancy in common or partnership (§ 442.025, Supp. 1953)</td>
</tr>
<tr>
<td>State</td>
<td>Statute References</td>
<td>Joint Tenancy</td>
<td>Tenancy in Common</td>
<td>Tenancy by Entirety</td>
<td>Survivorship</td>
<td>Partnership</td>
<td>Single Will or Transfer</td>
</tr>
<tr>
<td>-------</td>
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</tr>
<tr>
<td>Montana</td>
<td>Rev. Code Ann. (Repl. 1953) §§ 67-313, 67-308, 67-310</td>
<td>&quot;joint tenancy&quot; or &quot;estates by entirety&quot;</td>
<td>&quot;every interest&quot;</td>
<td>&quot;expressly declared to be a joint tenancy&quot;; where &quot;survivorship&quot; contained in grant of realty</td>
<td>included, (§ 67-313)</td>
<td>survivorship in estates by entirety where &quot;contained&quot; in grant of realty (§ 67-310)</td>
<td>partnerships</td>
</tr>
<tr>
<td>Nebraska</td>
<td>no express provisions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>applicable to conveyances creating &quot;joint tenancy, tenancy in common, or tenancy in partnership&quot; (Neb. Rev. Stat. § 76-118, 1943)</td>
</tr>
<tr>
<td>Nevada, Comp. Laws (Supp. 1941) § 3710</td>
<td>&quot;joint tenancy&quot;</td>
<td>real and personal property</td>
<td>&quot;expressly declared in the transfer to be a joint tenancy&quot;</td>
<td>included (H and W may hold real and personal property as joint tenants, tenants in common, or in community) § 3362 (1929)</td>
<td>&quot;when granted to executors or trustees as joint tenants&quot;</td>
<td>single will or transfer; with respect to personal property &quot;may be created by a written transfer, agreement or instrument&quot;</td>
<td></td>
</tr>
<tr>
<td>New Hampshire Rev. Laws (1942) c. 259, § 17. Cf. N. H. Laws, 1933, c. 178, § 11</td>
<td>&quot;joint tenancy&quot;</td>
<td>&quot;real estate&quot;</td>
<td>&quot;expressed... as joint tenants, or to them and the survivor of them, or other words... clearly expressing an intention to create a joint tenancy&quot;</td>
<td>no</td>
<td>&quot;conveyance or devise&quot;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Jersey Rev. Stat. (1937) § 46:3-17</td>
<td>&quot;joint tenancy&quot;</td>
<td>no specific designation</td>
<td>&quot;intention... to create an estate in joint tenancy and not an estate of tenancy in common&quot;</td>
<td>no; but joint tenancy in mortgages preferred as between H and W (§ 46:2D-1, Cum. Supp. 1952)</td>
<td>&quot;grant or devise&quot;</td>
<td>applicable to conveyances of real estate in joint tenancy (§ 46:3-17.1, Cum. Supp. 1950)</td>
<td></td>
</tr>
<tr>
<td>New Mexico Stat. Ann. (1941) § 75-111; id. §§ 75-134 (Supp. 1951)</td>
<td>no specific designation</td>
<td>interests in real estate and mortgages in real estate</td>
<td>&quot;clearly expressed... that it shall be held by both parties&quot; (§ 75-111); &quot;as joint tenants&quot; (§ 75-134)</td>
<td>(H and W may hold property as joint tenants, tenants in common or as community § 65-401)</td>
<td>&quot;executors or trustees&quot;</td>
<td>&quot;grant or bequest&quot;</td>
<td></td>
</tr>
<tr>
<td>New York Real Property Law (1945) § 66</td>
<td>&quot;joint tenancy&quot;</td>
<td>&quot;expressly declared to be in joint tenancy&quot;</td>
<td>no</td>
<td></td>
<td>&quot;executors or trustees&quot;</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Entitlements rights are specially favored with respect to contracts to sell entitlements realty (§ 26.191) and in certain types of intangible personalty (§ 26.211).*
<table>
<thead>
<tr>
<th>State</th>
<th>(1) Estate or Incident Disfavored in Favor of Tenancy in Common</th>
<th>(2) Kind of Property</th>
<th>(3) Language Necessary</th>
<th>(4) Husband and Wife Mentioned</th>
<th>(5) Special Exemptions</th>
<th>(6) Method of Transfer Contemplated</th>
<th>(7) Transfers from Owner to Himself and Another Sanctioned</th>
</tr>
</thead>
<tbody>
<tr>
<td>N. D. Rev. Code</td>
<td>&quot;joint tenancy&quot;</td>
<td>joint &quot;interest&quot;</td>
<td>&quot;expressly declared ... to be a joint tenancy&quot;</td>
<td>no</td>
<td>&quot;executors or trustees&quot; as joint tenants&quot;</td>
<td>&quot;single will or transfer&quot;</td>
<td>applicable to interests in realty conveyed in &quot;joint tenancy&quot; (§ 47-1023)</td>
</tr>
<tr>
<td>Ohio</td>
<td>No express provisions</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Okla. Stat. (1951) tit. 68, § 74</td>
<td>Joint tenancy and tenancy by entirety</td>
<td>&quot;real or personal property&quot;</td>
<td>&quot;expressly declared ... to be a joint tenancy or ... tenancy by entirety&quot;</td>
<td>yes (may be described as joint tenants or by entirety)</td>
<td>&quot;executors or trustees&quot;</td>
<td>&quot;single instrument, will or transfer&quot;</td>
<td>applicable to joint tenancy and entireties</td>
</tr>
<tr>
<td>Ore. Comp. Laws (1940) §§ 70-108, 8-303</td>
<td>&quot;joint tenants&quot;</td>
<td>&quot;lands or interest therein&quot;</td>
<td>&quot;expressly declared ... as joint tenants&quot;</td>
<td>&quot;tenancy by entirety ... shall be such as is now fixed (§ 70-203)&quot;</td>
<td>&quot;executors and trustees&quot;</td>
<td>&quot;conveyance or devise&quot;</td>
<td>applicable to tenancy by entireties in realty where Instrument shows intent to create such estate (§ 63-210)</td>
</tr>
<tr>
<td>R. I. Gen. Laws (1938) c. 431, § 1</td>
<td>&quot;joint tenancy&quot;</td>
<td>&quot;real or personal estate&quot;</td>
<td>&quot;that the tenancy is to be joint, or that the same is to ... the survivor ... of them ... or manifestly appears that [they] take as joint tenants and not as tenants in common&quot;</td>
<td>yes</td>
<td>&quot;trustees or executors&quot;</td>
<td>&quot;gifts, feoffments, grants, conveyances, devises or legacies&quot;</td>
<td>applicable to deeds of lands, hereditaments, or a thing in action jointly with another including conveyances between husband and wife (c. 435, § 17)</td>
</tr>
<tr>
<td>S. C. Code Ann. (1952) § 19-55</td>
<td>&quot;joint tenancy&quot;</td>
<td>&quot;any estate&quot;</td>
<td>[survivorship abolished]</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S. D. Code (1939; Supp. 1952) §§ 51.0212, 51.0214</td>
<td>&quot;joint tenancy&quot;</td>
<td>no specific designation</td>
<td>&quot;declared ... to be a joint tenancy&quot;</td>
<td>no</td>
<td>&quot;partnership&quot;; and &quot;executors or trustees&quot; as &quot;joint tenants&quot;</td>
<td>&quot;single will or transfer&quot;</td>
<td>applicable to real and personal property where intent to create joint tenancy (§ 31.0212, Supp. 1952)</td>
</tr>
<tr>
<td>Tenn. Code Ann. (Williams, 1934) §§ 7604, 8461</td>
<td>&quot;joint tenancy&quot;</td>
<td>&quot;real and personal&quot;</td>
<td>[survivorship abolished]</td>
<td></td>
<td>entitlements expressly preserved (§ 8461)</td>
<td>partners</td>
<td>applicable to entitities where intent to create such estate appears in instrument (§ 7605.1, Supp. 1952)</td>
</tr>
<tr>
<td>State/Code</td>
<td>Description</td>
<td>Details</td>
<td>Survivalship Abolished</td>
<td>Notes</td>
<td></td>
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<tr>
<td>Tex. Rev. Civ. Stat. (Vernon, 1951) art. 2580</td>
<td>&quot;Joint estate&quot;</td>
<td>&quot;real, personal or mixed&quot;</td>
<td>(survivalship abolished)</td>
<td>no</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utah Code Ann. (1953) §§7-1-5</td>
<td>Joint tenancy</td>
<td>&quot;every interest in real estate . . .&quot;</td>
<td>&quot;Joint tenancy&quot; or &quot;with rights of survivorship&quot; or &quot;and to the survivor of them&quot;</td>
<td>no</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vt. Stat. (1947) § 2632</td>
<td>&quot;Joint tenancy&quot;</td>
<td>&quot;lands . . . for years, life, or in fee&quot;</td>
<td>&quot;expressed . . . jointly, or as joint tenants, or in joint tenancy to . . . the survivor&quot; or &quot;manifestly appears from the tenor of the instrument that it was intended to create . . . joint tenancy&quot;</td>
<td>excepted</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Va. Code Ann. (1950) §§ 55-20, 55-21</td>
<td>Husband and wife take &quot;by moieties&quot;; other part of statute applies to &quot;Joint tenant(s)&quot;</td>
<td>&quot;real or personal&quot;</td>
<td>&quot;manifestly appears from the tenor of the instrument that&quot;</td>
<td>included</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wash. Rev. Code (1952) §§ 11.94-070, c. 270</td>
<td>&quot;Joint tenants&quot; and &quot;tenants by the entireties&quot;</td>
<td>No specific designation</td>
<td>(survivalship abolished)</td>
<td>deals with community as provided by statute</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>W. Va. Code Ann. (1949) §§ 3359, 3340</td>
<td>Joint tenants and tenants by the entireties</td>
<td>&quot;real or personal&quot;</td>
<td>&quot;manifestly appears from the tenor of the instrument that&quot;</td>
<td>entireties included</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wis. Stat. (1951) §§ 230.44, 230.45</td>
<td>&quot;Joint tenancy&quot;</td>
<td>Land</td>
<td>&quot;unless expressly declared to be in joint tenancy&quot;</td>
<td>excepted</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wyoming</td>
<td>No express provision</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
LEGISLATION PERTAINING TO JOINT BANK ACCOUNTS


Statutes applicable to accounts in a form payable to "either, or either or the survivor of them": Iowa Code Ann. (Supp. 1953) §534.21 (building, and federal savings and loan associations); Mass. Laws Ann. (Supp. 1953) c. 167, §14, c. 168, §34A, c. 172A, §5A (any bank, savings banks, banking companies); Minn. Stat. (1949) §55.10 (safe deposit boxes).


Statutes applicable to accounts in a form payable "to them, or either of them": Colo. Stat. Ann. (1935) c. 18, §45 (banks and trust companies). Cf. Minn Stat. (1949) §§48.30, 52.13 ("upon joint and several account"—applicable to banks, savings banks and credit unions); S.D. Code (1939) §7.0207 (building and loan association stock issued to two or more persons "or their survivors, in either joint or several form"); Wis. Stat. (1951) §215.15 (savings and loan association shares in names of two or more persons "or either, or their survivor").

Statutes applicable to writing expressing an intent to create "joint tenancy with the right of survivorship": Ill. Rev. Stat. (1953) c. 76, §2 (generally applicable to personal property, but the same statute approves accounts in bank and trust companies in the names of two or more "payable to them" and building, and federal savings and loan association shares issued in the "joint names of two or more . . . or their survivors"). Cf. id., c. 32, §496.8 (credit union shares may be issued "in joint tenancy, or in survivorship"). But cf. id., c. 32, §230 (building and loan shares and certificates may be issued to two or more persons "and the survivor").


c. 32, §255f (state and federal savings and loan associations); Kan. Gen. Stat. Ann. (1949) §17-5804 (savings and loan associations); N.D. Code (1943) §7-0407 (building and loan associations); Ohio Rev. Code (Baldwin, 1953) §1151.9 (building and loan association deposit in the "joint account of two or more persons ... payable on the order of any one ... and ... payable notwithstanding the death or incapacity of one"); Okla. Stat. (1951) tit. 18, §2125 (building and loan associations and federal savings and loan associations).


Statutes applicable to persons who become depositors "jointly": Wash. Rev. Code (1951) §31.12.140 (credit unions).