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Real Property -- Conveyances between Spouses -- Creation and Dissolution of Estates by the Entirety

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as a criterion for determining the extent of the interest transferred when community property passes from a husband to his wife by gift or upon his death.

It is evident from the rights of the wife detailed above that when a husband transfers community property to his wife, she then for the first time receives certain important property rights in her one-half interest. Whether the transfer of those rights is so insignificant as not to warrant taxation of course depends largely upon individual state taxing policy.[41] However, before the tax consequences are resolved, the extent of the interest transferred should be determined and brought into a proper perspective with the taxing policy. It is submitted that common law states, when confronted with the problem of taxing transfers of community property from a husband to his wife, can more realistically accomplish this determination by analyzing the actual substantive rights possessed by the wife before and after the transfer—and not by relying upon the sometimes vague and meaningless label of "vested."

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Real Property—Conveyances between Spouses—Creation and Dissolution of Estates by the Entirety

In North Carolina, a married woman can make a valid conveyance to her husband of her real property[1] only if the instrument of conveyance contains a certificate by the certifying officer of his findings of facts and conclusions as to whether the deed is unreasonable or injurious to her.[2] The certificate is based on a private examination of the wife.[3]

[41] New York, for example, has a specific estate tax statute (similar to the federal statute in effect from 1942 to 1948) in regard to community property. It states that the gross estate of a decedent shall include property "held as community property by the decedent and surviving spouse under the law of any state . . . or any foreign country, except such part thereof as may be shown to have been received as compensation for personal services rendered by the surviving spouse or derived originally from such compensation or from the separate property of the surviving spouse. In no case shall such interest included . . . be less than the value of the community property as was subject to the decendent's power of testamentary disposition." N. Y. TAX LAW § 249-r (5-a). Where all the community property passes to the wife upon the husband's death, it has been held, under this statute, that the entire amount of property was includible in the husband's gross estate. *In re* Walk's Estate, 192 N. Y. Misc. 237, 79 N. Y. S. 2d 645 (Surr. Ct. 1948).

[1] N. C. CONST. art. X, § 6. "The real and personal property of any female in this State . . . may be devised and bequeathed, and, with the written consent of her husband, conveyed by her as if she were unmarried." See also Perry v. Stancil, 237 N. C. 442, 75 S. E. 2d 512 (1953) (The wife conveyed her separate estate to her husband without his written consent. The court held that art. X, § 6 of the Constitution did not apply to the conveyance to the husband. The provision applies only to conveyances to third parties.)

[2] N. C. GEN. STAT. § 52-12(b) (1955).

[3] N. C. GEN. STAT. § 52-12(a) (1955).

In a recent case,[4] a wife owned two tracts of land in fee. By deed, she and her husband conveyed the property to a third party. No certificate by the certifying officer that the instrument was not unreasonable or injurious to her was annexed to the deed. Later the same day, both tracts were conveyed by the third party to the wife and husband in form sufficient to create a tenancy by the entirety. It was held that the deed from the wife to the the third party was void for failure to comply with the provisions of G. S. 52-12.[5] The court said that the wife could not do indirectly, by such non-compliance, what she could not do directly; therefore, the attempt to create the tenancy by the entirety in the wife's property was unsuccessful.

The requirements in North Carolina for the creation of tenancies by the entirety by conveyance between the spouses are not clear. At common law, when a married man wanted to create a tenancy by the entirety in himself and his wife with his solely owned property, it was necessary for him to convey to an intermediate third party who immediately conveyed the property to the husband and wife as tenants by the entirety.[6] This transaction was required to make present the five unities of time, title, interest, possession and person necessary to create the tenancy.[7] The anachronism of conveying through a straw man to create a tenancy by the entirety in property owned by one of the spouses has not been repudiated in North Carolina.

The jurisdictions that recognize tenancy by the entirety[8] are in sharp disagreement as to the validity of such a tenancy created by a *direct* conveyance from one spouse to both. One line of authority follows the common law precedent.[9] In these jurisdictions a direct conveyance is invalid because the common law unities of time and title necessary to

[4] Davis v. Vaughn, 243 N. C. 486, 91 S. E. 2d 165 (1956). *Cf.* McCullen v. Durham, 229 N. C. 418, 50 S. E. 2d 511 (1948) (Wife's property was conveyed by the wife, with her husband's joinder, to a third person. Seven months later the property was conveyed by the third person to the husband. The deed from the wife contained no certificate that it was not unreasonable or injurious to her. The court held that the transaction was not void because it clearly appeared that the first deed was not made "with any view to accomplishing an indirect conveyance of the [wife's] property to her husband.")

[5] At the time the deed in question was executed, the statute did not provide for a private examination of the wife. N. C. Sess. Laws 1945, c. 73, § 19, as amended by N. C. Sess. Laws 1947, c. 111 and N. C. Sess. Laws 1951, c. 1006, § 2.

[6] 4 POWELL ON REAL PROPERTY 659 (1954).

[7] *Id.* at 653.

[8] Tenancy by the entirety has importance in only twenty-one states. It has been eliminated or is absent in the remainder of the states. *Id.* at 655.

[9] Edge v. Barrow, 316 Mass. 104, 55 N. E. 2d 5 (1944); Ames v. Chandler, 265 Mass. 428, 164 N. E. 616 (1929); Pegg v. Pegg, 165 Mich. 228, 130 N. W. 617 (1911); Stone v. Culver, 286 Mich. 263, 282 N. W. 142 (1938) (Tenancy by the entirety was not created, but because the wife used her old name as grantor and her new name as grantee, the court held that her heirs were estopped to assert that the tenancy had not been created.); Richardson v. Richardson, 111 Vt. 140, 11 A. 2d 227 (1940).

create the tenancy by the entirety are lacking.[10] Thus, it is held that the very nature of the tenancy makes it necessary to convey through an intermediary.

A growing minority,[11] led by New York,[12] has taken a different and more liberal approach to the problem. The theory that a direct conveyance is invalid because the unities of time and title are lacking has been displaced by the theory that the spouse is not conveying the property to himself, as such, and to his wife, but to a legal entity composed of the husband and wife.[13] Therefore, the conveyance to the intermediate straw man is not necessary.

The North Carolina Supreme Court has not directly faced this problem. However, there is a basis for the adoption of the New York rule, at least if the property was originally owned by the husband. Our court has long held that a tenancy by the entirety is vested in one person—the "husband and wife."[14] Since the objection to a direct conveyance is that the husband, in a sense, is conveying the property to himself, the separate entity concept of "husband and wife" would render nugatory such an objection. The husband would not be conveying the property to himself, but to a recognized separate entity—"husband and wife."

The same reasoning should apply if the property is originally owned by the wife. The New York rule that a tenancy by the entirety may be created by a direct conveyance by the husband or wife to themselves of property owned by one of them is logical and reasonable. The refusal by a court to give credence to such a transaction "would be a judicial conveyance of the property contrary to the owner's expressed intention."[15] The direct conveyance would require the execution and recordation of a single deed, while a conveyance through a straw man would require the execution and recordation of two separate deeds.[16] Nevertheless, there is considerable doubt that a conveyance by the wife to herself and her husband would create a tenancy by the entirety in North Carolina. Our court has not directly passed upon the problem, but it has held that an attempted conveyance by a third party to the husband and

[10] "In the attempt to create an estate by entirety, in the case under consideration, neither the unity of time nor title was observed. The estate was not created by one and the same act, neither did it vest in them at one and the same time." Pegg v. Pegg, 165 Mich. 228, 230, 130 N. W. 617, 618 (1911).

[11] Ebrite v. Brookhyser, 219 Ark. 676, 244 S. W. 2d 625 (1951); Herr v. Herr, 13 N. J. 79, 98 A. 2d 55 (1953); Boehringer v. Schmid, 254 N. Y. 355, 173 N. E. 220 (1930); *In re* Klatzl's Estate, 216 N. Y. 83, 110 N. E. 181 (1915).

[12] The leading case is *In re* Klatzyl's Estate, 216 N. Y. 83, 110 N. E. 181 (1915), explained in Boehringer v. Schmid, 254 N. Y. 355, 173 N. E. 220 (1930).

[13] *Ibid.*

[14] Davis v. Bass, 188 N. C. 200, 204, 124 S. E. 566, 568 (1924). Stacy, J., in listing some of the properties and incidents of tenancy by the entirety stated: "In the eyes of the law an estate by the entirety is vested in one person—the husband and wife."

[15] 2 TIFFANY, REAL PROPERTY 225 (1939).

[16] N. C. GEN. STAT. § 47-18 (1950).

wife as tenants by the entirety will be considered a conveyance to the wife alone when she has furnished all of the consideration.[17] Thus, an estate by the entirety, with rights of survivorship, can be created only if the husband is jointly entitled to the property as well as jointly named in the deed.[18] The basis for the distinction is that a married woman is presumed to have acted under the coercion of her husband.[19]

Another problem arises when a husband and wife own the property as tenants by the entirety and one of them wants to convey his interest to the other. Such a conveyance is valid in several jurisdictions.[20] The position of the North Carolina Supreme Court on this is at least partially clear. If the conveyance is made by the husband of his interest in the estate by the entirety, he will be estopped upon the death of his wife to claim the property by survivorship and the property will go to the heirs or devisees of the wife.[21] By the use of the doctrine of estoppel, the court has found it unnecessary to determine whether the deed is valid as a conveyance.[22] No North Carolina authority concerning similar conveyances by the wife has been found.[23]

These problems could be solved most effectively by the passage of a remedial statute. Such a statute is proposed as follows:

> Conveyances between spouses; creation and dissolution of estates by the entirety.
>
> (1) A conveyance from a husband or wife to the other of an undivided one-half interest in real property, by which the grantor retains a like undivided one-half interest, vests the title to the real property in the husband and wife as tenants by the entirety, provided words are used indicating an intention to create an estate by the entirety.
>
> (2) A conveyance from a husband or wife to the other of the

[17] Ingram v. Easley, 227 N. C. 442, 42 S. E. 2d 624 (1947); Carter v. Oxendine, 193 N. C. 478, 137 S. E. 424 (1927).

[18] Davis v. Vaughn, 243 N. C. 486, 91 S. E. 2d 165 (1956); Ingram v. Easley, 227 N. C. 442, 42 S. E. 2d 624 (1947); Sprinkle v. Spainhour, 149 N. C. 223, 62 S. E. 910 (1908).

[19] Carter v. Oxendine, 193 N. C. 478, 137 S. E. 424 (1927); Sprinkle v. Spainhour, 149 N. C. 223, 62 S. E. 910 (1908). If the husband conveys land to his wife, it is presumed that it is a gift to the wife. Shue v. Shue, 241 N. C. 65, 84 S. E. 2d 302 (1954); Carlisle v. Carlisle, 225 N. C. 462, 35 S. E. 2d 418 (1945) (The presumption is one of fact and is rebuttable.); Rudasill v. Cabaniss, 225 N. C. 87, 33 S. E. 2d 475 (1945).

[20] Hunt v. Covington, 145 Fla. 706, 200 So. 76 (1941); Enyeart v. Kepler, 118 Ind. 34, 20 N. E. 539 (1889).

[21] Keel v. Bailey, 224 N. C. 447, 31 S. E. 2d 362 (1944); Willis v. Willis, 203 N. C. 517, 166 S. E. 398 (1932); Capps v. Massey, 199 N. C. 196, 154 S. E. 52 (1930).

[22] Cases cited note 19 *supra*.

[23] See Elson v. Elson, 245 Mich. 205, 222 N. W. 176 (1928), where a conveyance by a wife to her husband of her interest in property held by them as tenants by the entirety was held a release of the wife's interest in the property.

grantor's interest in real property held by them as tenants by the entirety dissolves the estate and vests the complete title in the grantee.[24]

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Torts—Carriers—Termination of the Carrier-Passenger Relationship

The high degree of care a common carrier owes to its passenger[1] necessarily terminates when the carrier-passenger relationship ceases to exist. Hence it has become incumbent upon courts to fashion standards against which facts may be tested in order to ascertain the existence or non-existence of a carrier-passenger relationship.

Journey's End

Whether a carrier-passenger relationship has terminated often depends upon the type of common carrier involved and upon the physical place of the journey's end. If the passenger is discharged at a railroad carrier's station, the general rule is that the relation of carrier and passenger continues until the passenger has had a reasonable time and opportunity to leave the carrier's premises.[2] The same rule applies when the passenger alights at a bus station[3] or at an airline terminal.[4] The

[24] Based on OR. REV. STAT. § 108.090 (1953).

[1] For a note on the degree of care a common carrier owes to its passenger, see Note, 17 N. C. L. REV. 453 (1939).

[2] Emerson v. Carolina Casualty Ins. Co., 206 F. 2d 13 (8th Cir. 1953); Young v. Baldwin, 82 F. 2d 841 (8th Cir. 1936); MacGregor v. Pacific Electric Ry., 6 Cal. 2d 596, 59 P. 2d 123 (1936); Georgia & F. Ry. v. Thigpen, 141 Ga. 90, 80 S. E. 626 (1913); Sink v. Grand Trunk Western Ry., 227 Mich. 21, 198 N. W. 238 (1924); Galehouse v. Minneapolis, St. P. & S. Ste. M. Ry., 22 N. D. 615, 135 N. W. 189 (1912); Wessman v. Boston & M. R. R., 22 N. H. 475, 152 Atl. 476 (1930); Fagan v. Atlantic Coast Line R. R., 220 N. Y. 301, 115 N. E. 704 (1917); Layne v. Chesapeake & Ohio Ry., 68 W. Va. 213 69 S. E. 700 (1910). See, Pinson v. Kansas City Southern Ry., 37 F. 2d 652 (5th Cir. 1930). Relation of passenger-carrier continued until plaintiff leaving train had a reasonable opportunity to see about baggage and find means of getting to destination. See also, Fulghum v. Atlantic Coast Line R. R., 158 N. C. 555, 74 S. E. 584 (1912). Train passenger alighted in daylight at a flag station. A conductor helped her off and placed her safely on the ground alongside the railroad track about 60 feet north of a railroad crossing. Plaintiff, in making her way to the crossing, was injured when she stepped on a wet crosstie. Carrier's motion to nonsuit was affirmed on the basis of plaintiff's contributory negligence but Clark, C. J., dissenting, stated that the plaintiff was still a passenger since she had not left the carrier's premises.

[3] Crown Coach Co. v. Whitaker, 208 Ark. 535, 186 S. W. 940 (1945); Southeastern Greyhound Corp. v. Graham, 69 Ga. App. 621, 26 S. E. 2d 371 (1943).

[4] Delta Air Lines, Inc. v. Millirons, 87 Ga. App., 334, 73 S. E. 2d 598 (1952); *cf.*, Crowell v. Eastern Air Lines, Inc., 240 N. C. 20, 81 S. E. 2d 178 (1954). Although the airport was leased by the city of Charlotte to the air carrier (a common arrangement between municipalities and air carriers) the carrier was held liable for injuries to one of its passengers who fell in a passageway furnished for boarding the airplane of the carrier. *Accord,* Horelick v. Pennsylvania R. R., 13 N. J. 349, 99 A. 2d 652 (1953).