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COMMENTS

THE STATUS OF ENTIRETIES IN FLORIDA

During the course of the years many states¹ have found it expedient to eliminate the estate by the entirety from their laws either for the reason that their married woman's property acts have abrogated the doctrine that husband and wife are one, or because statutes have been enacted which destroy the right of survivorship, and which through interpretation destroy the very purpose of the estate. Parenthetically, Florida, along with a small minority,² has determined that the enactment of the Married Woman's Property Act³ has no effect on the estate⁴ for the basic reason that the entirety is not separate property within the purview of the statute. Similarly, a statute⁵ eliminating the right of survivorship in joint tenancies has no effect upon the estate because, being in abrogation of the common law, it must be strictly construed.⁶ The result is that the estate exists in Florida in its original common law form⁷ except where modified by statute.⁸ Several such modifications and judicial determinations have appeared in recent years. Consequently, it is appropriate, and almost mandatory, to review this general field of law with particular emphasis upon the termination of such an estate.

GENERALLY

The basis of the estate is that the husband and wife are one person in contemplation of law.⁹ According to Blackstone,¹⁰ ". . . the very being or legal existence of the woman is suspended during the marriage, or at least is

1. Alabama, Arizona, California, Connecticut, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Nevada, New Hampshire, Ohio, Rhode Island, South Dakota, Texas, Virginia, West Virginia, and Wisconsin.

2. Arkansas, Delaware, Indiana, Maryland, Michigan, Missouri, North Carolina, Oregon, Pennsylvania, Tennessee, Vermont, and Wyoming.

3. FLA. CONST. Art. XI, § 1; FLA. STAT. § 708.01 *et seq.* (1949).

4. *Newman v. Equitable Life Assur. Soc'y of the United States*, 119 Fla. 641, 160 So. 745 (1935); *Logan Moore Lumber Co. v. Legato*, 100 Fla. 1455, 131 So. 381 (1930); *Bailey v. Smith*, 89 Fla. 303, 103 So. 833 (1925); *English v. English*, 66 Fla. 427, 63 So. 822 (1913); *but cf. Matthews v. McCain*, 125 Fla. 840, 170 So. 323 (1936); *Ohio Butterine Co. v. Hargrave*, 79 Fla. 458, 84 So. 376 (1920) (wherein it was held that the Act did not eliminate the entirety, but that it did modify it to the extent that it gave the wife the right to control her indivisible share).

5. FLA. STAT. § 689.15 (1949).

6. *Bailey v. Smith*, *supra* note 4; *English v. English*, *supra* note 4.

7. FLA. STAT. § 2.10 (1949) ("The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this state."); *Sheldon v. Waters*, 168 F.2d 483 (5th Cir. 1948); *Menendez v. Rodriguez*, 106 Fla. 214, 143 So. 223 (1932); *Bailey v. Smith*, *supra* note 4; *English v. English*, *supra* note 4.

8. *Matthews v. McClain*, *supra* note 4; *Ohio Butterine Co. v. Hargrave*, *supra* note 4.

9. *Lang v. Comm'r of Int. Rev.*, 289 U.S. 109, 111 (1933); *Bailey v. Smith*, *supra* note 4.

10. 1 BL. COMM.* 442.

incorporated and consolidated into that of the husband" The conclusion in law is that, although for all practicalities there are two people involved, the tenancy must be considered as belonging to one person. Despite the fact that the *doctrine of oneness* is a creature of the common law, it was recognized even in that time that a husband and wife who chose to receive property as an estate other than by the entirety could do so irrespective of their social union.¹¹ Thus, it is not mandatory that they hold by the entirety when they own property jointly.

When a conveyance is made to husband and wife during the time of their coverture their intentions will determine the type of estate that is to be created,¹² but where no contrary intention is shown a tenancy by the entirety will be presumed.¹³ Just as in joint tenancies, it is essential that the unities of interest, title, time and possession be present.¹⁴ A fifth unity¹⁵ that is unique to the entirety is that of a valid marriage. Consequently, when a marriage is void in the eyes of the law there is no possible means of creating the estate,¹⁶ although a conveyance to a man and woman, who are parties to a voidable marriage, will be given full force and effect.¹⁷ The courts have gone so far as to say, in effectuating the creation of the estate, that the husband and wife need not be described as such in a deed,¹⁸ and even further that it is not even necessary that the marital relationship be referred to at all.¹⁹

When the husband owns property in his own name and desires to create an entirety the customary procedure is for him to convey to a third party and for that person to then grant the property to the husband and wife jointly. By virtue of a fairly recent statute,²⁰ it is now possible for him to convey directly to his wife without the use of a dummy.²¹ It has been argued that such a conveyance is invalid because the husband cannot be both grantor and grantee in the same deed,²² but this contention has been legally brushed aside since "the deed executed by the husband to the wife in legal effect conveys to the wife and reserves to the husband."²³

The estate may exist both in real and personal property.²⁴ In realty

11. *Hunt v. Blackburn*, 128 U.S. 464 (1888).

12. *White v. White*, 42 So.2d 719 (1949); *Matthews vs. McCain*, *supra* note 4; *Bailey v. Smith*, *supra* note 4.

13. *Knapp v. Fredricksen*, 148 Fla. 311, 4 So.2d 251 (1941) *Dixon v. Becker*, 134 Fla. 547, 184 So. 114 (1938).

14. *Johnson v. Landefeld*, 138 Fla. 511, 189 So. 666 (1939); *Ohio Butterine Co. v. Hargrave*, *supra* note 4.

15. *Ibid.*

16. *Kerivan v. Fogal*, 156 Fla. 92, 22 So.2d 584 (1945) (a bigamous marriage).

17. *Johnson v. Landefeld*, *supra* note 14 (uncle and niece married).

18. *American Central Ins. Co. v. Whitlock*, 122 Fla. 363, 365, 165 So. 380, 381 (1936).

19. *Ibid.*

20. FLA. STAT. § 689.11 (1949).

21. *Hunt v. Covington*, 145 Fla. 706, 200 So. 76 (1941).

22. *Johnson v. Landefeld*, *supra* note 14 (dissent).

23. *Ibid.* (majority).

24. *Sheldon v. Waters*, *supra* note 7; *White v. White*, *supra* note 12; *Bailey v. Smith*, *supra* note 4.

it may be created in fee,²⁵ for life,²⁶ for years,²⁷ in homestead property,²⁸ or in any other chattel real.²⁹ Formerly, it could exist in fee tail³⁰ but by statute³¹ this type of estate has been abolished in Florida. The main distinction between the estate in realty and in personalty is that in the latter the parties have the right to partition.³² There are no specific statutory provisions for the creation of the estate in personalty,³³ but it has generally been held that there must be a specific intent at the time of creation.³⁴

Once the entirety is created certain representative features arise.³⁵ Each spouse is seized of the whole estate and does not take a share or a divisible part.³⁶ Neither one can individually convey or forfeit any part of the estate so as to defeat the right of the survivor.³⁷ Nor can there be a severance by the act of either.³⁸ Definitively, this means that there is no right of partition during their joint lives, or so long as the estate exists, although, as pointed out previously, there is such a right in the case of personal property.

The estate, by operation of law, upon the death of either party, remains in the surviving spouse to the exclusion of the heirs of the deceased.³⁹ The survivor does not take by inheritance, or even by the usual method of survivorship.⁴⁰ Rather, he continues to hold the whole estate by virtue of the

25. *Matthews v. McClain*, *supra* note 4.

26. *Ibid.*

27. *Ibid.*

28. *Coleman v. Williams*, 146 Fla. 45, 200 So. 207 (1941); *Menendez v. Rodriguez*, *supra* note 7.

29. *Matthews v. McClain*, *supra* note 4 (a leasehold in land is a chattel real).

30. *Ibid.*

31. FLA. STAT. § 689.14 (1949) ("no real estate shall be entailed in this state. Any instrument purporting to create an estate tail shall, notwithstanding the rule in *Shelly's case*, be deemed to create an estate for life in the first taker (that is in the donee or tenant in tail) with remainder per stirpes to the issue of the first taker in being at the time of his death.").

32. *Sheldon v. Waters*, *supra* note 7.

33. *Doing v. Riley*, 176 F.2d 449 (5th Cir. 1949); *Mann v. Etchells*, 132 Fla. 409, 182 So. 198 (1938); *Merrill v. Adkins*, 131 Fla. 478, 180 So. 41 (1938).

34. *Doing v. Riley*, *supra* note 33; *White v. White*, *supra* note 12; *Matthews v. McCain*, *supra* note 4.

Examples of the estate in personalty are: *White v. White*, *supra* note 12 (rents from a house which is held by the entirety); *Dodson v. Nat. Title Ins. Co.*, 159 Fla. 371, 31 So.2d 402 (1947) (income from the sale of real estate which is an entirety); *Merrill v. Adkins*, *supra* note 33 (payment of a debt to one of the spouses which is owed to the husband and wife jointly).

35. 2 BL. COMM. *182 ("... if an estate in fee be given to a man and his wife, they are neither properly joint-tenants, nor tenants in common; for husband and wife being considered as one person in law, they cannot take the estate by moieties, but both are seized of the entirety, per tout, et non per my; the consequence of which is, that neither the husband nor the wife can dispose of any part without the assent of the other, but the whole must remain to the survivor.")

36. *Newman v. Equitable Life Assur. Soc. of the United States*, *supra* note 4; *Bailey v. Smith*, *supra* note 4; *English v. English*, *supra* note 4.

37. *Rader v. First Nat. Bank in Palm Beach*, 42 So.2d 1 (Fla. 1949); *Logan Moore Lumber Co. v. Legato*, *supra* note 4; *English v. English*, *supra* note 4.

38. *Ibid.*

39. *Knapp v. Fredricksen*, *supra* note 13; *Miller v. Mobley*, 136 Fla. 351, 186 So. 797 (1939); *Menendez v. Rodriguez*, *supra* note 7.

40. *Palm Beach Estates v. Croker*, 106 Fla. 617, 143 So. 792 (1932).

original title.⁴¹ The only change is that a possibility of survivorship has been removed. This, too, finds its reason and very existence in the doctrine that the husband and wife are one. Fundamentally, when one of the parties dies the only alteration in the estate is that a part of the *one person is dead*⁴²—almost as if the survivor had merely lost an arm or a leg. Thus, the survivor's title dates from the creation of the entirety, and not from the time of death of the other spouse. Since the property does not pass by inheritance the obvious result of an attempt by either party to devise the property to the exclusion of the other will be a complete nullity of such devise.⁴³

During the joint lives of the husband and wife, the property held by the entireties may not be levied upon for debts of one spouse.⁴⁴ By reason of the legal relation of the parties it is required that there be a unity in encumbering the estate,⁴⁵ and it logically follows that it cannot be executed against for the separate debts of either the husband or the wife. Under the common law rule the rents and profits of an entirety could be sequestered to satisfy the debts of the husband, but because of the Married Woman's Property Act,⁴⁶ which destroyed the husband's right to control the wife's share, this is no longer possible.⁴⁷

Except for mechanic's liens, the only time the debts of one of the parties may attach to the entirety is when it is apparent to the court that the estate has been created as a fraud upon the creditors.⁴⁸ Thus, in bankruptcy proceedings the entirety is exempt from liability unless it is clearly shown that there is fraud involved.⁴⁹ The mechanic's lien is anomalous to the general rule, since, by legislative enactment⁵⁰ it may attach to the entirety when contracted by either party individually.⁵¹ The statutory rationalization⁵² is

41. *Bailey v. Smith*, *supra* note 4; *English v. English*, *supra* note 4.

42. *Ibid.*

43. *Hall v. Roberts*, 146 Fla. 444, 1 So.2d 579 (1941).

44. *Stanley v. Powers*, 123 Fla. 359, 166 So. 843 (1936) (estate was subject to judgment against both husband and wife in spite of the fact that they weren't described as such in the judgment); *Lindsley v. Phare*, 115 Fla. 454, 155 So. 812 (1934); *State ex rel Molter v. Johnson*, 107 Fla. 47, 144 So. 299 (1932); *Anderson v. Trucman*, 100 Fla. 727, 130 So. 12 (1930); *Allardice & Allardice Inc. v. Weatherlow*, 98 Fla. 475, 124 So. 38 (1929); *Ferris-Lee Lumber Co. v. Fulghum*, 98 Fla. 171, 123 So. 697 (1929); *Phare v. Randall*, 97 Fla. 858, 122 So. 217 (1929); *Hart v. Atwood*, 96 Fla. 667, 119 So. 116 (1928); *Ohio Butterine Co. v. Hargrave*, *supra* note 4.

45. *Allardice & Allardice Inc. v. Weatherlow*, *supra* note 44.

46. FLA. STAT. § 708.08 (1949).

47. *Ohio Butterine Co. v. Hargrave*, *supra* note 4.

48. *Whetstone v. Coslick*, 117 Fla. 203, 157 So. 666 (1934); *Ohio Butterine Co. v. Hargrave*, *supra* note 4.

49. *Richardson v. Grill*, 138 Fla. 787, 190 So. 255 (1939).

50. FLA. STAT. § 84.12 (1949).

51. *Le Roy v. Reynolds*, 141 Fla. 586, 193 So. 843 (1940); *Logan Moore Lumber Co. v. Legato*, *supra* note 4.

52. FLA. STAT. § 84.12 (1949) ("When the contract for improving real property is made with husband or wife who is not separated and living apart from his or her spouse and the property is owned by the other or both, the husband or wife who contracts shall be deemed to be the agent of the other to the extent of subjecting the right, title or interest of the other in said property to liens under this chapter unless such other shall, within ten days after learning of such contract, give the contractor and file with the clerk of the circuit court of the county in which the property is situated written notice of his or her objection thereto.").

that each party is acting as agent for the other when contracting for labor or material. The essential characteristic is that the labor performed or the materials furnished must be done with the knowledge or assent of both parties, although only one of them does the actual contracting.⁵³

The tax problems in relation to the estate by the entirety are numerous and very often insurmountable. Most of them point to the advisability of holding property in some form other than by the entirety. As Albert Bernstein said in his article "Tax Dangers in Estates by the Entirety",⁵⁴ ". . . attorneys should no longer advise clients to use estates by the entirety in all purchases of property. Such advice is archaic. . . . The estate by the entirety might be the solution to the problems of some clients, but, as a general rule, it has outlived its usefulness."

Because of its highly specialized nature it is not practical to cover the tax problems in this article. Then, too, such a discussion would only be repetitious of the above quoted comparatively exhaustive study. But, a recent case⁵⁵ in the tax field is worthy of comment because it has completely changed the previous law in point, and has possibly opened the door to fraud between the parties. It was the former rule that where the estate was put up for tax sale due to a default the entirety would be revived if either of the parties involved was the purchaser.⁵⁶ The theory followed was that the man and wife were one, the default of one was that of the other, and the purchase by one was of necessity the purchase of both. Applying the doctrine that repurchase by one joint tenant at a tax sale revived the estate, and joining it with the fact that the entirety is essentially a joint tenancy modified by the unity of husband and wife, the court concluded that the rule applicable to joint tenancies would also have to apply to entireties. In a recent decision⁵⁷ involving joint tenants the court reversed the field. The gist of the opinion was that under the new County Quiet Title Statute⁵⁸ the county, when it forecloses defaulted property, takes a new and clear title, and consequently, there is nothing remaining which can be revived. Since the very basis for the revival of the entirety was its similarity to the joint tenancy, it presumably follows that the purchase of the defaulted entirety by one of the spouses will not in the future revive the estate. Assuming this conclusion to be correct it will be possible for one of the parties, through some subterfuge, to default on taxes and purchase the property at tax sale free and clear of the entirety.

TERMINATION

There are varied means of terminating the estate by the entirety. The normal determination is brought about by a conveyance of the property,

53. Allardice & Allardice Inc. v. Weatherlow, *supra* note 44.

54. 1 MIAMI L.Q. 86 (1947).

55. Logan v. Ward, 48 So.2d 525 (Fla. 1950).

56. Spencer v. Spencer, 160 Fla. 749, 36 So.2d 424 (1948); Andrews v. Andrews, 155 Fla. 654, 21 So.2d 205 (1945).

57. See note 55 *supra*.

58. FLA. STAT. § 194.47 *et seq.* (1949).

through divorce, or by the death of one of the spouses. But, termination may also occur when there is either a murder of one spouse by the other or a simultaneous death of both parties.

Conveyance

The right to partition of personal property, and the right of survivorship have been previously discussed, so we proceed to the subject of conveyancing by the parties. Such a conveyance amounts to an absolute termination of the estate and does not act as a partition.⁵⁹ In order to make the conveyance complete it is necessary that the husband and wife sign in the presence of two attesting witnesses.⁶⁰ The witnesses in turn must sign the deed and it must then be notarized.⁶¹ It is mandatory⁶² that the wife attach a separate acknowledgment to the conveyance.⁶³ The importance of the acknowledgment to the purchaser may be realized when one contemplates the result in a fairly recent decision⁶⁴ in which the grantee of the entirety was refused specific performance on a contract for sale of the entirety merely because the wife failed to acknowledge. After these requisites are carried out, the only step remaining in order to make a complete conveyance is delivery.⁶⁵

A peculiar problem arises when either party attempts to convey the entirety without the joinder of the other. Such a conveyance is not absolutely void. If attacked during the life of both parties to the entirety it will be set aside, but if allowed to stand until the death of one of the spouses certain ramifications arise. In a hypothetical case, where the husband individually conveys the property, and subsequently dies, any rights the grantee might have had are extinguished. The reason for this is found in the rules on the right of survivorship. Since the wife would retain the whole estate by operation of law, having been relieved of the possibility of survivorship, there was never anything that the husband had to grant away. Taking the same hypothetical case but substituting the wife's death for that of the husband's the problem becomes a little more complex and the result completely contrary. In the latter situation the conveyance would be upheld.⁶⁶ The only basis the wife would have had during her lifetime to attack it would be by virtue of her possibility of survivorship, and that possibility, being personal to the party, does not survive to her heirs or representatives. The husband, on the other hand, having previously granted away all his rights in the estate, is estopped by the courts from ever attacking his own conveyance.

59. *Maxwell v. Sullivan*, 123 Fla. 263, 160 So. 575 (1936).

60. *New York Life Ins. Co. v. Oates*, 122 Fla. 540, 166 So. 269 (1936).

61. *Ibid.*

62. FLA. STAT. § 693.03 (1949); *Wilkins v. Fears*, 78 Fla. 78, 82 So. 762 (1919).

63. *New York Life Ins. Co. v. Oates*, *supra* note 60; *Oates v. New York Life Ins. Co.*, 113 Fla. 678, 152 So. 671 (1933).

64. *Berlin v. Jacobs*, 157 Fla. 14, 24 So.2d 717 (1946).

65. *New York Life Ins. Co. v. Oates*, *supra* note 60.

66. *Newman v. Equitable Life Assur. Soc'y of the United States*, *supra* note 4.

Divorce

In divorce the court will retain jurisdiction to determine the distribution of the entirety.⁶⁷ By statute and judicial decision it has been continuously determined in Florida that upon the advent of divorce the estate immediately becomes a tenancy in common.⁶⁸ The essential of the entirety is that the husband and wife are one. Once the divorce is granted the fiction of the unity is destroyed and the parties are left in a position similar to the unmarried man and woman. The result is that each party owns an undivided one-half interest of the common⁶⁹ and both have the right to partition.⁷⁰ When the tenancy is created after the divorce proceedings, partition does not follow as a matter of course. It is a right vested in the parties, but if they desire to continue to hold the estate in common there is nothing to compel them to exercise it.⁷¹

The problem that continuously confronts the courts in divorce suits is whether an entirety purchased solely out of the funds of one party is of such a nature that it may be made a tenancy in common after the divorce is granted. The solution is the application of the presumption that a gift has been made to the other party.⁷² Such a presumption may only be rebutted by conclusive evidence and it is noteworthy that it has been overcome only once before the Supreme Court of Florida.⁷³ Once the gift is presumed, the parties hold equal financial interests in the estate, and there is a logical foundation for the creation of a tenancy in common.

Extending the problem one step further, where the husband purchases the estate entirely out of his own funds but expects remuneration from his wife for her share, the court is still prone towards the creation of a tenancy in common.⁷⁴ The result is that the common is created, but the wife's obligation to repay her debt survives. It appears that the reason the courts go to this extreme to protect the interests of the parties is the uniqueness of land. A half interest in land is usually greater than the sum paid for it. It naturally follows that if the facts were reversed and the wife was the purchaser, the same result would be achieved. In a similar situation, but where the evidence of the debt was less conclusive, the court found it expedient to apply the doctrine of presumption of gift.⁷⁵ Thus, the tenancy in common was still created, but the existence of any debt was denied.

67. *Dempsey v. Dempsey*, 154 Fla. 728, 19 So.2d 52 (1944).

68. FLA. STAT. § 689.15 (1949) (. . . and in cases of estates by entirety, the tenants, upon divorce, shall become tenants in common); *Giachetti v. Giachetti*, 157 Fla. 259, 25 So.2d 658 (1946); *Kollar v. Kollar*, 155 Fla. 705, 21 So.2d 356 (1945); *Markland v. Markland*, 155 Fla. 629, 21 So.2d 145 (1945); *Strauss v. Strauss*, 148 Fla. 23, 3 So.2d 727 (1941); *Francis v. Francis*, 133 Fla. 495, 182 So. 833 (1938).

69. *Valentine v. Valentine*, 45 So.2d 885 (Fla. 1950).

70. *Kollar v. Kollar*, *supra* note 68; *Markland v. Markland*, *supra* note 68; *Francis v. Francis*, *supra* note 68.

71. *Valentine v. Valentine*, *supra* note 69.

72. *Lieber v. Lieber*, 40 So.2d 111 (Fla. 1949); *Hargett v. Hargett*, 156 Fla. 730, 24 So.2d 305 (1946); *Kollar v. Kollar*, *supra* note 68.

73. *Hargett v. Hargett*, *supra* note 72.

74. *Markland v. Markland*, *supra* note 68.

75. *Lieber v. Lieber*, *supra* note 72.

Murder

The next means of termination that merits consideration is the situation where one spouse murders the other. By operation of law the estate would normally remain absolutely in the survivor.⁷⁶ But, to avoid allowing the felonious party to profit by his or her own wrong, several theories have been forwarded to resolve the problem.

One view⁷⁷ is to the effect that although the husband survives his wife she will be considered as the survivor in the eyes of the law. The consequences of this theory are that the husband's rights are completely defeated, and the heirs of the wife receive the whole estate.

A position taken by some⁷⁸ is that a constructive trust should be impressed upon the estate. The husband would remain the legal title holder but the heirs of the wife would have the use and enjoyment of the estate. Upon the death of the husband the trust would pass to the heirs of the wife rather than those of the husband.

Similar to the previous view, another theory⁷⁹ would impose the constructive trust, but would be guided by the normal expectancy of life for the wife if she had lived. This view is more liberal to the extent that if the husband should live past his wife's normal life expectancy her possibility of survivorship would be removed and he would hold the absolute estate. Of course, if he should die before the determined length of his wife's life the estate would pass to her heirs.

A final position,⁸⁰ and one which Florida has recently chosen to follow,⁸¹ has been expounded by the Missouri court. It proceeds along the rationalization that the death contemplated in the laws on estates by entireties must be "in the ordinary course of events and subject only to vicissitudes of life."⁸² Murder is not contemplated as a normal occurrence. The result is that the husband by his willful and felonious act, has terminated the marital relationship. The courts consider such a termination to be similar to that of divorce, since for the purposes of the entirety, in this situation, the wife is not dead. Once the analogy of divorce is drawn it necessarily follows that the estate would become a tenancy in common with a one-half undivided interest passing to the heirs of the deceased spouse and the other one-half interest remaining in the survivor.

76. Knapp v. Fredricksen, *supra* note 13.

77. Van Alstyne v. Tuffy, 103 Misc. 455, 169 N.Y. Supp. 173 (1918). *But cf.* Beddingfield v. Estill & Newman, 118 Tenn. 39, 100 S.W. 108 (1907); Wenker v. Landon, 161 Ore. 265, 88 P.2d 971 (1939) (wherein it was held that the husband although murdering the wife would retain the whole estate).

78. Bryant v. Bryant, 193 N.C. 372, 137 S.E. 188 (1927).

79. Sherman v. Weber 113 N.J. Eq. 451, 167 Atl. 517 (1933).

80. Grose v. Holland, 357 Mo. App. 874, 211 S.W.2d 464 (1948); Barnett v. Covey, 224 Mo. App. 913, 27 S.W.2d 757 (1930).

81. Ashwood v. Patterson, 49 So.2d 848 (Fla. 1951).

82. *Ibid.*

Common Disaster

Perhaps the most unique termination of all is the situation where the owners of the entirety die under circumstances shrouded in such uncertainty that it is impossible to determine which one predeceased the other. The problem has never come before the appellate court of Florida, and has only been decided once⁸³ elsewhere. Fortunately, the legislature has seen fit to predetermine the issue and therefore when the problem does arise there will be little difficulty in resolving it.

It was the former rule in Florida that there was no presumption as to survivorship.⁸⁴ Any person claiming a share in one of the deceased's estates had the burden of proving his claim. If the burden was met the whole entirety would pass to the claimant and the heirs of the other deceased spouse would receive nothing.

To remedy this situation the legislature adopted the Uniform Simultaneous Death Law.⁸⁵ This statute requires⁸⁶ that, when there is a common disaster, the estate by the entirety should pass one-half to the heirs of the wife and one-half to the heirs of the husband. In *McGhee v. Henry*, a Tennessee case based on the common law doctrine which was followed in the Uniform Act, it was determined that the common disaster terminated the estate in the same manner as divorce. The deaths, in effect, ended the estate before any possibilities of survivorship arose, since neither one could survive the other. Once the possibilities were removed the estate became one in common and a one-half undivided interest passed to the heirs of the wife, with the other half going to the heirs of the husband. Because of its decisions in divorce cases and in the case of murder, the Florida Supreme Court is committed to the theory that the estate should become a tenancy in common. This is important, because it means that the inheriting parties will receive a one-half undivided interest in the entirety, rather than a divided half of the estate as is possible under the wording of the statute.

CONCLUSION

It can not be stated dogmatically that the estate is either all good or all

83. *McGhee v. Henry*, 144 Tenn. 548, 234 S.W. 509 (1921).

84. *Smith v. Croom*, 7 Fla. 81 (1857).

Other views on the subject are: *Carpenter v. Severin*, 201 Iowa 967, 204 N.W. 448 (1925) (in the absence of evidence the husband will be presumed to have outlived his spouse); *Carmody v. Powell*, 32 Cal. App.2d 56, 89 P.2d 158 (1934) (survivorship will be presumed from probabilities resulting from the strength, age and sex of the parties); *Watkins v. Home Life & Acc. Ins. Co.*, 137 Ark. 207, 208 S.W. 587 (1919) (there is no presumption, but where there is no evidence to aid in the determination of the problem the property will be distributed as if both had died at the same time); *Garvee v. St. Louis-San Francisco Ry.*, 220 Mo. App. 1245, 290 S.W. 655 (1927) (the presumption is that they died at the same moment, and so the wife's estate is distributed as if she had survived her husband, and his estate is distributed as if he had survived her).

85. FLA. STAT. § 736.05 (1949).

86. FLA. STAT. § 736.05(3) (1949) ("Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived . . .").

bad. So many factors enter into the determination of its use that each situation must be considered in the light of its own merits. For this reason it is impractical to list fully the benefits and the disadvantages, but it is advisable to weigh them when considering the use of the estate.

The greatest advantage to the parties is that the entirety is a convenient means of protecting the surviving spouse from the tedious administration of the decedent's estate. Then, too, it is a means of protection against improvident debts of either of the parties. It is in these that the estate finds its peculiar and justifiable function.⁸⁷

On the other side of the ledger, taxing in the entireties does not usually work in favor of the estate.⁸⁸ Also, it is impossible for one of the spouses to obtain credit or to mortgage the estate without the joinder of the other. The rule, which requires such a joinder of the parties when encumbering the estate, protects the entirety against mismanagement by one party. Conversely, it has not left room for the situation where, for economic reasons, mortgaging would be advisable, but cannot be accomplished because of the unwillingness of one of the parties to join for some underlying and usually sentimental reason.

HOWARD ALAN MEYERS

A COMPARATIVE STUDY OF COMPULSORY ARBITRATION AND INTERSTATE COMMERCE

The Supreme Court in *Amalgamated Ass'n v. Wisconsin Employment Relations Board*¹ has recently declared the Wisconsin Public Anti-Strike law to be inoperative. Because of this ruling, the W.E.R.B. has been shorn of its power to check strikes in public utilities. Provisions quite similar to those in the Wisconsin act exist in many states,² and the present decision affects their status as law. This article will compare some of the other important and similar statutes with the instant case in an attempt to render a valid opinion as to their position as law.

STATE STATUTES

In the *Amalgamated* case, the Court interpreted the effect and applicability of the NLRA of 1935,³ as amended by the LMRA of 1947,⁴ and found in a 6-3 decision that the state statute⁵ was in conflict with the federal regulation and could not be permitted to be enforced. It was de-

87. *Fairclaw v. Forrest*, 130 F.2d 829 (D.C. Cir. 1942).

88. See note 54 *supra*.

1. 71 Sup. Ct. 359 (1951).

2. Florida, Indiana, Massachusetts, Michigan, Missouri, New Jersey, Pennsylvania, and Virginia.

3. 49 STAT. 449, 29 U.S.C. § 151 (1946).

4. 61 STAT. 136, 29 U.S.C. § 141 (Supp. 1949).

5. WIS. STAT. § 111.50 (1947).