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be rebutted by evidence that the user was permissive at its inception.[22] Permission is used here in the sense that the parties concerned recognize that the owner of the servient tenement retains the right to terminate the user at his will. Third, that a presumption of a grant can also rest upon claim of right which is founded in oral permission to use the land as if legally conveyed;[23] that is to say permission by which the landowner indicates consent for a user for an unlimited period. Fourth, where permission by the landowner to use his property results in a substantial expenditure on improvements upon the faith of such permission and irrevocable license may be established.[24] The circumstances that will make it inequitable to revoke the permission will depend upon the particular case.[25]

The type of situation which appears most likely to raise a problem in this state today is that in which the question arises as to whether the use was merely a matter of neighborly accommodation or under an adverse claim, or as it may otherwise be expressed, whether among neighbors use alone is enough to indicate such an appropriation as to raise a presumption of adverse use, and thus establish correlatively the foundation for presumption of a lost grant. It should be remembered that the Wyoming court in a similar situation[26] treated the nature of the user as a question of fact for the trial court to decide from the relationship of the parties and the surrounding circumstances.

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SURVIVORSHIP IN THE PROCEEDS OF A SALE OF JOINTLY OWNED PROPERTY

So much property is owned by persons holding it in joint tenancy or tenancy by the entireties that it seems desirable to review some of the ways in which courts treat the survivorship feature when the property is sold. This discussion is concerned with the situation which presents itself when property[1] owned in either of these ways is sold voluntarily or involuntarily and the purchase price is not paid until after the death of one of the joint vendors. There are two possibilities as to whom the vendee owes the unpaid portion of the purchase price: (1) He owes it all to the surviving vendor, on the theory that the survivorship feature was retained as to the contract of sale; (2) He owes it half to the survivor and half to the estate of the deceased, on the theory that the sale terminated the joint tenancy or

22. Kammerzell v. Anderson, 69 Wyo. 252, 240 P.2d 893 (1952).
23. Gustin v. Harting, 20 Wyo. 1, 121 Pac. 522, 531 (1912).
24. Coumas v. Transcontinental Garage Inc., 68 Wyo. 99, 230 P.2d 748, 41 A.L.R.2d 539 (1951).
25. Ibid.
26. Kammerzell v. Anderson, 69 Wyo. 252, 240 P.2d 893 (1952).

1. For the purposes of this note it should be assumed that it will make no difference whether the property being discussed is real or personal. If that distinction is relevant, it will be noted.

tenacy by the entireties and destroyed the survivorship, thus causing the parties to hold the contract of sale as tenants in common.

One of the most important considerations in the case of voluntary sales, has been to determine the intent of the parties with respect to how they desire to hold the contract of sale when this intent is not expressed in the contract. Various methods of finding this intent have been used by the courts. One approach has been to consider the silence of the vendors as to form of ownership in the sale contract as an indication of an intent to extinguish the survivorship feature and to hold the contract as tenants in common.[2] This conclusion has been reached on the theory that creation of a joint tenancy is a matter of contract[3] and hence a clear expression of intent is necessary to create this form of ownership.[4] On the other hand, silence of the vendors has been regarded as indicative of their intent to retain the survivorship feature in the contract of sale. The ground for this decision[5] was that since the parties has held the property as tenants by the entireties and failed to indicate a contrary purpose as to the proceeds of the sale of the property, they must have intended to hold those proceeds in the same manner as the property had been held.

If the joint owners enter into some type of collateral agreement, the terms of which are inconsistent with an intent to hold the property in joint tenancy or by the entireties, the effect of such an agreement is to strongly indicate an intention to terminate the tenancy and destroy the survivorship.[6] Thus, an actual agreement can end the joint tenancy or tenancy by entireties. But the execution of a formal agreement, written or otherwise, by the parties is not essential. The requisite intent can be found from conduct or a course of dealing which tends to indicate the parties treat their property as being held in tenancy in common.[7]

Some courts have denied the continuation of the joint tenancy as a result of the conveyance. Inasmuch as it is unanimously held that a conveyance or sale by one or fewer than all joint tenants terminates the joint tenancy and destroys the right of survivorship,[8] these cases use the statement

2. Buford v. Dahlke, 158 Neb. 39, 62 N.W.2d 252, 258 (1954).
3. E.g., Sanderson v. Everson, 93 Neb. 606, 141 N.W. 1025, 1026 (1913).
4. DeForge v. Patrick, 162 Neb. 568, 76 N.W.2d 733, 736 (1956); In re Horn's Estate, 102 Cal.App.2d 622, 228 P.2d 99, 102 (1951).
5. Allen v. Tate, 58 Miss. 585, 588 (1881).
6. McDonald v. Morley, 15 Cal.2d 409, 101 P.2d 690 (1940). Joint tenants (husband and wife) contracted in a property settlement that property they held as joint tenants should go to their daughter, upon the death of either, rather than to the survivor. This was held to destroy the joint tenancy. As to tenancy by the entireties, see Runco v. Ostroski, 361 Pa. 593, 65 A.2d 399, 8 A.L.R.2d 630 (1949).
7. Lagar v. Erickson, 13 Cal.App.2d 365, 56 P.2d 1287, 1288 (1936). One joint tenant made a testamentary disposition inconsistent with a joint tenancy. It being a question of fact whether this indicated the parties' intent to end the joint tenancy, and the trial court having so found, the appellate court affirmed.
8. Tracy-Collins Trust Co. v. Goeltz, 5 Utah 2d 350, 301 P.2d 1086, 1090 (1956); the statement, "A conveyance terminates a joint tenancy" is cited with approval in In re Heckmann's Estate, 288 Iowa 967, 291 N.W. 465, 468 (1940), but the decision was not based on this rule. However, a conveyance by fewer than all joint tenants must cause severance because after such a conveyance the owners of the property no longer hold their interests by the same title.

"a conveyance terminates a joint tenancy" as authority for the holding that a conveyance by all joint tenants terminates the joint tenancy.[9] This appears erroneous because the reason that termination occurs when only one joint tenant conveys, viz., severance of at least one of the unities of time, title, interest, or possession, does not exist when all the owners join in the sale. The nature of their property interest may change in that as a result of a contract the ownership extends to contractual rights in lieu of real property. The unities necessary to a joint tenancy and to a tenancy by the entireties all exist in the contract of sale and only the subject of the ownership is changed. Equal interests arise at the same time and from the same instrument and are possessed equally. Although such ownership would be of personalty, it is commonly held that a joint tenancy can exist in personal property,[10] as can tenancies by the entireties.[11] The Wyoming court has apparently approved the rule that parties may contract that survivorship will attach to jointly owned personalty,[12] and in *Hill v. Breenden*[13] seemed to indicate that there may be a tenancy by the entireties in personal property, but expressly avoided deciding this point. In the *Hill* case, the fact situation was such that the court found it unnecessary to decide the equitable ownership of a note given to a husband and wife in payment for property they had held by the entireties.

Another factor to be considered is that the attitudes of the courts seem to vary widely. Some have said that the policy of American law is opposed to survivorship.[14] At least one case found survivorship even where the joint estate was terminated by the sale.[15] Others have held survivorship destroyed by a conveyance because the unity of possession was destroyed even when the vendors retained title as security for the payment of the purchase money.[16]

If the intent of the parties is to be the controlling element, it seems obvious that an involuntary sale should not cause a destruction of survivor-

9. In re Baker's Estate, 247 Iowa 1380, 78 N.W.2d 863, 867 (1956); Buford v. Dahlke, 158 Neb. 39, 62 N.W.2d 252, 256 (1954); In re Sprague's Estate, 244 Iowa 540, 57 N.W.2d 212, 215 (1953).
10. E.g., In re Whiteside's Estate, 159 Neb. 362, 67 N.W.2d 141, 145 (1954).
11. Cases recognizing estates by the entireties in personalty: Tendrich v. Tendrich, 193 F.2d 368 (D.C. Cir. 1951); Wylie v. Zimmer, 98 F.Supp. 298, 300 (E.D.Pa. 1951); Cross v. Phar, 215 Ark. 463, 221 S.W.2d 24, 25 (1949); Dodson v. National Title Insurance Co., 159 Fla. 371, 31 So.2d 402, 404 (1947); Beard v. Beard, 185 Md. 178, 44 A.2d 469, 472 (1945); State Bank of Poplar Bluff v. Coleman, 241 Mo. 600, 240 S.W.2d 188, 189 (1951); Alcorn v. Alcorn, 364 Pa. 375, 72 A.2d 96 (1950); Sloan v. Jones, 192 Tenn. 400, 241 S.W.2d 506, 507 (1951). Cases holding that no tenancy by the entireties can exist in personal property: Able-Old Hickory Building and Loan Ass'n. v. Polansky, 138 N.J.Eq. 232, 47 A.2d 730, 731 (1946); In re Eldon, 198 Misc. 531, 98 N.Y.S.2d 697, 699 (1950); Wilson v. Ervin, 227 N.C. 396, 42 S.E.2d 468, 470 (1947).
12. Hart v. Brimmer, 74 Wyo. 338, 353, 287 P.2d 638, 643 (1955). A dictum shows that the court assumes such a contract would be valid.
13. 53 Wyo. 125, 79 P.2d 482 (1938).
14. Wyckoff v. Young Women's Christian Association, 37 N.J.Super. 274, 117 A.2d 162, 166 (1955); DeForge v. Patrick, 162 Neb. 568, 76 N.W.2d 733, 736 (1956), also indicates the general disfavor of joint tenancy.
15. Allen v. Tate, 58 Miss. 585, 588 (1881).
16. E.g., Buford v. Dahlke, 158 Neb. 39, 62 N.W.2d 252 (1954).

ship. If the sale is a result of condemnation proceedings, for example, the proceeds awarded the owners should be held by them in the same manner as they owned the property condemned.[17] In such a situation, the proceeds from joint tenancy property should retain the character of the property from which they were acquired. This seems to be the ruling most likely to give effect to the intent of the parties. For the same reason, if the sale is the result of a foreclosure on a mortgage of jointly owned property, any sum realized in excess of the amount required to satisfy the debt should belong to the mortgagors in the same manner as they previously owned the property. Since the sale was involuntary there is no room for the inference that the parties intended to sever the joint tenancy or the estate by the entireties, while such an inference may be easier to draw in the case of a voluntary sale.

It is probably more common that parties selling jointly owned property will not express an intent as to the form of ownership by which they desire to hold the proceeds of the sale. As pointed out above, courts have taken different positions on how survivorship is effected by failure of the parties to express this intent. It would seem the preferable view would be to infer from their silence in this respect that they want to own the proceeds in the same way they formerly owned the property. Courts should require strong evidence of a contrary intent before holding that a sale by all joint tenants or tenants by entireties destroys survivorship in the proceeds of sale.

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BASIC MISCONCEPTIONS OF THE DECLARATORY JUDGMENT LAW

Since the early part of the century, Section I of the Uniform Declaratory Judgments Act[1] has been adopted, with some modification, in over half of the states.[2] In 1934 Congress passed the Federal Declaratory Judgments Act[3] which was declared constitutional four years later in the celebrated case of *Aetna Life Insurance Co. of Hartford, Conn. v. Haworth.*[4] The primary object of this act, like the Uniform Act, was to provide for a speedy and inexpensive method of adjudicating legal disputes before damage had actually been suffered and the act was to be liberally construed to that end.[5]

17. In re Zaring Estate, 93 Cal.App.2d 577, 209 P.2d 642 (1949).

1. Uniform Declaratory Judgments Act, 9 U.L.A. 234 (1922). Sec. I: "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declaration shall have the force and effect of a final judgment or decree."
2. Borchard, Declaratory Judgments 25 (2d ed., 1941).
3. Act of March 3, 1915, c. 90, § 274 (a), 38 Stat. 956, as amended June 14, 1934, c. 512, 48 Stat. 955, 28 U.S.C.A. § 400.
4. 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617, 108 A.L.R. 1000 (1937).
5. Lehigh Coal & Navigation Co. v. Central R. of New Jersey, 33 F.Supp. 362 (E.D.Pa. 1940).