

Summer 1984

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Jeffrey W. Jackson

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VOLUNTARY TERMINATION OF JOINT TENANCIES: ILLINOIS ELIMINATES THE STRAWMAN

JEFFREY W. JACKSON*

Traditionally, a joint tenancy could be terminated by any act which was inconsistent with its continued existence or which destroyed one or more of the essential unities of interest, time, title and possession.¹ According to common law rules, each joint tenant had the power to sever the right of survivorship by conveyance of his or her joint tenant interest to another person.² One could not, however, enfeoff oneself, that is, one could not be both grantor and grantee in a single transaction.³ A joint tenant could sever the joint tenancy by conveying to another, but not by conveying to himself.

In *Minonk State Bank v. Grassman*,⁴ the Illinois Supreme Court rejected the common law prohibition against enfeoffing oneself and held that a joint tenant can unilaterally sever a joint tenancy by conveying his interest to himself without the use of an intermediary.⁵ Illinois' highest court thus eliminated the antiquated and obsolete legal fiction, the "strawman."⁶ This article reviews the strawman's ascendancy and ultimate decline in Illinois. Illinois' rejection of the archaic concept of the strawman places it in a majority with those jurisdictions that have decided

* B.A., Lawrence University 1974; M.B.A., University of Chicago 1976; J.D., St. Louis University 1979. Associate, Westervelt, Johnson, Nicoll & Keller, Peoria, Illinois.

1. See *Klouda v. Pechousek*, 414 Ill. 75, 110 N.E.2d 258 (1953); 2 AMERICAN LAW OF PROPERTY, §6.1, at 4 (A.J. Casner ed. 1952).

2. 2 W. BLACKSTONE, COMMENTARIES* 185-86; 4 *Kent's Commentaries** 362-63. See also *Lawler v. Byrne*, 252 Ill. 194, 96 N.E. 892 (1911).

3. *Deslauriers v. Senesac*, 331 Ill. 437, 440, 163 N.E. 327, 329 (1928).

4. 95 Ill. 2d 392, 447 N.E.2d 822 (1983).

5. *Id.* at 396, 447 N.E.2d at 824.

6. "Strawman" is defined as

A "front"; a person who is put up in name only to take part in a deal. Nominal party to a transaction; one who acts as an agent for another for the purpose of taking title to real property and executing whatever documents and instruments the principal may direct respecting the property. Person who purchases property for another to conceal identity of real purchaser.

BLACK'S LAW DICTIONARY 1274 (5th ed. 1979).

that a joint tenant could unilaterally sever a joint tenancy.⁷

JOINT TENANCY: THE TRADITIONAL CONCEPTS

The "strawman," or intermediary device, developed in response to rigid common law requirements governing the law of joint tenancy. The law of joint tenancy originated in feudal England, at a time when every conveyance of an estate to two or more persons created a joint tenancy. The reason was clear. In this feudal era, English lords wanted the land in single ownership, if possible.⁸ The grantees acquired realty together as though they were one, a fictitious unity.⁹

Because the grantees took the property as a fictitious unity, their individual interests were necessarily equal in all respects. Blackstone recited the four unities essential to the creation of a joint tenancy: time, title, interest, and possession.¹⁰ In order to create a joint tenancy, the interests of the joint tenants had to vest at the same time; the parties had to take their interests by the same instrument; the estates had to be of the same type; and the joint tenants had to have undivided interests in the whole.¹¹ These unities expressed the basic notion that the same deed or foefment must create identical interests. The absence of any of these unities prevented the creation of a joint tenancy. The subsequent breaking of any of them severed the tenancy.¹²

In Illinois, these unities were regarded as necessary to create and continue a joint tenancy.¹³ Thus, if a person owning land

7. See *e.g.*, *Riddle v. Harmon*, 102 Cal. App. 3d 524, 162 Cal. Rptr. 530 (1980) (intermediary device not necessary to sever joint tenancy); *Hendrickson v. Minneapolis Fed. Sav. & Loan Assoc.*, 281 Minn. 462, 161 N.W.2d 688 (1968) (declaration of election to sever sufficient to sever joint tenancy); *but see Kraus v. Crossley*, 202 Neb. 806, 277 N.W.2d 242 (1979) (joint tenant's purported conveyance of his interest in property to himself did not constitute a severance). See *generally* Annot., 7 A.L.R. 4th 1268 (1981).

8. The rationale for this desire was stated as follows: "The common law favored title by joint tenancy, by reason of this very right of survivorship. Its policy was averse to the division of tenures, because it tended to multiply the feudal services, and weaken the efficacy of that connection." 4 KENT'S COMMENTARIES* 361.

9. The rise of joint tenancies is discussed in 2 AMERICAN LAW OF PROPERTY, § 6.1, at 3, 4 (A.J. Casner ed. 1952). See also J. CRIBBET, PRINCIPLES OF THE LAW OF PROPERTY, at 98-102 (2d ed. 1975).

10. 2 W. BLACKSTONE, COMMENTARIES* 180.

11. See 4A R. POWELL, POWELL ON REAL PROPERTY ¶ 615, at 663 (1st ed. 1949).

12. 2 AMERICAN LAW OF PROPERTY, § 6.1 at 4 (A.J. Casner ed. 1952). See *generally* Annot., 44 A.L.R. 2d 595 (1955).

13. See, *e.g.*, *Klouda v. Pechousek*, 414 Ill. 75, 110 N.E.2d 258 (1953) (four coexisting unities are mandatory); *Tindall v. Yeats*, 392 Ill. 502, 64 N.E.2d 903 (1946) (must be unity of interest, title, time and possession); *Porter v. Porter*, 381 Ill. 322, 45 N.E.2d 635 (1942) (properties of joint estate derived from its four unities); *Deslauriers v. Senesac*, 331 Ill. 437, 163 N.E. 327 (1928)

in fee simple absolute executed a deed conveying the property to himself and his new spouse "as joint tenants and not as tenants in common," a tenancy in common, not a joint tenancy, was created.¹⁴ The desire to create a joint tenancy would not make up for the absence of unities of time and title. In this case, the grantor, having already possessed an interest in the property, could not take the property at the same time as his grantees.

Lawyers resorted to another fiction, known as the strawman,¹⁵ to escape the common law fiction of the four unities. Actually, the term "strawman" originated in early Britain.¹⁶ Professional witnesses willing to testify to any matter for a price wore straw in their shoes.¹⁷ The landowner wanting to convey his fee to himself and his new spouse, as joint tenants, would convey to the strawman, who in turn, would reconvey to the landowner and his spouse as joint tenants. In this manner, the four unities would be present, insuring the creation of a joint tenancy.

As the age of feudalism ended, so did the reasons for the presumption in favor of joint tenancy. Survivorship, the hallmark of joint tenancies, became known as a mechanism by which a person's heirs were deprived of their rightful inheritance.¹⁸ In 1827, Illinois joined a growing number of jurisdic-

(joint estate based on its unity, which is fourfold); *Gaunt v. Stevens*, 241 Ill. 542, 89 N.E. 812 (1909) (necessary unity of interest, title, time and possession). After its decision in *Minonk St. Bank v. Grassman*, 103 Ill. App. 3d 1106, 432 N.E.2d 386 (1982), the Fourth District Appellate Court recognized the "four unities" concept in *Harms v. Sprague*, 119 Ill. App. 3d 503, 456 N.E.2d 976 (1983).

14. See *Deslauriers v. Senesac*, 331 Ill. 437, 163 N.E. 327 (1928).

15. See *supra* note 6.

16. See, DONAHUE, KAUPER & MARTIN PROPERTY: AN INTRODUCTION TO THE CONCEPT AND THE INSTITUTION, CASES AND MATERIALS 579 n.1 (1974) citing Note, *The Use of Strawman in Massachusetts Real Estate Transactions*, 44 B.U.L. REV. 187, 187-88 (1964).

17. See Note, *The Use of Straw Men in Massachusetts Real Estate Transactions*, 44 B.U.L. REV. 187, 187-88 (1964).

18. See Hines, *Real Property Joint Tenancies: Law, Fact, And Fancy*, 51 IOWA L. REV. 582, 585 (1966). See also *Hendrickson v. Minneapolis Fed. Sav. & Loan Assoc.*, 281 Minn. 462, 161 N.W.2d 688, 690 (1968). In *Shipley v. Shipley*, 324 Ill. 560, 155 N.E. 334 (1927), the Illinois Supreme Court noted that:

[the] leaning in favor of joint tenancy grew out of a desire to lessen the feudal burdens of the tenants, since only one suit and service was due from all the joint tenants, and on the death of one joint tenant the other acquired his share free from the burdens in favor of the lord, which ordinarily accrued on the death of the tenant of land. With the practical abolition of tenures, the reason for such policy ceased. Thereafter, courts of equity, regarding the right of survivorship as productive of injustice in making no provision for posterity, showed a disposition to lay hold of any indication of intent, in order to construe an instrument as creating a tenancy in common, and not a joint tenancy.

tions by establishing a presumption favoring the creation of tenancies in common rather than joint tenancies.¹⁹ Illinois courts, following the General Assembly's directive, required a clearly expressed intent to create a joint tenancy in the conveyance to overcome the presumption favoring creation of tenancies in common.²⁰

In 1953, the Illinois General Assembly abrogated another remnant of the common law, the rule that a person cannot convey or deliver property to himself.²¹ This change eliminated the necessity for use of a "strawman" when a grantor wished to convey property to himself and another to create a joint tenancy. Thus, the General Assembly recognized a change in the area of conveyances. Inexplicably, the General Assembly omitted any reference to the severance of a joint tenancy.

Id. at 560-61, 155 N.E. at 335.

19. The statute provides in part:

No estate in joint tenancy in any lands, tenements or hereditaments, or in any parts thereof or interest therein, shall be held or claimed under any grant, legacy or conveyance whatsoever heretofore or hereafter made, other than to executors and trustees, unless the premises therein mentioned shall expressly be thereby declared to pass not in tenancy in common but in joint tenancy. . . .

ILL. REV. STAT. ch. 76, § 1 (1983).

The effect of the statutory enactment was to reverse the common law rule, so that a conveyance to two or more persons creates a tenancy in common unless the intention to vest a joint estate is clearly manifested. *Gaunt v. Stevens*, 241 Ill. 542, 548, 89 N.E. 812, 813 (1909).

20. The exact words of the statute need not be used to indicate an intention to create a joint tenancy. The language must be such as to clearly show that the parties to the transfer intended that the premises were to pass in joint tenancy. *Engelbrecht v. Engelbrecht*, 323 Ill. 208, 153 N.E. 827 (1926) (use of exact words is not essential); *Stukis v. Stukis*, 316 Ill. 115, 146 N.E. 530 (1925) (only requirement is that language clearly show that tenancy in common is not intended).

21. The statute provides in part:

Whenever a grant or conveyance of lands, tenements, or hereditaments shall be made where the instrument of grant or conveyance declares that the estate created be not in tenancy common but with right of survivorship, or where such instrument of grant or conveyance declares that the estate created be not in tenancy in common but in joint tenancy, the estate so created shall be an estate with right of survivorship notwithstanding the fact that the grantor is or the grantors are also named as a grantee or as grantees in said instrument of grant or conveyance. Said estate with right of survivorship, so created, shall have all of the effects of a common law joint tenancy estate.

ILL. REV. STAT. ch. 76, ¶ 1(b) (1977).

The common law requirement with respect to the four unities was relaxed by this section. Illinois no longer required the unity of interest in the creation of joint tenancies. See *Frey v. Wubbena*, 26 Ill. 2d 62, 185 N.E.2d 850 (1962).

Illinois Changes Positions

In *Minonk State Bank v. Grassman*,²² Gustav Grassman executed a deed by which his sisters, Agnes, Ida and Frieda Grassman, became owners in joint tenancy of a tract of real property located in Woodford County, Illinois.²³ Agnes and Ida became the sole owners in joint tenancy after Frieda died in 1972. One week after Frieda's death, Ida Grassman executed and recorded a deed which conveyed her interest from herself as joint tenant to herself as tenant in common.²⁴ The deed recited that the conveyance was "made for the purpose [of] dissolv[ing] any and all rights of survivorship" between the parties to the deed executed by Gustav Grassman.²⁵ After the execution of the deed, Ida became incompetent.

Agnes died on February 16, 1977. Her will, dated March 13, 1963, was admitted to probate, and Minonk State Bank was appointed administrator. Agnes' will made no mention of any disposition of real property, and the parties agreed that Agnes was unaware of Ida's conveyance. After the will was admitted to probate, Minonk State Bank filed a declaratory judgment action seeking the court's declaration that Ida and Agnes held the property in tenancy in common as a result of Ida's severance of the joint tenancy by execution of the 1972 deed.²⁶

The trial court found that Ida Grassman's intention in executing and recording the 1972 deed was to sever the joint tenancy.²⁷ Nevertheless, the court held that the decision in *Deslauries v. Senesac*²⁸ required it to hold that the purported conveyance failed to effect the transfer of any interest in the land.²⁹ The court stated that Illinois' enactment of "An Act to revise the law in relation to joint rights and obligations"³⁰ affected only the creation, and not the termination of, joint

22. 95 Ill. 2d 392, 447 N.E.2d 822 (1983).

23. *Id.* at 393, 447 N.E.2d at 823.

24. *Id.*

25. *Id.*

26. The facts are thoroughly reviewed in the appellate court decision. 103 Ill. App. 3d 1106, 432 N.E.2d 386 (4th Dist. 1982), *aff'd*, 95 Ill. 2d 392, 447 N.E.2d 882 (1983).

27. The appellate court decision focused on the conclusion of the trial court. The appellate court reversed on the issue of whether "a joint tenant can unilaterally sever that joint tenancy by conveying her interest to herself as a tenant in common without the use of an intermediary?" Through focusing on this issue it is assumed that the purpose of Ida Grassman's executed and recorded of the 1972 deed was to sever the joint tenancy. *Id.* at 1107, 432 N.E.2d at 387.

28. 331 Ill. 437, 163 N.E. 327 (1928).

29. *Id.*

30. ILL. REV. STAT. ch. 76, § 1(b) (1953).

tenancies.³¹

In *Deslauriers*, the sole owner of certain real estate joined with her husband in the execution of a warranty deed purporting to convey the property to themselves as joint tenants and not as tenants in common.³² The wife died intestate, and the husband contracted to sell the property to third parties. Before the purchasers became entitled to a deed, the husband died. His will was admitted to probate, and the purchasers indicated their readiness to pay the balance of the purchase price. They refused to accept the deed, however, upon the advice of an attorney who doubted that a joint tenancy had been created. The husband's executor filed suit against the heirs of the wife requesting that the court decree that the deed created a joint tenancy and that as the surviving husband, he had been sole owner of the property.³³ The Illinois Supreme Court held that a joint tenancy could not be created when one grantee was also a grantor, since a person cannot convey or deliver to himself what he already possesses.³⁴ The common law unities prohibited a person from ever being both a grantor and a grantee in the same transaction if a joint tenancy was to be created.³⁵

*Minonk State Bank v. Grassman*³⁶ concerned the severance, not the creation, of a joint tenancy. The Illinois statute did not address severances.³⁷ Consequently, the trial court had to consider whether the law relating to the creation of joint tenancies applied to the severance of joint tenancies.

In Illinois, the general rule regarding severance of a joint tenancy was that any act that destroyed one of the unities necessary to the creation and continuance of a joint tenancy severed the joint tenancy and extinguished the right of survivorship.³⁸ The leading Illinois case supporting the rule of

31. *Id.*

32. 331 Ill. 437, 438, 163 N.E. 327, 328 (1928).

33. *Id.* at 439, 163 N.E. at 328.

34. *Id.* at 441, 163 N.E. at 329.

35. See *supra* text accompanying notes 4-20.

36. 95 Ill. 2d 392, 447 N.E.2d 822 (1983).

37. See ILL. REV. STAT. ch. 76, ¶ 1 (1977).

38. See *e.g.*, *Tindall v. Yeats*, 392 Ill. 502, 64 N.E.2d 903 (1946). Illinois recognizes a variety of ways in which joint tenancies can be severed: transfer to a trustee, *Flynn v. O'Dell*, 281 F.2d 810 (7th Cir. 1960); conveyance from one tenant to another tenant, *Jackson v. O'Connell*, 23 Ill. 2d 52, 177 N.E.2d 194 (1961); conveyance of a remainder interest while reserving a life estate, *Klouda v. Pechousek*, 414 Ill. 75, 110 N.E.2d 258 (1953); involuntary conveyance by a sheriff divesting one tenant of his estate following a judicial sale, *Jackson v. Lacey*, 408 Ill. 530, 97 N.E.2d 839 (1951); a contract between the joint tenants to sever, *Duncan v. Suhy*, 378 Ill. 104, 37 N.E.2d 826 (1941); executing a contract to convey the property, *Naiburg v. Hendriksen*, 370 Ill. 502, 19 N.E.2d 348 (1939); deeding the property to a stranger, *Szynczak v.*

severance by conveyance is *Lawler v. Byrne*.³⁹ In *Lawler*, a wife conveyed her half interest in a joint tenancy to her children by a prior marriage. After she died, her husband, the other joint tenant, resisted a partition action brought by her children on the theory that the statutory joint tenancy was actually a tenancy by the entirety, which could not be severed against the wishes of the other tenant.⁴⁰ The court held that a severance had occurred, stating that tenancies by the entirety had not existed in Illinois since the Married Woman's Act of 1861.⁴¹

The Illinois Supreme Court followed its holding in *Lawler* in *Porter v. Porter*.⁴² In *Porter*, the court stated:

One of the rights of a joint tenant in real property is to sever the tenancy by conveyance of his interest, in which event, the grantee becomes a cotenant with the remaining joint tenant, and the chief attribute of joint tenancy, *viz*, the survivor's right to take to the entire interest, is hereby destroyed.⁴³

The *Lawler* and *Porter* cases show that an indisputable right of each joint tenant is the power to convey his or her separate estate by way of gift or otherwise without the knowledge or consent of the other joint tenant and to therefore terminate the joint tenancy. Only in exceptional circumstances, where consideration is given for the creation of a joint tenancy or where one of the joint tenants takes some irrevocable action in reliance upon the creation or existence of a joint tenancy, could the question of whether one tenant unilaterally dissolves the joint tenancy arise.⁴⁴

A party need not actually convey the property to sever a joint tenancy. In *Duncan v. Suhy*,⁴⁵ the Illinois Supreme Court recognized that a joint tenancy can be severed simply by agreement between the joint tenants.⁴⁶ In fact, such agreement may even be inferred from the manner in which the parties deal with the property.⁴⁷

Zynczak, 306 Ill. 541, 138 N.E. 218 (1923); mortgaging an interest to a stranger, *Lawler v. Byrne*, 252 Ill. 194, 96 N.E. 892 (1911).

39. 252 Ill. 194, 96 N.E. 892 (1911).

40. *Id.* at 196, 96 N.E. at 892.

41. *Id.* at 197, 96 N.E. at 893.

42. 381 Ill. 322, 45 N.E.2d 635 (1942).

43. *Id.* at 326-27, 45 N.E.2d at 637.

44. *Minonk State Bank*, 95 Ill. 2d 392, 447 N.E.2d 822 (1983).

45. 378 Ill. 104, 37 N.E.2d 826 (1941).

46. *Id.* at 109, 37 N.E.2d at 829.

47. The rule that a joint tenancy can be severed simply by agreement of the joint tenants was recently applied in *Estate of Coleman*, 77 Ill. App. 3d 397, 395 N.E.2d 1209 (2d Dist. 1979). In *Coleman*, Robert and Carolyn Coleman agreed prior to Robert's death, that Robert would buy Carolyn's interest in the marital home. A divorce decree and property settlement outlined a lending arrangement, whereby Carolyn would receive \$15,000 for her one-

If severance of a joint tenancy can be inferred from the manner in which the parties dealt with the property, as prior Illinois cases indicate, then the absence of the strawman is irrelevant. In *Minonk State Bank*, the Illinois Supreme Court held that where one joint tenant unequivocally expressed his intention to sever the interest by an executed and recorded warranty deed, the existence of a strawman was unnecessary.⁴⁸ Consequently, the parties no longer held a unified interest. The trial court in *Minonk State Bank*, however, rejected this argument, holding that the common law principles espoused in *Deslauriers* required it to find the purported deed to be a nullity.⁴⁹

The Illinois Supreme Court Decision in Minonk State Bank

Defendant Grassman presented two arguments to the supreme court. First, she contended that Illinois courts were precluded from changing the common law rule that a joint tenant cannot destroy the right of survivorship by conveying property to herself.⁵⁰ Specifically, the defendant argued that Illinois' reception statute⁵¹ incorporating the common law of England as it existed prior to the fourth year of James the First, prevented judicial abrogation of common law principles.⁵² Second, defendant Grassman argued that section 1b of "An Act to revise the law in relation to joint rights and obligations"⁵³ applies only to the creation, not to the termination, of joint tenancies.⁵⁴ The supreme court rejected both arguments, and held that defendant Grassman severed the joint tenancy by conveying a deed to herself.⁵⁵

half interest with a mortgage and note to be executed by Robert. *Id.* at 398, 395 N.E.2d at 1210.

Robert gave Carolyn a promissory note and made monthly payments on the note until his death. Robert's administrator sought a determination that the former marital real estate was an asset of the decedent's estate. Carolyn contended that Robert's full compliance with the terms of the divorce decree was a condition precedent to her obligation to quit-claim the property to him. Consequently, she argued that she held the property as the surviving joint tenant free of the claim of Robert's estate. *Id.*

The appellate court rejected Carolyn's argument and held that the property settlement agreement severed the unity of interest between the parties, and that Robert's death, before he fully discharged his obligation, did not defeat the severance. *Id.* at 400, 395 N.E.2d at 1211.

48. *Minonk State Bank*, 95 Ill.2d 392, 393, 447 N.E.2d 822, 824 (1983).

49. *Id.*

50. *Id.* at 394, 447 N.E.2d at 823.

51. ILL. REV. STAT. ch. 28, § 1 (1977).

52. 95 Ill. 2d at 394, 447 N.E.2d at 823.

53. ILL. REV. STAT. ch. 76, § 1(b) (1977).

54. 95 Ill. 2d at 394, 447 N.E.2d at 824.

55. *Id.* at 396, 447 N.E.2d at 825.

The court recognized that Illinois' reception statute did not adopt solely those precedents which happened to have already been announced by English courts at the close of the sixteenth century. The statute also adopted a system of law whose outstanding characteristic is its adaptability and capacity for growth.⁵⁶ The court agreed with the administrator that it is necessary for the common law to keep pace with "the gradual changes of trade, commerce, arts, inventions and the exigencies and usages of the country."⁵⁷

The court previously considered the reception statute in *Amann v. Faigy*,⁵⁸ where the defendant insisted the statutory enactment adopting the English common law as the law of Illinois barred the plaintiff's action.⁵⁹ In *Amann*, the issue was whether the plaintiff could recover for the wrongful death of her child who was negligently injured *en ventre sa mere* and who, after birth, died as a result of those injuries.⁶⁰ An earlier court,⁶¹ confronted with this issue, had held that while the common law courts regarded an unborn child as *in esse* for some purposes, they had not extended the doctrine to allow an action for prenatal injuries.⁶²

The *Amann* court held that an action existed in Illinois for prenatal injuries.⁶³ The court reasoned that the reception statute adopted not only those sixteenth century English precedents but also adopted a system of law "whose outstanding characteristic is its adaptability and capacity for growth."⁶⁴ The *Minonk* court adopted this same view of the reception statute and held that the strawman was a remnant of an archaic land transfer procedure.⁶⁵

The *Minonk* court agreed with a California appellate court that "handing oneself a dirt clod is ungainly."⁶⁶ The supreme court reasoned that because the Illinois General Assembly provided that livery of seisin is no longer necessary for the conveyance of real property and that a writing is sufficient to effectuate such a conveyance, there was no reason to insist that a grantor

56. *Id.* at 395, 447 N.E.2d at 824.

57. *Id.*, quoting *Amann v. Faigy*, 415 Ill. 422, 434, 114 N.E.2d 412, 418 (1953).

58. 415 Ill. 422, 114 N.E.2d 412 (1953).

59. *Id.* at 432, 114 N.E.2d at 418.

60. *Id.* at 423, 114 N.E.2d at 413.

61. *Allaire v. St. Luke's Hospital*, 184 Ill. 359, 56 N.E. 638 (1900).

62. *Id.* at 362, 56 N.E. at 640.

63. 415 Ill. 422, 432, 114 N.E.2d 412, 417-18 (1953).

64. *Id.* at 433, 114 N.E.2d at 418.

65. 95 Ill. 2d 392, 396, 447 N.E.2d 822, 824 (1983).

66. *Id.*, quoting *Riddle v. Harmon*, 102 Cal. App. 3d 524, 529, 162 Cal. Rptr. 530, 533 (1980). See *infra* text accompanying note 103.

use a strawman to sever a joint tenancy.⁶⁷ The court recognized that "An Act to revise the law in relation to joint rights and obligations"⁶⁸ effectively overruled its decision in *Deslauriers*.⁶⁹ Believing that the rules applicable to the creation and severance of joint tenancies should be the same, the court then held that a joint tenant can unilaterally sever a joint tenancy without the use of a strawman.⁷⁰

Had the supreme court in *Minonk* accepted Ida Grassman's argument that different rules should apply to the creation and severance of joint tenancies because the 1953 amendment to the joint tenancy statute omits any reference to severances, it would have recognized a rule making it more difficult to destroy joint tenancies than to create them. Such a rule runs contrary to the basic concept of joint tenancy, including that at common law.⁷¹ At common law, severance of any one of the unities destroyed the joint tenancy.⁷² The primary concern was the intention of the parties to enter or maintain the joint tenancy relationship. The four unities simply showed this intent existed when the estate was created. A party could *sever* the joint tenancy unilaterally, thus demonstrating that the parties no longer intended to continue the relationship. The intent to sever was the controlling issue, although the technical aspects of the "strawman" transaction were followed.⁷³

Before *Minonk*, Illinois courts had recognized a variety of ways in which a joint tenancy could be severed.⁷⁴ A review of these methods such as mortgaging an interest to a stranger,⁷⁵ deeding the property to a stranger,⁷⁶ contracting with a joint tenant to sever,⁷⁷ and conveying to another joint tenant,⁷⁸ illustrate the importance of the intent to sever. As the appellate court in *Minonk* noted, "[t]his observation all but militates a conclusion that severance should not be governed more strictly than creation of joint tenancies."⁷⁹

67. 95 Ill. 2d at 395, 447 N.E.2d at 824.

68. ILL. REV. STAT. ch. 76, § 1(b) (1977).

69. 95 Ill. 2d at 394, 447 N.E.2d at 823-24. No Illinois case decided after 1953 even mentions *Deslauriers*. See *supra* text accompanying notes 32-35.

70. *Minonk State Bank*, 95 Ill. 2d at 396, 447 N.E.2d at 824.

71. See 2 AMERICAN LAW OF PROPERTY, § 6.2, at 5, 6 (A.J. Casner ed. 1952).

72. See *supra* text accompanying note 12.

73. See *Minonk State Bank v. Grassman*, 103 Ill. App. 3d 1106, 1111, 432 N.E.2d 386, 390 (1982).

74. See *supra* note 38.

75. *Lawler v. Byrne*, 252 Ill. 194, 96 N.E. 892 (1911).

76. *Szymczak v. Szymczak*, 306 Ill. 541, 138 N.E. 218 (1923).

77. *Duncan v. Suhy*, 378 Ill. 104, 37 N.E.2d 826 (1941).

78. *Jackson v. O'Connell*, 23 Ill. 2d 52, 177 N.E.2d 194 (1961).

79. 103 Ill. App. 3d 1106, 1111, 432 N.E.2d 386, 390 (1982).

The supreme court in *Minonk* focused on the intent to sever, omitting any discussion of statutory construction in its opinion. Ida Grassman had argued that the 1953 amendment to the joint tenancy statute applies strictly to creation of joint tenancies, having no application to severance questions.⁸⁰ Ida Grassman argued that the common law principle espoused in *Deslauriers v. Senesac*,⁸¹ that there be a separate grantor and grantee, must be applied to the severance of a joint tenancy.⁸² The supreme court rejected this argument, reasoning that *Deslauriers* was overruled by the 1953 amendment to the joint tenancy statute.⁸³ Under the 1953 statute, a joint tenancy could be created whether or not the grantor was also a grantee.⁸⁴ The supreme court concluded that the amendment to the joint tenancy statute recognized that one could be grantor and grantee in a single transaction regardless of whether the conveyance created or severed a joint tenancy.⁸⁵ When viewed as a change of the common law "two-to-transfer" notion, without regard to creation or severance, the supreme court in *Minonk* had no problem recognizing that a joint tenant may sever a joint tenancy by conveying the property to herself.

Jurisdictional Support

A split of authority exists between states which have considered the issue of whether a joint tenant can unilaterally sever a joint tenancy.⁸⁶ Illinois,⁸⁷ Minnesota⁸⁸ and California⁸⁹ have judicially eliminated the need to convey to an intermediary if a joint tenant wants to sever the joint tenancy. Nebraska, the only state having found that the conveyance does not sever the joint tenancy, continues to adhere to the feudal law requirements accompanying livery of seisin.⁹⁰

In Hendrickson v. Minneapolis Federal Savings & Loan As-

80. *Minonk State Bank*, 95 Ill. 2d at 396, 447 N.E.2d at 824.

81. 331 Ill. 437, 163 N.E. 327 (1928).

82. *Minonk State Bank*, 95 Ill. 2d at 396, 447 N.E.2d at 824.

83. 95 Ill. 2d at 394, 447 N.E.2d at 824 (1983).

84. *Id.* at 396, 447 N.E.2d at 824. See ILL. REV. STAT. ch. 76, § 1(b) (1953).

85. 95 Ill. 2d at 396, 447 N.E.2d at 824.

86. See *Riddle v. Harmon*, 102 Cal. App. 3d 524, 162 Cal. Rptr. 530 (1980) (joint tenant may unilaterally terminate joint tenancy); *Hendrickson v. Minneapolis Fed. Sav. & Loan Assoc.*, 281 Minn. 462, 161 N.W.2d 688 (1968) (unilateral severance allowed); *Kraus v. Crossley*, 202 Neb. 806, 277 N.W.2d 242 (1979) (unilateral conveyance by deed will not sever joint tenancy).

87. *Minonk State Bank v. Grassman*, 95 Ill. 2d 342, 447 N.E.2d 822 (1983).

88. *Hendrickson v. Minneapolis Fed. Sav. & Loan Assoc.*, 281 Minn. 462, 161 N.W.2d 688 (1968).

89. *Riddle v. Harmon*, 102 Cal. App. 3d 524, 162 Cal. Rptr. 530 (1980).

90. *Kraus v. Crossley*, 202 Neb. 806, 277 N.W.2d 242 (1979).

sociation,⁹¹ a husband and wife held title to real property in joint tenancy. The husband unilaterally executed a "Declaration of Election to Sever Survivorship of Joint Tenancy" in order to preserve an interest in the property for his daughter by a previous marriage.⁹² The Supreme Court of Minnesota explored the methods available to sever a joint tenancy, noting the traditional method of unilaterally severing a joint tenancy by conveyance to a third party followed by reconveyance to the original owner.⁹³ The Minnesota court also acknowledged that joint tenants can convert their estate into a tenancy in common simply by agreeing to sever the joint tenancy.⁹⁴ The court concluded that if both joint tenants could mutually agree to sever the joint tenancy without resorting to use of a strawman, then one tenant should not be required to use a strawman.⁹⁵

California's intermediate courts also have considered the issue of whether a joint tenant can unilaterally sever a joint tenancy. In *Clark v. Carter*,⁹⁶ the California Court of Appeals held that a grantor could not convey an estate to himself.⁹⁷ Recently, however, *Clark* was overturned by the same appellate court in *Riddle v. Harmon*.⁹⁸

In *Riddle*, a husband and wife purchased a parcel of real estate, taking title as joint tenants. Thereafter, the wife executed a deed granting to herself an undivided one-half interest in the property. As the court pointed out, the deed was explicit in showing the grantor's intention to terminate the joint tenancy with her husband.⁹⁹ Upon his wife's death, the husband initiated a quiet title action.¹⁰⁰ The *Riddle* court noted that the California legislature amended the civil code to allow direct transfers of property in the creation of joint tenancies without the empty circuitry of action of the strawman conveyance.¹⁰¹

The *Riddle* court then addressed the "two-to-transfer" notion deemed crucial in *Deslauriers v. Senesac*:¹⁰²

91. 281 Minn. 462, 161 N.W.2d 688 (1968).

92. *Id.* at 463, 161 N.W.2d at 689.

93. *Id.* at 464, 161 N.W.2d at 691.

94. *Id.*

95. *Id.* at 464, 161 N.W.2d at 692. The document used to sever the joint tenancy in *Hendrickson* was not a deed.

96. 265 Cal. App. 2d 291, 70 Cal. Rptr. 923 (1968).

97. *Id.* at 294, 70 Cal. Rptr. at 927, citing *Deslauriers v. Senesac*, 331 Ill. 437, 163 N.E. 327 (1928).

98. 102 Cal. App. 3d 524, 162 Cal. Rptr. 530 (1980).

99. *Id.* at 526, 162 Cal. Rptr. at 531.

100. *Id.*

101. *Id.* at 527, 162 Cal. Rptr. at 532.

102. 331 Ill. 437, 163 N.E. 327 (1928).

That 'two-to-transfer' notion stems from the English common law feoffment ceremony with livery of seisin (Citation) . . .

It is apparent from the requirement of livery of seisin that one could not enfeoff oneself—that is, one could not be both grantor and grantee in a single transaction. Handing oneself a dirt clod is ungainly. Just as livery of seisin has become obsolete, so should ancient vestiges of that ceremony give way to modern conveyancing realities.¹⁰³

The court concluded that a joint tenant should be able to accomplish directly what he or she could otherwise achieve indirectly by use of the strawman.¹⁰⁴ In light of the wife's clear intention to sever, the court saw no reason to adhere to the ancient rule that one could not "enfeoff" oneself.¹⁰⁵

Nebraska is the only jurisdiction that supports the view that the strict common law unities must be observed and that a strawman transaction must be the intermediary through which a joint tenant can convey property to herself in tenancy in common. In *Krause v. Crossley*,¹⁰⁶ the Nebraska Supreme Court held that the joint tenant's attempted conveyance of his interest in property to himself as tenant in common did not sever the joint tenancy.¹⁰⁷ The court reasoned that although Nebraska's General Assembly modified the common law rule governing creation of joint tenancies by allowing one to convey an interest to himself to create a joint tenancy, that statute did not indicate any intention to permit severance by conveyance from one joint tenant to himself.¹⁰⁸

The *Krause* court relied on *Deslauriers v. Senesac*¹⁰⁹ for the proposition that a person cannot convey to himself what he already possesses.¹¹⁰ The court refused to determine the existence of a joint tenancy by the intention of the parties. The court specifically distinguished that approach from the common law four unities rule.¹¹¹ This approach, while laudably adhering to precedent, ignores the realities of modern conveyancing. According to *Krause*, an administrator who is also the sole beneficiary of real estate under a decedent's will, could not convey the real estate from himself as administrator to himself as an

103. 102 Cal. App. 3d at 528, 162 Cal. Rptr. at 533.

104. *Id.* at 531, 162 Cal. Rptr. at 534.

105. *Id.*

106. 202 Neb. 806, 277 N.W.2d 242 (1979).

107. *Id.* at 809, 277 N.W.2d at 246.

108. *Id.* at 808-09, 277 N.W.2d at 245-46.

109. 331 Ill. 437, 163 N.E. 327, *cited at* 277 N.W.2d at 246.

110. 202 Neb. at 809, 277 N.W.2d at 246. In light of the Illinois Supreme Court decision in *Minonk State Bank v. Grassman*, 95 Ill. 2d 392, 447 N.E.2d 822 (1983), the result in *Krause* must be questioned because *Deslauriers* has been overruled in Illinois. 95 Ill. 2d at 394, 447 N.E.2d at 824.

111. 202 Neb. at 808, 277 N.W.2d at 245.

individual.¹¹²

In the jurisdictions considering the issue, three have held that a joint tenant can unilaterally sever the tenancy.¹¹³ Not surprisingly, all three jurisdictions have statutory schemes recognizing a preference for tenancies in common. Those jurisdictions which have found a severance all hold that if an individual can grant to himself and to another individual property in joint tenancy, there is no reason why the same individual should not be able to sever the joint tenancy by conveying the estate to himself.

Public Policy Considerations

Policy considerations support the rule that a joint tenant can sever a joint tenancy by conveying his interest to himself as tenant in common without the use of an intermediary. First, construing deeds conveying property from the grantor to himself as effecting a severance of a joint tenancy is consistent with Illinois' statutory preference for recognizing tenancies in common.¹¹⁴ If an individual can grant to himself and another individual property in joint tenancy, there is no reason why the same party should not be able to sever the joint tenancy by conveying an estate to himself. If a joint tenancy could be created but could not be severed without a strawman, it would be more difficult to destroy joint tenancies than to create them.

Second, Illinois courts have consistently recognized a severance of a joint tenancy if a clear intent to sever has been demonstrated.¹¹⁵ Holding that a joint tenant can sever a joint tenancy by conveying his interest to himself as tenant in common without the use of an intermediary is consistent with prior Illinois law and does not exalt form over substance.¹¹⁶ More importantly, recognition of a rule allowing severance of a joint tenancy without a strawman focuses attention on the *intent to sever* rather than the nature of the grantor and grantee.

A third public policy consideration deals with the notion that allowing a joint tenant to sever unilaterally without an intermediary would eliminate an empty ritual and the paper work associated with it. The strawman magically appeared to per-

112. In Illinois, when an estate is closed, if the administrator is the sole beneficiary of real estate, he conveys as John Doe, Administrator to John Doe, individually.

113. See *supra* notes 87-89.

114. See ILL. REV. STAT. ch. 76, ¶ 1 (1977).

115. See *supra* note 73 and accompanying text. See also cases cited *supra* note 38.

116. See ILL. REV. STAT. ch. 76, § 1 (1977).

form a legal sleight of hand. He received a deed from the joint tenant effecting the severance. His reconveyance re-established title in the former joint owner free from the right of survivorship in his co-owner. The end result is thus the same whether or not a strawman is used.

The final public policy consideration focuses on the indisputable right of a joint tenant to convey his or her estate without the requirement of knowledge or consent on the part of the other joint tenant.¹¹⁷ Recognizing the absence of a requirement for an intermediary to sever a joint tenancy would not necessitate any extension of this right. Therefore, by allowing a party to destroy the joint tenancy by executing a deed from himself to himself, would dispense with an archaic charade which is of questionable legal significance.

CONCLUSION

The four unities essential to the creation and maintenance of a joint tenancy at common law expressed the basic notion that co-tenants, taking as one by the same deed or feoffment, must have identical interests. The grantees acquired the realty together as though they were one, a fictitious unity. Not surprisingly, recognition of these unities often required the use of another fiction, the strawman, to effectuate the intention of the parties with respect to a particular transaction. Over the years, Illinois courts began to recognize any number of ways in which joint tenancies could be severed. An examination of these cases shows that the courts have been inclined to allow severance once the intent to sever has been demonstrated. The intent to sever is also the primary concern of most of the courts having confronted the question of whether a joint tenant may unilaterally sever a joint tenancy.¹¹⁸ The Illinois Supreme Court's decision in *Minonk State Bank* eliminates an archaic construct, the strawman. It underscores the need to analyze a party's intentions to determine his status, and ultimately, his rights to that elusive concept of property.

117. See *supra* text accompanying notes 42-44.

118. *Minonk State Bank v. Grassman*, 95 Ill. 2d 392, 447 N.E.2d 822 (1983); *Riddle v. Harmon*, 102 Cal. App. 3d 524, 162 Cal. Rptr. 530 (1980); *Hendrickson v. Minneapolis Fed. Sav. & Loan Assoc.*, 281 Minn. 462, 161 N.W.2d 688 (1968).

