

# MORALS FROM THE COURTHOUSE

A study of recent Texas cases impacting the wills, probate and trust practice

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# Other Estate Planning Issues

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## Conveyance of Property Subject to Survivorship

*Fogal v. Fogal* – Page 13

Beaumont Court of Appeals

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### Background

- A and B owned property “as joint owners with rights of survivorship.”
- A deeded A’s interest to C, reserving life estate for herself and also stating that upon her death, title would vest in C
- A died
- Question whether B owned all property under survivorship right or C owned one-half of property under A’s deed

*Fogal v. Fogal* – Page 13

Beaumont Court of Appeals

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### Decision

- When A conveyed interest in property, joint tenancy with rights of survivorship was broken
- English common law rule: “the sale of one joint tenant’s interest in a property held by joint tenants cuts off the survivorship rights that the surviving joint tenant would have otherwise enjoyed had the property not been sold.”
- B and C hold as tenants in common

Moral: A co-tenant’s conveyance of property subject to a right of survivorship destroys the survivorship feature.

## Lady Bird Deeds

*Wright v. Jones* – Page 13  
Waco Court of Appeals

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### Background

- Husband and Wife executed Lady Bird deed reserving life estate and power to revoke.
- Husband died
- Wife revoked deed in two documents – one signed by Wife and agent and one signed only by agent
- Question whether Wife owned entire premises to exclusion of grantee under Lady Bird deed

*Wright v. Jones* – Page 13  
Waco Court of Appeals

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### Decision

- Under deed, each spouse reserved life estate in community one-half of property
- H's life estate ended and his interest immediately vested in Grantee when H died
- Deed could have provided that Husband's interest would pass to Wife upon his death, but did not.
- Wife's revocation of deed only impacted her one-half interest

Moral: Share owned by co-grantor of Lady Bird deed passes to grantee upon co-grantor's death and is not subject to revocation by surviving co-grantor unless deed expressly provides otherwise.

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## Title search: Case Law Update

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26<sup>th</sup> Annual Estate Planning, Guardianship and Elder Law Conference session  
"Case Law Update"