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Married Women's Suretyship Contracts in the United States

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where the contract was made should govern its validity,22 and this seems to be the modern weight of authority.23 The rule is based on sound principles of law most important of which is that only by the law of the place where the acts took place could it be determined whether they had any legal effect.24 In other words, unless the acts of the parties had the legal effect of creating a contract in the state where they occurred there could be no contract to enforce in another state. Furthermore, as a practical matter, the easiest law to apply is that under which the parties acted because, having determined where the contract was made, that law follows as a part of the contract.25 And lastly, this rule entails none of the uncertainties which follow the rule that the place of performance shall govern or the rule that the intention of the parties should control. If the intention of the parties is to govern there might be a conflict of evidence on the matter, or a conflict of intention, and the court would be forced to choose between conflicting laws. If the law of the place of performance is to govern the performance might extend over two or more jurisdictions26 therefore causing a conflict as to what law should be applied. But when the court has determined where the contract was made, which must necessarily be a particular jurisdiction, there can be no uncertainty as there is only one law to apply, namely that where the contract was made. Therefore it is submitted that in all future cases the Kentucky court should determine the validity of the contracts before it according to the law of the place where the contract is made.

JAMES D. ALLEN

MARRIED WOMEN'S SURETYSHIP CONTRACTS IN THE UNITED STATES.

The married woman's contractual disabilities have been removed to varying degrees in most American jurisdictions. Upon examination of the statutes, virtually the only limitation upon the total removal of these disabilities seems to be as to a married woman's capacity to be a surety. It is the purpose of this note to discuss the capacity of married women to be sureties in the various states.

22 Stumberg, Conflict of Laws (1937) 201 where he cites Beale, Goodrich and Minor as supporting the rule. Stumberg seems to disagree with the rule, 204–207. Restatement, Conflict of Laws (1934) sec. 332 adopts the rule that the law of the place where the contract is made should govern its validity.

23 See Goodrich, Conflict of Laws (1927) 220.

24 2 Beale, Conflict of Laws (1935) 1090; Goodrich, Conflict of Laws (1927) 229, "It takes the sanction of the law plus the acts of the parties to complete the contract."


26 Western Union Telegraph Co. v. Lacer, 122 Ky. 839, 93 S. W. 34 (1906) shows the difficulty.
It seems that American jurisdictions fall into three distinct classifications with respect to the subject under discussion:

I. Married women may be sureties for anyone.
II. Married women may be sureties to a limited extent.
III. Married women may not be sureties for anyone.

In the majority of American jurisdictions, the married woman may, apparently, enter into and be liable on a suretyship contract as if she were a *feme sole*. This rule obtains in the following jurisdictions: Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.²

² Ark.—Pope’s Dig. of Stat. of Ark. (1937), sec. 7237. See also Walker v. Arkansas National Bank, 256 Fed. 1 (1919), holding that a married woman could be a surety on her husband’s note.

Calif.—Calif. C. C. (1937), sec. 158. See also C. I. T. Corp. v. Sanderson, 43 Fed. (2d) 985 (1930).

Colo.—Courtright Mills Ann. Stats. of Colo. (1928), sec. 4759. See Patrick v. Morrow, 33 Colo. 509, 81 P. 342 (1905), holding that a married woman may validly contract for any purpose. This would seem to indicate that her suretyship contracts would be valid.


Dist. of Col.—Code (1929), title 14, secs. 43, 44.

Ill.—Ill. R. S. (1937), Chap. 68, sec. 6.


Iowa.—Code (1931), sec. 10468.

La.—La. Gen. Stats. (1932), secs. 2169, 2171. See Howard v. Cardella, 171 La. 921, 132 So. 501 (1931), holding that a woman may be surety for her husband. And see note (1933), 8 Tulane L. R. 106 for a discussion of married women’s acts in Louisiana with cases cited thereunder.

Me.—Me. Rev. Stat. (1930), c. 74, secs. 1, 4. It seems that the statutes here cited do not authorize a married woman to contract, except, perhaps, by implication. However, Maine formerly had a statute permitting married women to bind themselves by contract for any lawful purpose. See Mayo v. Hutchinson, 57 Me. 546 (1870), holding that a contract of suretyship is valid and binding on a married woman. This case, apparently, has not been overruled and is still law under the present statutes of Maine.

Md.—Md. Ann. Code (Bagby’s 1924), Art. 45, sec. 5.


Miss.—Code (1930), sec. 1940.

Mo.—Mo. Rev. Stat. (1929), sec. 2998. See Grandy v. Campbell,
In six states married women have been given a general right to contract, but as to their right to become sureties, their actions are limited, either by statutory provision or by decision. The theories behind imposing these limitations, based upon giving some kind of protection to married women, will be discussed in connection with the rules as they are found to exist in the various states.

In Alabama a married woman has, generally, full contractual capacity, but it is expressly provided by statute that she shall not, directly or indirectly, contract as surety for her husband. This statutory provision...

78 Mo. App. 502 (1899), holding that a woman could bind herself as surety for her husband.


Nev.—Nev. Comp. Laws (1929), secs. 3373, 3390, 3391, and 3393. A married woman upon obtaining a court order may become a sole trader. Sec. 3392 says that a married woman as a sole trader is liable on contracts as if she were feme sole.


N. Mex.—N. Mex. Stats. (1929), sec. 68-201. See First Sav. Bank & Trust Co. v. Flournoy, 24 N. M. 256, 171 P. 793 (1917), holding that a married woman is liable on contract as accommodation maker (informal suretyship).


N. C.—Code (1927), sec. 2507. See Royal v. Southerland, 168 N. C. 405, 84 S. E. 708 (1915), wife may be surety on husband’s obligations; Bristol Grocery Co. v. Bails, 177 N. C. 295, 98 S. E. 768 (1919), wife jointly and severally liable as partner or surety.

N. D.—N. D. Comp. Laws (1913), sec. 4411.

Ohio—Code (Page’s 1938), sec. 7999.


Tenn.—Code (1922), sec. 8460.


Va.—Code (1930), sec. 5154.

Wash.—Code (Pierce’s 1929), sec. 1430.

W. Va.—Civil Code (1931), sec. 48-3-9.

Wis.—Wis. Stat. (1936), sec. 6.015. See First Wisconsin Nat. Bank v. Milwaukee Patent Leather Co., 179 Wis. 117, 190 N. W. 822 (1922), holding liable a married woman who is accommodation indorser on a note (in effect a surety) under this section.

Wyo.—Wyo. Rev. Stat. (1931), sec. 69-102. In some of these states, where no cases have been cited, the point has apparently not been passed upon, but it is assumed from the tenor of the statute that these statutes will follow the majority in allowing a married woman to be a surety, when a case arises under the statute.

* Ala. Code (1923), sec. 8287.

* Id. sec. 8272. See also Hall v. Clark, 225 Ala. 37, 142 So. 65 (1932), holding that where wife signed note as surety for pre-existing debt of
vision is also found in New Hampshire. It would seem that these states have gone to the extreme in severing the unity of husband and wife by making it impossible for her to subject herself to liability for his debts. The theory behind such a law, if any logical theory can be deduced therefrom, is probably that the wife, when asked to become a surety for her husband, might not feel the same freedom of action that she would when asked to become a surety for someone who did not exercise so much influence over her.

Kentucky has a statutory provision to the effect that a married woman may not bind herself as surety for her husband or another unless specific property has been set aside for that purpose by an appropriate instrument.

There is some question, from the language of the Kentucky cases on this point, as to whether the married woman may ever be a surety, that is, whether she may set aside the property alluded to in the statute. Cook v. Landrum leaves the impression that the wife may not be a surety for anyone, in the usual sense, and that all the statute gives her is the right to pledge property for another's debt. So, it would seem that in Kentucky the only right given to a married woman with respect to contracting for the debt or default of another, is to pledge specific property which will be liable for that debt or default.

This rule also obtains in Idaho, Kansas and Nebraska, despite the fact that in these states there are statutes which purport to remove all common law contractual disabilities of married women.

In Idaho, one of the leading cases on this point is Bank of Commerce v. Baldwin in which it was held that the Idaho statute which apparently gave the married woman general contractual capacity did not permit her to bind herself as surety. Still another leading case, Tipton v. Ellsworth, holds that the wife could make a valid mortgage to secure her husband's debt, but, after the mortgaged property was exhausted, a deficiency decree against her was improper.

her husband, she had a good defense under this section: Hawkins v. King, 228 Ala. 139, 153 So. 253 (1934), holding that a wife may not become surety for her husband's debt.


* Supra n. 5.
7 14 Idaho 75, 53 P. 504 (1904).
In Kansas, in the case of Deering v. Boyle, it is held that when a married woman becomes a surety, she does not bind herself personally, but she binds her separate estate. It is suggested by this case that the married woman is liable for impliedly agreeing to bind her separate estate by executing the suretyship contract, that is, she impliedly binds all separate property not exempted from execution by law. She could not be held liable, personally, and there can be no deficiency judgment against her after the separate property is exhausted. In Nebraska, in First National Bank v. Ernst, the rule that a married woman's suretyship contract is only binding if it shows her intention to bind her separate estate, is clearly laid down.

It would seem, then, that in these three states, the rule is the same as that laid down by an express statute in Kentucky, despite the fact that there are express statutes purporting to grant complete contractual freedom in all three jurisdictions. The theory behind such a rule is probably based upon the old common law idea that the woman was helpless and did not know what she was doing. By evidencing her intent to bind her separate estate, the married woman clearly shows that she is aware of what she is doing.

III

In the remaining six jurisdictions, the right of married women to become sureties is totally denied. One jurisdiction, Arizona, has a statute which purports to remove all disabilities, but in the case of Stiles v. Lord, the court cited this statutory provision and held that, despite it, the wife could not make a contract of suretyship or guaranty, so that it would seem that in Arizona the married woman may not be a surety, since it does not appear that this case has ever been overruled.

By statute in Florida, the wife has no general power to contract; her separate property remains under the care and management of her husband. However, the wife is permitted to petition the circuit court praying for license to take charge and control of her separate property, to contract freely and to bind herself as if she were unmarried. If this

10 Kansas 525 at 531 (1871). It is logical to assume that the rule which obtains in Kansas would be the same as the rule clearly laid down in the Idaho cases cited supra n. 7 and 8, since the laws of Idaho are taken directly from Kansas. See also Live Stock Commission Co. v. Haston, 68 Kan. 749, 75 P. 1028 (1904), and Moody v. Stubbs, 94 Kan. 250, 146 P. 346 (1915), both holding that the wife could mortgage her separate property as collateral for note given to secure pre-existing indebtedness of her husband.

21 117 Neb. 34, 219 N. W. 798 (1928). See also Grand Island Banking Co. v. Wright, 53 Neb. 574, 74 N. W. 82 (1898), holding that the burden of proving that the married woman intended to bind her separate estate by contract is on the promisee.


petition is granted she may contract as if unmarried. If this permission is given by the court as a matter of course, then Florida belongs in Class II.

Georgia has an express statute to the effect that a married woman may not bind her estate by any contact of suretyship, and this provision is the basis for a unanimous holding to this effect in all the cases which were found on this point in Georgia.

A Michigan statute provides that the separate estate (real or personal) of a married woman acquired after marriage shall remain her separate estate, that it should not be liable for her husband's debts, and that it can be contracted, sold, transferred, bequeathed or devised as if she were single. However, despite this apparently broad statute, the court in Russell v. People's Savings Bank, indicated that the statute had its limits, holding that a contract of suretyship is not one by which the married woman contracts, sells, transfers, mortgages or conveys her own property or any part of it, and is, therefore, not within the meaning of the statute. This position has uniformly been supported in cases following the Russell case, so that it seems that the law of suretyship in Michigan at present is correctly laid down by that case.

The law on this question in Pennsylvania is settled by an express statute which provides that a married woman may contract as if unmarried except that she may not be surety for another. The cases in this connection will not be here discussed, since they have been collected and adequately discussed by another writer.

The statutes in Texas give the wife neither express nor implied general power to contract, and she may not become personally bound as surety. The contractual capacity of the wife in Texas, is well summed up in the case of Lee v. Hall Music Co. in the following words: "Our statutes impliedly invest the wife with power to contract for necessaries for herself and children as well as for such expenses as are incidental to the control and management of her separate estate and such community property as the statute commits to her charge.

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29 Penn. Stats. (1936), Title 48, sec. 32.
30 Reader, Married Women's Contracts of Suretyship, 38 Dickinson L. R. 230 (1934).
31 Texas Stats. (1936), Art. 4614, 4623.
She also has implied power under article 4623 to become, *jointly* with her husband, the *joint* [italics added] maker of a note or a surety on any bond or obligation of another.” So it would seem that if the husband does not consent to become jointly bound with his wife as surety, she may not so bind herself. However, if the consent of the husband is to be considered as a matter of course, then Texas belongs in Class II.

The theory behind the rule in this third class is that the law, while it has removed the wife's disabilities with regard to the ownership and disposition of property, should nevertheless protect the interest of the *feme covert* from being wasted and impaired by the assumption, through undue family influence, of debts for the benefit of others. While these states are willing to remove disabilities for her interest, they were not willing to allow her to enter into contracts from which no benefit could be derived.

**Phillip Schiff**

**INHERITANCE TAX UPON FAILURE TO EXERCISE SPECIAL POWER OF APPOINTMENT.**

Property may be deeded or devised subject to the exercise of two types of powers, namely, general and special. Under a general power the donee is unrestricted in his selection of the person or persons to whom he may appoint; under a special power his selection is restricted to a named class or group. Generally, when property is deeded or devised subject to the exercise of a power, the donor provides that it shall pass to a certain person or persons in default of an exercise of the power by the donee. This note will be devoted to a discussion of the imposition of a succession tax upon the failure of the donee to exercise a special power.

Under the Federal Estate Tax Act, property subject to a general power of appointment is made a part of the gross estate of the donee for the purpose of computing the estate tax, but only when the power is exercised and the property appointed to someone other than the person or persons named to take in default of an exercise of the power.

Most state statutes impose a succession tax upon the passage of the property to the beneficiary at the death of the donee, whether

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2. Id.

