Donations - Testaments - Captation Under Article 1492

Anthony J. Correro III
Civil Code article 1492 provides: "Proof is not admitted of the dispositions having been made through hatred, anger, suggestion or captation." While Louisiana courts have not been hesitant to apply the article, they have encountered difficulty in determining what proof is prohibited, particularly under the term "captation." This Note will undertake an analysis of "captation" in light of its origin and judicial application.

Under French law prior to the French Civil Code a testamentary disposition could be annulled if it were shown that the testator was motivated by an unjust anger or as a result of fraudulent artifices practiced by the legatee to induce the disposition. The former disposition was stricken on the fiction that the anger left the testator bereft of reason, while the latter fell under the notion that the testator's will was not completely free. The fraudulent practices sufficient to annul a disposition involved either falsely inspiring in the testator hatred against his heirs, or generating affection toward the legatee based on false grounds. These practices were termed captation.

1. LA. CIVIL CODE art. 1492 (1870).
3. This was known as the action ab irato. Originally it was limited to forced heirs of the testator, but later it was extended to cover all collateral heirs. See 3 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2877 (1959); Cahn, Undue Influence and Captation: A Comparative Study, 8 TUL. L. REV. 507, 508 (1934).
4. This broad phrase is used to describe what was termed fraudulent captation. For a discussion of the meaning of the term see text accompanying note 14 infra. The requirement that the captation be fraudulent to annul a disposition is taken from the Louisiana court's appreciation of the French law as expressed in Zerega v. Percival, 46 LA. ANN. 590, 15 SO. 476, 481 (1894). See 3 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2884 (1959).
7. See 3 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) nos. 2880, 2884 (1959). Under this notion, then, falsely informing the testator that his heirs were preparing to interdict him or were guilty of some crime would be cause for nullity if it were shown that the disposition was made under this inducement.
8. Captation has been broadly defined as "the act of one who succeeds in controlling the will of another, so as to become the master of it." Zerega v. Percival, 46 LA. ANN. 590, 606, 15 SO. 476, 480 (1894). The court gives a further defini-
The French soon discovered that a rule which allowed nullity of dispositions for fraudulent captation opened the courts to scores of litigants who, eager for a share of a testator's estate, would not hesitate to allege and attempt to prove all manner of scandal and foul play on the part of legatees. To end these abuses, the Commission for the French Civil Code recommended an article to prohibit attacks on dispositions based on captation. Yet, the framers of the French Civil Code, fearful lest the Code would be said to sanction fraud, deleted the provision, leaving their Code silent on the subject. Nevertheless, the reductors of the Louisiana Code of 1808 included it, and it now appears as article 1492.


The scope of the prohibition of article 1492 seems clear in light of its French source. The dispositions which were tainted under the jurisprudence were those in which the testator had an active desire to dispose to the particular legatee; the nullity was declared only because of a fault in his motive for so exercising his free will. Under article 1492 a testator's motivation for disposing and the acts which induced this motive are not to be impugned when there was an active desire by the testator to make the disposition. And, a fortiori, article 1492 has no application whenever the disposition is not one which the testator was desirous of making as, for example, a disposition made under duress or threats of violence.

The early Louisiana decisions seemed to recognize the scope of article 1492 set out above. However, later cases have made statements so broad that they in fact obscure these distinctions. Thus it has been stated that the article prohibits proof of duress, force, violence and all acts, conduct or motives of the testator. Nevertheless these decisions contain statements entirely consistent with the clear import of the article, and the
inconsistent pronouncements may be mere indiscreet choices of words. It seems unthinkable that the court would not annul a disposition shown to be made under fear of harm or other duress. 21

Dicta in certain cases indicate that there is an exception to article 1492 which admits proof of captation when the conduct has taken place at the time of the execution of the will. 22 The rule is derived from statements made in an early case, Godden v. Executors of Burke, 23 but analysis of that case reveals no basis for the exception. There the court was not speaking of testaments generally, but of the will made by authentic act. The evidence was proffered not to annul the disposition for captation, but for lack of compliance with the requirements of form 24 for a nuncupative will by public act. 25 Thus it appears that the court held merely that 1492 did not prohibit proof of matters tending to show that the formalities required by law for the execution of a nuncupative will by public act were not followed. 26 Further, the present rule does not appear to be consonant with article 1492. If captation means fraudulent inducements by someone to encourage the testator to make a certain disposition to him, 27 there seems no logical reason to predicate admissibility vel non on the time of occurrence of the acts. It is submitted that an inducement made at the execution of the will is no more grievous than one made prior thereto. Of course, as a practical matter captation at the execution of the will is more susceptible of linkage with the reason for the disposition. Nevertheless, article 1492 and the policy behind it do not suggest such a distinction, 28 and it is submitted that it is not justified.


24. See LA. CIVIL CODE arts. 1574-1604 (1870).

25. The question was whether the will could be annulled because it was not dictated to the notary.

26. The court stated: "It is an error to suppose that (article 1492) ... was designed to prevent the admission of proof to establish the circumstances which transpire at the making of an authentic will, under charges tending to the nullity of the act, for want of compliance with the exigencies of the law." (Emphasis added.) Godden v. Executors of Burke, 35 La. Ann. 160, 163 (1883).

27. See text accompanying note 14 supra.

28. However, if the courts have interpreted article 1492 to include violence, force, and fraud in the execution of a will, the rule may have some merit because of the fact that these actions usually occur at the making of the will.
Proof of captation has been admitted in recent Louisiana cases to show testamentary incapacity,²⁹ possibly on the theory that the susceptibility of the testator to such pressure tends to show incapacity.³⁰ Perhaps this rule can be logically distinguished from the prohibition of article 1492,³¹ but it is submitted that its application completely undermines the purpose of this article, which is to protect against divulgence of scandalous matter and multitudinous attacks on testaments.³² Proof of captation is prohibited not because captation is socially desirable but because, as a policy consideration, it was considered better to protect the innocent legatee from spurious attacks than to deprive the guilty one of his legacy. However, when the article can be circumvented by an allegation of testamentary incapacity, the doors to litigation have been opened once more.³³ However, it is certainly arguable that the policy behind ascertaining whether a will was made by a person of sound mind outweighs the possibility of thwarting the policy underlying article 1492.

In conclusion, it may be said that the decisions relating to article 1492 are not entirely satisfactory. The courts, never having been squarely presented with many of the issues, have allowed gratuitous pronouncements to confuse the actual meanings of the terms used in the article. It is submitted that when the court has an opportunity to consider the article again, it should distinguish sharply between fraudulent captation and duress, force, and violence; it should consider the present-at-the-execution exception in the light of this distinction; and it should re-evaluate admissibility to prove incapacity in light of policy considerations.

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²⁹ Succession of Franz, 232 La. 310, 94 So. 2d 270 (1957); Cormier v. Myers, 223 La. 259, 65 So. 2d 345 (1953); Succession of Andrews, 153 So. 2d 470 (La. App. 4th Cir. 1963); Succession of Willis, 149 So. 2d 218 (La. App. 2d Cir. 1963).
³⁰ At least this is the reason suggested by the author of Comment, 34 Tul. L. Rev. 585 (1960).
³¹ Article 1492 prohibits proof of dispositions made through captation. In cases in which the evidence is offered to show incapacity, an attempt is made to prove that the will was made through insanity.
³² See text accompanying note 10 supra.
³³ In Succession of Andrews, 153 So. 2d 470 (La. App. 4th Cir. 1963) the court admitted testimony to the effect that "testator gradually became subjected to her (the legatee) dominance and control and was brow-beaten or persuaded by her to leave more and more to her at the expense of his collaterals." Id. at 472. This would appear to be the very evidence prohibited by 1492 under the policy of prohibiting scandalous litigation.