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# Successions - Illegitimate Children - Inheritance Inter Se - Decedent

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the duty of full disclosure of value. Generally, the degree of reliance of one party, knowledge of reliance, misrepresentation and proof of fraud must be considered before allowing the action of rescission or the action for damages, and it is the impression gathered from the entire transaction which determines whether the action will lie.<sup>10</sup>

In determining the rights of a deceived party, an important distinction must be drawn between the action to rescind the contract made without full knowledge and the action to recover damages for a fraudulent misrepresentation. A contract of sale may be rescinded by showing merely that a misrepresentation was made;<sup>11</sup> but in the *ex delicto* action for damages, actual fraud, including the intent to deceive, must be proved.<sup>12</sup> Whether or not the "fraud" in this case would have been sufficient to support a tort action, rescission of the contract might also have been justified on the basis of a unilateral error, known to the other party.<sup>13</sup> On either basis, the decision seems sound. Although latitude in bargaining may be the general rule, misrepresentation will not be tolerated where the effect of applying the general rule would be to violate concepts of fair dealing.

W. F. M. M., Jr.

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SUCCESSIONS—ILLEGITIMATE CHILDREN—INHERITANCE INTER SE  
—Decedent, an adulterous illegitimate, died intestate, leaving a war risk insurance policy made payable to his estate. His aunt, as administratrix, and three other collateral heirs opened the succession and obtained the policy. An adulterous illegitimate sister sued the administratrix to annul the judgment, alleging that she was the natural sister and only heir of the deceased and therefore under Article 923<sup>1</sup> of the Louisiana Civil Code entitled to his es-

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10. See *Winzey v. Louisiana Industrial Life Ins. Co.*, 195 So. 67, 69 (La. App. 1940). See also *Harper*, *op. cit. supra* note 1, at 464-467, § 224.

11. *Williams v. Hunter*, 13 La. Ann. 476 (1858); *Guerin Theater Seating System v. Guerin*, 163 La. 426, 112 So. 34 (1927). Cf. Arts. 2531, 2541, 2545, La. Civil Code of 1870; *Christe and Lowe v. Pennsylvania Iron Works Co.*, 128 La. 208, 54 So. 742 (1911); *Galt v. Herndon*, 16 La. App. 239, 133 So. 800 (1931); *Williston*, *Treatise on the Law of Contracts* (1936) 4189, § 1500.

12. *Note* (1928) 52 A.L.R. 1153; *Derry v. Peek*, L.R. 14 App. Cas. 337 (1889); *Anson*, *op. cit. supra* note 1, at 234, § 196.

13. *Hurst v. National Bond and Investment Co.*, 96 Fla. 148, 117 So. 792, 59 A.L.R. 807 (1928); *Note* (1929) 59 A.L.R. 809. See Arts. 1819, 1823, La. Civil Code of 1870. *Geremia v. Boyarsky*, 107 Conn. 387, 140 Atl. 749 (1928). Compare *Newman v. Scarborough*, 115 La. 866, 40 So. 248 (1905).

1. "If the father and mother of the natural child died before him, the

tate. *Held*, an adulterous illegitimate is not a natural child and has no right to inherit from her adulterous brother. *Edwards v. Lathan*, 121 F. (2d) 183 (C.C.A. 5th, 1941).

The conclusion of the court that decedent and his sister, being adulterous illegimates, were not natural children<sup>2</sup> was based upon a well established principle of Louisiana law.<sup>3</sup> Although the adulterous illegitimate sister of the deceased is not entitled to inherit from her adulterous illegitimate brother,<sup>4</sup> should the estate fall to the aunts and uncles of the deceased?

The actual result of this case, allowing aunts and uncles to inherit from their adulterous illegitimate nephew, runs contrary to another rule of Louisiana jurisprudence—that illegitimate children have no relatives in a legal sense in the ascending or collateral line.<sup>5</sup> They belong to no family. In *Felix v. Bruce*<sup>6</sup> it was held that an uncle or aunt of an illegitimate person could not inherit from him.

Had the state intervened and demanded that these principles be applied to the present facts, the succession doubtlessly would have been declared vacant and would have escheated to the state under Article 929,<sup>7</sup> since there were no "heirs" within the rules of the Louisiana Civil Code.

If the deceased had been a natural child he could not have

estate of such natural child shall pass to his natural brothers and sisters or to their descendants." Art. 923, La. Civil Code of 1870.

2. "In considering the right of Delia Priest to inherit from her brother, Will Lathan, the legal distinction between 'natural children' and 'bastards' must be kept in mind. Under the provisions of Art. 182, La. Civil Code, both would be classed as adulterous bastards." *Edwards v. Lathan*, 121 F. (2d) 183, 185 (C.C.A. 5th, 1941).

3. "Illegitimate children who have been acknowledged by their father, are called natural children; those who have not been acknowledged by their father, or whose father and mother are incapable of contracting marriage at the time of conception, or whose father is unknown, are contradistinguished by the appellation of bastards." Art. 202, La. Civil Code of 1870.

4. *Jones v. James*, 12 La. App. 224, 125 So. 761 (1930). "Only legitimate and natural brothers and sisters inherit from each other. Even fathers and mothers do not inherit from their illegitimate children, unless they have acknowledged them." 12 La. App. at 227, 125 So. at 763.

5. "Illegitimate children, generally speaking, belong to no family, and have no relations. . . ." Art. 238, La. Civil Code of 1870. See *Montegut v. Bacas*, 42 La. Ann. 158, 159, 7 So. 449, 450 (1890).

6. 14 Orl. App. 64 (La. App. 1916). "It has been specially decided that 'there is no statutory provision authorizing the uncle or the aunt of an illegitimate person to inherit from him.'" 14 Orl. App. at 70. Accord: *Succession of Fletcher v. Decoudreau*, 11 La. Ann. 59 (1856); *Montegut v. Bacas*, 42 La. Ann. 158, 7 So. 449 (1890). See *Succession of Miller*, 27 La. Ann. 574, 575 (1875).

7. "In default of lawful relations, or of a surviving husband or wife, or acknowledged natural children, the succession belongs to the state." Art. 929, La. Civil Code of 1870.

inherited from his aunts or uncles,<sup>8</sup> and since he was an adulterous illegitimate (a classification still further removed from legitimate) he was definitely prohibited from inheriting from them. Therefore it is a departure from a system of equality to permit his aunts and uncles to inherit from him and prevent a blood sister from inheriting her brother's estate.

In a case such as this, where both parties may be legally excluded from the estate, it would be more in accord with justice<sup>9</sup> as well as the modern legal trend<sup>10</sup> to award the decision to the nearest of blood, thereby erasing, to a small extent, the suffering caused by the social attitude toward such unfortunates who have no choice but to accept the position and class into which they are automatically cast.

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WORKMEN'S COMPENSATION—DAMAGES—EFFECT OF REFUSAL TO SUBMIT TO OPERATION—Plaintiff sues under the Workmen's Compensation Act<sup>1</sup> for total disability occasioned by a nose fracture. Medical proof disclosed that relief from sinusitis and other conditions resulting from the injury could not be obtained without a surgical operation on plaintiff's nose. Defendant maintained that plaintiff should submit to such an operation, the effect of which would relieve him of payments for *permanent total* disability under subsection 1 (b) of Section 8 of the act. *Held*, an injured employee will not be compelled by the court to submit to a major operation, the purpose of which is to reduce the existing disability. *DeLafield v. Maples*, 2 So. (2d) 704 (La. App. 1941).

It is well established that a wronged person owes to the individual wronging him a duty<sup>2</sup> to minimize the damage where it

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8. "The law does not grant any right of inheritance to natural children to the estate of the legitimate relations of their father or mother." Art. 921, La. Civil Code of 1870.

9. The court in *Succession of Haydel*, 188 La. 646, 177 So. 695 (1937), gave an estate to an adulterous illegitimate under a broad interpretation of the word "alimony."

10. See Daggett, *The Social Attitude of the Civil Law in the United States* (1937) 15 *Social Forces* 558, 561.

1. La. Act 20 of 1914 [Dart's Stats. (1932) §§ 4391-4432].

2. This is not a duty in the strict legal sense, such as to create an enforceable legal right in the person to whom the duty is owed. It means rather a *disability* to recover for that part of the damage which the law deems the injured party could reasonably have prevented.