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## Private Law: Persons

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## PERSONS\*

*Katherine Shaw Spaht\*\**

### ESTABLISHING THE FILIATION OF ILLEGITIMATE CHILDREN

In last year's symposium,<sup>1</sup> the provisions of Act 549 of 1980 which amended Civil Code articles 208 and 209<sup>2</sup> were analyzed. Anticipating the possibility of constitutionally mandated<sup>3</sup> modifications

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\* The subject of rehabilitative alimony will be discussed in a forum juridicum to appear in this volume of the LOUISIANA LAW REVIEW in a subsequent issue.

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1. Spaht, *Developments in the Law, 1979-1980—Persons*, 41 LA. L. REV. 380, 380-88 (1981).

2. LA. CIV. CODE art. 208 (as it appeared prior to 1981 La. Acts, No. 720, § 1): Illegitimate children, who have not been acknowledged as provided in Article 203, may be allowed to prove their filiation. LA. CIV. CODE art. 209 (1980) (as it appeared prior to 1981 La. Acts, No. 720, § 1):

(1) An illegitimate child may be entitled to a rebuttable presumption of filiation under the provisions of this article. Or any child may establish filiation, regardless of the circumstances of conception, by a civil proceeding instituted by the child or on his behalf in the parish of his birth, or other proper venue as provided by law, within the time limitation prescribed in this article.

(2) A child who is shown to be the child of a woman on an original certificate of birth is presumed to be the child of that woman, though the contrary may be shown by a preponderance of the evidence.

(3) An illegitimate child not shown as the child of a woman on an original certificate of birth may prove filiation by any means which establish, by a preponderance of the evidence, including acknowledgment in a testament, that he is the illegitimate child of that woman.

(4) A child of a man may prove filiation by any means which establish, by a preponderance of the evidence, including acknowledgment in a testament, that he is the child of that man. Evidence that the mother and alleged father were known as living in a state of concubinage and resided as such at the time when the child was conceived creates a rebuttable presumption of filiation between the child and the alleged father.

(5) Proof of filiation must be made by evidence of events, conduct, or other information which occurred during the lifetime of the alleged parent. A civil proceeding to establish filiation must be brought within six months after the death of the alleged parent, or within nineteen years of the illegitimate child's birth, whichever occurs first. If an illegitimate child is born posthumously, a civil proceeding to establish filiation must be instituted within six months of its birth, unless there is a presumption of filiation as set forth in Paragraph 2 above. If no proceeding is timely instituted, the claim of an illegitimate child or on its behalf to rights in the succession of the alleged parent shall forever be barred. The time limitation provided in this article shall run against all persons, including minors and interdicts.

3. U.S. CONST. amend. XIV; LA. CONST. art. I, § 3. See the Louisiana Supreme Court decision in *Succession of Brown*, 388 So. 2d 1151 (La. 1980).

of Louisiana successions law,<sup>4</sup> the Legislature passed Act 549 to establish a procedure for proving the filiation of an illegitimate child neither formally acknowledged<sup>5</sup> nor legitimated<sup>6</sup> by the alleged parent. The Civil Code articles as amended did create problems in interpretation and application, which were considered in last year's symposium article.<sup>7</sup>

During the 1981 legislative session, a bill was introduced on recommendation of the Louisiana Law Institute to amend Civil Code articles 208 and 209 again.<sup>8</sup> Act 720 eliminates many of the problems

4. 1981 La. Acts, No. 919. In *Smith v. Stephens*, 401 So. 2d 674 (La. App. 3d Cir. 1981), the plaintiff instituted suit against the legitimate heirs of James Edward Stephens, who died in 1959, and other defendants, seeking recognition as a surviving child (illegitimate) and irregular heir. The trial court sustained a dilatory exception of prematurity based upon the plaintiff's failure to first obtain a judgment recognizing her as an irregular heir and placing her in possession of the Stephens' succession. The court of appeal affirmed the judgment of the trial court. According to the majority, "the plaintiff has the right of action in which she may seek to have herself declared an irregular heir of the descendant . . . [And] [a]s part of such an action she may allege her paternity and the acknowledgment of the relationship and offer evidence to prove those allegations." *Id.* at 678. According to Judge Culpepper, in a concurring opinion, "[t]he requirement of a prior court order or judgment recognizing an illegitimate heir [who has no seizin] appears to be very similar to the 'filiation order' held to be a permissible state statute requirement in *Lalli v. Lalli*, 439 U.S. 259, 99 S. Ct. 518, 58 L. Ed. 2d 503." *Id.* at 679 (Culpepper, J., concurring).

Neither the majority opinion nor the concurring opinion cite Civil Code articles 208 and 209, as amended by 1980 La. Acts, No. 549, effective July 23, 1980. The plaintiff, who did not allege formal acknowledgment under Civil Code article 203 or legitimation under Civil Code articles 198 and 200, would be governed by the provisions of section 4 of Act 549.

5. LA. CIV. CODE art. 203: "The acknowledgment of an illegitimate child shall be made by a declaration executed before a notary public, in the presence of two witnesses, by the father and mother or either of them, or it may be made in the registering of the birth or baptism of such child."

6. LA. CIV. CODE art. 198: "Illegitimate children are legitimated by the subsequent marriage of their father and mother, whenever the latter have formally or informally acknowledged them as their children, either before or after the marriage."

LA. CIV. CODE art. 200:

A father or mother shall have the power to legitimate his or her illegitimate children by an act passed before a notary public and two witnesses, declaring that it is the intention of the parent making the declaration to legitimate such child or children; provided, there exists at the time of conception or at the time of legitimation of such children no legal impediment to the marriage of the father or mother. Nor can a parent legitimate his or her illegitimate offspring in the manner prescribed in this article, when there exists on the part of such parent any legitimate descendant at the time of legitimation.

Furthermore, the comments to article 209, as amended by 1981 La. Acts, No. 720, § 1, indicate that adopted children are legitimately filiated by the adoption proceeding itself and need not comply with this article. See LA. CIV. CODE art. 214.

7. See note 1, *supra*.

8. La. H.B. 818, 7th Reg. Sess. (1981).

in statutory construction raised by the provisions of its predecessor, Act 549 of 1980. First, Act 720 does not distinguish between illegitimate children who "may be entitled to a rebuttable presumption of filiation"<sup>9</sup> and those who must establish filiation "by a civil proceeding instituted by the child on his behalf . . . within the time limitation prescribed in this article."<sup>10</sup> Thus, the dichotomy between illegitimate children who were required to institute a timely proceeding to establish filiation and those who were not<sup>11</sup> was eliminated. Under Act 720, "a child who does not enjoy legitimate filiation or who has not been filiated by the initiative of the parent by legitimation or by acknowledgment under article 203 must initiate a proceeding under article 209."<sup>12</sup>

Furthermore, the language of article 208 is more precise than its predecessor<sup>13</sup> in establishing which illegitimate children must institute the proceeding to establish filiation. Act 549 of 1980 specified that illegitimate children who had not been formally acknowledged *regardless of the circumstances of conception*<sup>14</sup> were required to institute a proceeding to establish filiation. Article 208, as amended by Act 720 of 1981, specifies that a child who enjoys legitimate filiation by application of the presumption of article 184,<sup>15</sup> or a child who has been legitimated<sup>16</sup> or formally acknowledged<sup>17</sup> by the parent need not institute the proceeding. In all of the foregoing instances, sufficient proof of the parent-child link is available. Furthermore, article 209, as amended by Act 720,<sup>18</sup> implies that the child *who enjoys*

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9. LA. CIV. CODE art. 209, as amended by 1980 La. Acts, No. 549, § 1. The statutory language of Act 549 of 1980 concerning the rebuttable presumption of paternity has been eliminated from Civil Code article 209, as amended by 1981 La. Acts, No. 720. However, reference to the circumstances which created the presumption is made in comment (b) to article 209: "Proof of filiation may include, but is not limited to: 'Informal' acknowledgment; scientific test results; acknowledgment in a testament; and proof that *the alleged parents lived in a state of concubinage at the time of conception. . .*" (Emphasis added).

10. LA. CIV. CODE art. 209, as amended by 1981 La. Acts, No. 720, § 1.

11. See discussions in Spaht, *supra* note 1, at 383-84.

12. LA. CIV. CODE art. 208, as amended by 1981 La. Acts, No. 720, § 1.

13. LA. CIV. CODE art. 208, as amended by 1980 La. Acts, No. 549, § 1: "Illegitimate children who have not been acknowledged as provided in article 203, may be allowed to prove their filiation."

14. LA. CIV. CODE art. 209, as amended by 1980 La. Acts, No. 549, § 1.

15. LA. CIV. CODE art. 184: "The husband of the mother is presumed to be the father of all children born or conceived during the marriage."

16. LA. CIV. CODE arts. 198 & 200.

17. LA. CIV. CODE art. 203.

18. LA. CIV. CODE art. 209(A), as amended by 1981 La. Acts, No. 720, § 1:

A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation by a preponderance of the evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this article. . . .

*legitimate filiation*, or is legitimated or formally acknowledged, *cannot* institute the proceeding to establish filiation. Such an interpretation is perfectly consistent with the organization of the Civil Code articles regarding proof of the parent-child relationship,<sup>19</sup> but inconsistent with the implications of some of the jurisprudence.<sup>20</sup> A further indication that such an interpretation is correct is the amendment to the Child Support Enforcement Program.<sup>21</sup> The provisions which authorize the Department of Health and Human Resources to institute filiation proceedings suggest that article 209 prohibits a child from instituting the civil proceeding to establish filiation if he enjoys legitimate status: "The department . . . may . . . take direct civil action, including actions to establish filiation against an alleged *biological* parent *notwithstanding the existence of a legal presumption that another person is the parent of the child solely for the purpose of fulfilling its responsibility under this Section.*"<sup>22</sup>

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19. See LA. CIV. CODE arts. 178-209. The structure of these Civil Code articles was the subject of a recent article, Spaht & Shaw, *The Strongest Presumption Challenged: Speculations on Warren v. Richard and Succession of Mitchell*, 37 LA. L. REV. 59 (1976).

20. In particular, the court in *Warren v. Richard*, 296 So. 2d 813 (La. 1974), held that for purposes of a wrongful death action instituted under Civil Code article 2315, a child may be the presumed legitimate child of the husband of the mother, LA. CIV. CODE art. 184, and the biological child of another man.

In *Succession of Mitchell*, 323 So. 2d 451 (La. 1975), the supreme court held that children, presumed to be legitimate issue of the husband of the mother, could be legitimated under Civil Code article 198 by the subsequent marriage of their mother to the biological father. The rationale of the Louisiana Supreme Court depended upon the statutory construction of article 198 and cannot be cited as authority for the general proposition that a child may possess a "dual status." Furthermore, the holding in *Succession of Mitchell* is unaffected by the statutory language of article 209, as amended by Act 720, because as to the biological father of the child legitimated under Civil Code article 198, the civil proceeding to establish filiation need not be instituted. Nothing in the statutory language of article 209, as amended by Act 720, can be construed as *necessarily* overruling *Succession of Mitchell*. See a discussion of these cases in Spaht & Shaw, *supra* note 19.

21. LA. R.S. 46:236.1(F) (Supp. 1975, 1976 & 1978) as amended by 1981 La. Acts, No. 720, § 3:

The department, except when it is not in the best interest of the child, may, without the necessity of written assignment, subrogation, tutorship proceedings, separation proceedings, or divorce proceedings, take direct civil action, including actions to establish paternity, in any court of competent civil jurisdiction to obtain child support from the person primarily legally responsible for the support of a minor child who is receiving aid to families with dependent children when that person has failed to support such child. The amount of such child support shall be set only by order of a court of competent jurisdiction or by the consent of the parties. A separate and distinct cause of action in favor of the department is hereby created, and suits brought under this provision need not be ancillary to or dependent upon any other legal proceeding.

22. *Id.* (emphasis added).

Reading the two statutory changes<sup>23</sup> made in Act 720, the discernible legislative intent is that a child presumed to be that of the husband of the mother may not institute a proceeding to establish filiation to another man.<sup>24</sup>

Another alteration of Act 549 was the time period after the death of the alleged parent within which a child must institute the proceeding to establish filiation. Under Act 549, the child had to institute the civil proceeding within six months of the death of the alleged parent or nineteen years from the child's birth, whichever first occurs.<sup>25</sup> By the provisions of Act 720, a child is accorded one year after the death of the alleged parent or within nineteen years of the child's birth, whichever first occurs, to institute the proceeding.<sup>26</sup> Furthermore, in the paragraph containing the time limitation imposed on the institution of the action to establish paternity, the statute provides that "[i]f the proceeding is not timely instituted, the child *may not thereafter establish his filiation.*"<sup>27</sup> The language is sufficiently broad to apply to establishing filiation for purposes other than successions law—such as a wrongful death action<sup>28</sup> and an action for alimony.<sup>29</sup> By comparing the corresponding statutory language in Act 549,<sup>30</sup> the predecessor of Act 720, the con-

23. LA. CIV. CODE arts. 208 & 209, as amended by 1981 La. Acts, No. 720, § 1; LA. R.S. 46:236.1(F) (Supp. 1975, 1976, & 1978), as amended by La. Acts, No. 720, § 3.

24. An argument could be made that the proper interpretation of "a child who enjoys legitimate filiation" means a child who is presumed to be the legitimate child of the father to whom the child is now seeking to establish filiation. The language "who has been legitimated or acknowledged" under article 203 is qualified by the words: "by the parent." The result of accepting such an argument is, if the presumed father, the husband of the mother under Civil Code article 184, is a different person from the alleged father to whom the child seeks to establish filiation, the suit is not prohibited under the language of articles 208 and 209.

25. LA. CIV. CODE art. 209, as amended by 1980 La. Acts, No. 549, § 1.

26. LA. CIV. CODE art. 209(B), as amended by 1980 La. Acts, No. 549, § 1: "The proceeding required by this article must be brought within one year of the death of the alleged parent or within nineteen years of the child's birth, whichever first occurs. . . ."

27. LA. CIV. CODE art. 209(B), as amended by 1980 La. Acts, No. 549, § 1 further provides: "If the proceeding is not timely instituted, the child may not thereafter establish his filiation."

28. LA. CIV. CODE art. 2315.

29. LA. CIV. CODE arts. 227, 229-234 & 240-243.

30. LA. CIV. CODE art. 209(5), as amended by 1980 La. Acts, No. 549, § 1: "If no proceeding is timely instituted, the claim of an illegitimate child or on its behalf to rights in the succession of the alleged parent shall forever be barred." (Emphasis added).

Note that Civil Code article 891, as amended by 1981 La. Acts, No. 919, § 1, imposes upon alleged parents seeking to inherit the property of their children the following burden of proof: "A parent for the purposes of this and the following article, includes one who is legitimately filiated to the deceased or who is filiated by legitimation or by acknowledgment under article 203 or by judgment under article 209 or who has

clusion may be reached that Louisiana Civil Code articles 208 and 209 apply generally to determine the proof required to establish the parent-child relationship of an unacknowledged illegitimate.

Section 4 of Act 549 of 1980 provided that "[a]ny illegitimate child nineteen years of age or older shall have one year from the effective date of this Act to bring a civil proceeding to establish filiation under the provisions of this Act and if no such proceeding is instituted within such time, the claim of such an illegitimate shall be forever barred." The effective date of Act 549 was July 23, 1980, upon signature of the Governor.<sup>31</sup> Under Act 549, an illegitimate child who had been formally acknowledged, "or possibly who is entitled to a rebuttable presumption of filiation . . ."<sup>32</sup> was not affected by the expiration of the statutory period. However, other informally acknowledged illegitimate children were subject to the peremptive period<sup>33</sup> for instituting a civil proceeding, which expired July 23, 1981.

Under Section 2 of Act 720,<sup>34</sup> "any person against whom the time period in this Act would otherwise have accrued except for the provisions of this Section shall have one year from its effective date to bring a proceeding to establish filiation of a child." The effective

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*openly and notoriously treated the child as his own and has not refused to support him.*" (Emphasis added). The italicized language of article 891 was borrowed from recommendations of the Law Revision Commission of New York discussed in Note, *Illegitimates' Intestate Succession Rights in New York: Is Further Liberalization Forthcoming?*, 49 *FORDHAM L. REV.* 379, 390 (1980). It is similar to a provision of the Uniform Probate Code § 2-109(2)(ii) (1969 version) which was intended to reduce the possibility of fraudulent claims against an illegitimate's estate.

31. 1980 La. Acts, No. 549, § 3.

32. Spaht, *supra* note 1, at 387.

33. There is authority for the proposition that section 3 of Act 549 of 1980 was a period of peremption, rather than prescription. By use of the language "shall forever be barred," the time limit of one year from the effective date of the Act became a part of the right, which was extinguished on July 23, 1981. See the following Louisiana decisions in which statutes containing the language "forever barred" were interpreted as peremptive: *Buster v. Wray Dickinson Co.*, 183 La. 562, 164 So. 2d 415 (1935); *Ancor v. Belden Concrete Prods. Co.*, 260 La. 372, 256 So. 2d 122 (1971); *Harris v. Trader's & Gen. Ins. Co.*, 4 So. 2d 24 (La. App. 1st Cir. 1941). See generally Comment, *Legal Rights and the Passage of Time*, 41 *LA. L. REV.* 220 (1980).

The United States Supreme Court uses a *different* approach in distinguishing a period of prescription from that of peremption. Under the Supreme Court analysis a time limit that appears in the same statute that creates the substantive right or in another statute that is closely related to the right becomes a part of the substantive right. See, e.g., *Chase Sec. Co. v. Donaldson*, 325 U.S. 304 (1944); *Danzer & Co. v. Gulf & Ship Island R.R. Co.*, 268 U.S. 633 (1924); *Davis v. Mills*, 194 U.S. 451 (1903); *Campbell v. Holt*, 115 U.S. 620 (1855). The time limit of section 3 of Act 549 of 1980 would also be considered by the United States Supreme Court as a period of peremption.

34. 1981 La. Acts, No. 720, § 2 (emphasis added).

date of Act 720 was September 11, 1981. Thus, unacknowledged illegitimate children whose right to institute an action to establish filiation expired on July 23, 1981, were by section 2 of Act 720 granted an additional year (from September 12, 1981 to September 12, 1982) in which to institute the proceeding to establish filiation. The purpose of the section was to cure defects in section 4 of Act 549, which had terminated the right to establish filiation of an illegitimate child under nineteen years of age whose alleged parent had died more than six months before July 23, 1980. The question raised by section 2 of Act 720 is whether an heir is vested with a substantive right to raise the expiration of the period of peremption as a defense against an inheritance claim by the illegitimate. If so, the legislature by extending the time period for instituting a filiation proceeding may not divest the heir of this "vested" right without due process of law.<sup>35</sup>

The threshold question concerns the nature of the "right" to establish filiation. It is essentially procedural, or evidentiary—the first and second steps in a three-step process<sup>36</sup> which ultimately determines a child's classification and consequently his substantive rights.<sup>37</sup> Classification is made under Civil Code as follows: (1) identify the mother; (2) identify the father; (3) determine the date of birth or conception. If the date of conception or birth falls within the marriage of the father and mother, then the child is legitimate. Filiation is the act of fixing paternity or maternity. Classification is the process of arranging persons in either the class of legitimate children or the class of illegitimate children. Identifying father and mother are only two steps in the codal method for classification of children. Filiation is precedent to and has an effect on classification. However, the distinction between filiation and classification has been obfuscated.

In *Pounds v. Schori*<sup>38</sup> amendments to the Civil Code articles on disavowal of paternity<sup>39</sup> were considered by the Louisiana Supreme

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35. U.S. CONST. amend. XIV; LA. CONST. art. I, § 2.

36. "Classification is made according to a three-step *method* prescribed by the Civil Code: (1) identify the mother, (2) identify the father, (3) determine the date of conception. . . ." Spaht & Shaw, *supra* note 19, at 63. "Consequently, filiation's main concern is with proof: what sort of evidence is required to prove the identity of the father to the satisfaction of the trier of fact." *Id.* at 64.

37. The purpose of classification is to provide a vehicle for regulation of the parent-child relationship, that is, for identifying the rights and obligations which parents incur by the birth of their children. . . . It may be said then, that the importance of classification derives from its *effects*, that is, the legal consequence which the legislator chooses to attach to status.

*Id.* at 62.

38. 377 So. 2d 1195 (La. 1979).

39. LA. CIV. CODE arts. 184-190, *as amended by* 1976 La. Acts, No. 430, § 1.

Court as "affecting substantive rights."<sup>40</sup> The status of a child born during marriage and entitled to "the presumption of legitimacy, is a matter of substance of the utmost importance considering it involves not only legitimacy but the right of inheritance."<sup>41</sup> Thus, the articles on disavowal, which regulate the *proof* of legitimate filiation, were considered substantive rather than procedural because of their ultimate classificatory function. The right to establish filiation under article 208 and 209 of Act 549, within the accompanying preemptive period, by analogy was a substantive right of the illegitimate child. The characterization of the illegitimate's right to establish filiation as substantive, rather than procedural, under the jurisprudence is crucial for purposes of further analysis.<sup>42</sup> Yet, even if one concludes that the right is substantive, it does not necessarily follow that an heir by the extinction of the illegitimate's right has acquired a substantive right to inherit property.

Might an heir argue that as a result of the loss of the "substantive" right of the illegitimate child by expiration of the preemptive period on July 23, 1981, the heir has acquired a "vested right"—a right of enjoyment, present or prospective that now has become his property absolutely and independent of any contingency? No Louisiana cases directly address the legal issue presented by section 2 of Act 720.<sup>43</sup> However, in two United States Supreme Court decisions<sup>44</sup> the Court held that a time period considered part of a "substantive" right cannot be extended as to claims that are already barred without violating the defendant's due process right. In *Danzer & Co. v. Gulf & Ship Island R.R. Co.*<sup>45</sup> an amendment to the Federal Transportation Act made after the cause of action arose, which would have extended the period of time within which the plaintiff could file suit to recover damages, was held inapplicable. The

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40. 377 So. 2d at 1198.

41. *Id.*

42. The two United States Supreme Court cases which are discussed in the text at notes 44-48, *infra*, involve time periods characterized as preemptive attached to substantive rights.

43. In *Succession of Pizzillo*, 223 La. 328, 65 So. 2d 783 (1953), a child alleged legitimate status on the basis of a defective act of adoption, rendered valid by the expiration of a six-month period provided in a statute of repose. According to the court the expiration of the preemptive time period cured any defect in the adoption; therefore, the second wife of the decedent adoptive father had no right to object to the adoption. No mention was made in the opinion of the divestiture of any vested rights of the second wife, (who at the expiration of the time period was not even married to the decedent), nor the rights of the second wife that may have been affected in a subsequent suit made possible by the recognition of the adopted child's status.

44. *William Danzer & Co. v. Gulf & Ship Island R.R. Co.*, 268 U.S. 633 (1925); *Davis v. Mills*, 194 U.S. 450 (1903).

45. 268 U.S. 633 (1924).

Supreme Court held that the lapse of time not only barred the remedy but destroyed the liability of the defendant to the plaintiff.<sup>46</sup> The question certified by the Second Circuit Court of Appeals to the United States Supreme Court in *Davis v. Mills*<sup>47</sup> was whether the defendant in an action created by Montana law could raise the defense of the time limitation prescribed for the action when the action is brought in the court of another state. The Supreme Court answered the inquiry affirmatively.<sup>48</sup> The rationale was that the time period was identified specifically with the right, and therefore became a part of the substantive right wherever applied.

Explaining the two cases of *Danzer* and *Davis*, the Supreme Court in *Chase Securities Corp. v. Donaldson*<sup>49</sup> opined, "where the statute in creating the liability also put a period to its existence, a retroactive extension of the period after its expiration amounted to a taking of property without due process."<sup>50</sup> The Supreme Court made specific reference to *Danzer* and *Davis* and in endorsing the rationale stated: "The abstract logic of a distinction between substantive rights and remedial or procedural rights may not be clear cut but it has been found to be a workable concept to point up the real and valid differences between rules in which the *stability* is of prime importance and those where flexibility is a more important value."<sup>51</sup>

The possibility of distinguishing *Danzer* and *Davis* does exist. Arguably, the heirs who on July 24, 1981, were secure from inheritance claims of unacknowledged illegitimates, were not *liable* to the plaintiffs, in all cases, such that their *liability* was also destroyed. Their eventual right to inherit all the property of the deceased is affected, since prior to extinction of the right to establish filiation the illegitimate upon adequate proof would be en-

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46. *Id.* at 637:

[*Campbell v. Holt*, 115 U.S. 620 (1885)] belonged to the class where statutory provisions fixing the time within which suits must be brought to enforce an existing cause of action are held to apply to the remedy only. But such provisions [time periods] sometimes constitute a part of the definition of the cause of action created by the same or another provision, and operate as limitation upon liability . . . . This case belongs to the latter class. Section 206(f) will not be construed retroactively to create liability. To give it that effect would be to deprive defendant of its property without due process of law in contravention of the Fifth Amendment.

47. 194 U.S. 451 (1904).

48. *Id.* at 457.

49. 325 U.S. 304 (1945).

50. *Id.* at 315 n.8.

51. *Id.* at 314 (emphasis added).

titled to claim a portion, if not all,<sup>52</sup> of the deceased's property. On the other hand, if the heirs have been sent into possession of the succession property and have disposed of it, with or without an administration, they may be *liable* to the illegitimate who has established his filiation.<sup>53</sup> The heirs probably must account to the illegitimate child for his proportionate share of the deceased's property or its value.

Another qualification of the "abstract logic" which would protect the defendant's "vested" right to raise the preemptive period of Act 549 as a defense is referred to in the *Chase Securities Corporation* case—that is, a hardship situation. Whether the plight of an illegitimate, who failed to file a timely suit to establish filiation, will be considered a hardship case is difficult to answer. On one hand, how the title to property devolves at death is an area of the law in which "stability is of prime importance."<sup>54</sup> Yet, on the other hand, the illegitimate child affected by section 4 of Act 549<sup>55</sup> did not have the possibility of inheriting as a legitimate child until September 3, 1980.<sup>56</sup> The illegitimate child, thereafter, had less than one year within which to file the action to establish filiation and, if successful, the possibility of inheriting property of the deceased parent. Of course, the purpose of the legislature in enacting Act 549, and in particular section 4, was to avoid subjecting the other heirs to the possibility of such suits indefinitely in the interest of stability of land titles.

The legal dilemma created by section 2 of Act 720 is an interesting one, not capable of simple resolution. But, with the exception of section 2, Act 720 represents a much needed reconsideration of important Civil Code articles. The provisions of Act 720, in comparison to its predecessor, are more consistent with the Civil Code structure regarding proof of the parent-child relationship and less suggestive of litigation involving statutory interpretation.

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52. LA. CIV. CODE art. 919, as interpreted in *Succession of Brown*, 388 So. 2d 1151 (La. 1980).

53. See LA. CIV. CODE art. 1381; LA. R.S. 9:5630 added by 1981 La. Acts, No. 721, § 1.

54. 325 U.S. 304, 314 (1945). See text at note 51, *supra*.

55. LA. CIV. CODE art. 919. For a discussion of the retroactivity of *Succession of Brown*, see *Succession of Ross*, 397 So. 2d 830 (La. App. 4th Cir. 1981), and Note, *The Problematic Application of Succession of Brown*, 41 LA. L. REV. 1314 (1981).

56. September 3, 1980, was the date the decision in *Succession of Brown* was rendered.