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Successions

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Illegitimates' Rights

Just as litigation and legislation concerning illegitimates' rights in Louisiana has subsided and stabilized, the United States Supreme Court rendered a decision on June 10, 1986, which will have impact on the constitutional right of an illegitimate to inherit from a parent dying before January 1, 1975. Any stability in successions law achieved by *Succession of Clivens*[1] has been undermined by the United States Supreme Court's opinion in *Reed v. Campbell*.[2]

In *Succession of Clivens*, the Louisiana Supreme Court on original hearing "held that *Succession of Brown* would be applied retroactively as to co-heirs in intestate successions, and prospectively from the date of its rendition, September 3, 1980, in testate successions and as to third parties."[3] In *Succession of Brown*,[4] the Louisiana Supreme Court had "held that La. C.C. art. 919 was unconstitutional in that it unreasonably discriminated against illegitimate children by denying them the same inheritance rights in the successions of their fathers, under any circumstances, as was enjoyed by their legitimate counterparts."[5] In declaring former article 919 unconstitutional in *Brown*, the court relied upon "the United States Supreme Court case of *Trimble v. Gordon* . . . *and* Article I, Section 3 of the Louisiana Constitution of 1974."[6] The question of whether *Brown* was to apply retroactively was raised in *Clivens* in the context of the succession proceedings of the widow of the deceased father of an acknowledged illegitimate child. The father had died on September 24, 1971. The widow had been placed in pos-

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1. 426 So. 2d 585 (La. 1982)(on rehearing).
2. 106 S. Ct. 2234 (1986).
3. 426 So. 2d at 593.
4. 388 So. 2d 1151 (La. 1980).
5. Succession of Clivens, 426 So. 2d at 594.
6. Id. (citation omitted) (emphasis by the court).

La. Const. art. I, § 3 (effective Jan. 1, 1975): "No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth . . . ."

session of his property after his death,[7] and subsequently died. The illegitimate child intervened in the widow's succession proceedings. On rehearing, the Louisiana Supreme Court concluded that "*Succession of Brown*'s declaration of unconstitutionality of La. C.C. art. 919 is retroactive to January 1, 1975, the effective date of the 1974 Louisiana Constitution."[8]

Although relying upon the Louisiana Constitution in fixing the date of the applicability of *Succession of Brown*,[9] the Louisiana Supreme Court recognized that, "even were we not to find the date of the 1974 Louisiana Constitution controlling, a retroactive application of *Brown* back to the date *Trimble v. Gordon* [April 26, 1977] was rendered, would be necessary."[10] The court apparently accepted the view that the *Trimble* case need not be applied retroactively.[11] Furthermore, the court in its reasons for granting a rehearing mentioned the argument that "unlimited retroactive application of *Brown* as against co-heirs in intestate successions would work a substantial injustice, especially in cases from years past where the heir has either already disposed of his inheritance or relied on his ownership of the property to his detriment."[12]

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7. La. Code Civ. P. art. 3062:

> The judgment of possession rendered in a succession proceeding shall be prima facie evidence of the relationship to the deceased of the parties recognized therein, as heir, legatee, surviving spouse in community, or usufructuary, as the case may be, and of their right to the possession of the estate of the deceased.

8. 426 So. 2d at 600.

9. 388 So. 2d 1151 (La. 1980).

10. 426 So. 2d at 600.

11. Id.:

> [N]o other state of which we are aware, has applied *Trimble v. Gordon*, in a succession case, from a point later than *Trimble's* rendition date. Ford v. King, 268 Ark. 128, 594 S.W.2d 227 (1980); Stewart v. Smith, 269 Ark. 363, 601 S.W.2d 837 (1980); Frakes v. Hunt, 266 Ark. 171, 583 S.W.2d 497 (1979); In re Rudder's Estate, 78 Ill. App. 3d 517, 34 Ill. Dec. 100, 397 N.E.2d 556 (1979); Pendleton v. Pendleton, 560 S.W.2d 538 (Ky. 1977); Murray v. Murray, 564 S.W.2d 5 (Ky. 1978); Matter of Sharp's Estate, 151 N.J.Super. 579, 377 A.2d 730 (1977); Allen v. Harvey, 568 S.W.2d 829 (Tenn. 1978); Winn v. Lackey, 618 S.W.2d 910 (Tex. Civ. App. 1981).

See also Justice Dennis' discussion of the retroactivity of *Trimble v. Gordon* in his dissenting opinion on original hearing in *Clivens*: "All other state supreme courts which have considered the issue have applied *Trimble* prospectively, although some have given it limited retroactivity to actions pending at the time the state case or *Trimble* was decided." 426 So. 2d at 592.

12. 426 So. 2d at 593. See also the discussion in the majority opinion on original hearing, which expressed different concerns from those of the opinion on rehearing:

> *Brown* overruled a Civil Code article upon which individuals had relied for generations. Legitimate children have been placed into possession of estates, sold, mortgaged and, in some cases, dissipated them. Substantial uncertainty and confusion would result if those who have relied to their detriment on prior

Four years after the Louisiana Supreme Court's decision in *Clivens*, the United States Supreme Court in *Reed v. Campbell*[13] reversed and remanded a decision of the Texas Court of Appeals which "held that §42 of the Texas Probate Code nevertheless prevented appellant from sharing in her father's estate because *Trimble* does not apply retroactively."[14] The appellant was the child of the decedent born subsequent to an absolutely null marriage of the decedent and the appellant's mother.[15] Five legitimate children of the decedent had survived and inherited his estate to the exclusion of the appellant. The decedent had died four months before the decision of the United States Supreme Court in *Trimble v. Gordon*,[16] and one of his legitimate children had been appointed administratrix of his estate. The succession was still open in 1978 when the "appellant formally notified the administratrix and the Probate Court of her claim to a one-sixth share of the estate."[17]

Rejecting the issue as one of retroactivity, the Court concluded "that a State may not justify discriminatory treatment of illegitimates in order to express its disapproval of their parents' misconduct."[18] The Court expressly recognized that a state may permissibly distinguish illegitimate children from legitimate children if the legislative provisions substantially relate to "the State's interest in providing for the orderly and just distribution of a decedent's property at death."[19] For example, the Court

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law became subject to the claims of illegitimate heirs. However, with intestate successions, the element of detrimental reliance is generally present only as to third parties. *Brown* mandates vast changes in estate and property ownership. The importance of stability in land titles and the reliance on the former law in property transactions favor prospective application.

Id. at 587.

13. 106 S. Ct. 2234 (1986).

14. 106 S. Ct. at 2236.

15. Id.:

In November 1957, Prince Ricker and appellant's mother participated in a ceremonial marriage, but it was invalid because Ricker's divorce from his first wife was not final. Appellant was born a year later. . . .

. . . [A] jury found that Ricker was her father but that he was never validly married to her mother; and the trial court denied her claim.

16. 430 U.S. 762, 97 S. Ct. 1459 (1977).

17. 106 S. Ct. at 2236.

18. 106 S. Ct. at 2237.

19. Id. The Court cites as authority its decision in Lalli v. Lalli, 439 U.S. 259, 99 S. Ct. 518 (1978). See footnote 7 in *Reed*, 106 S. Ct. at 2237:

Although the dissenters did not believe the state interest was sufficient to support the particular statute before the Court in that case, they agreed with the basic proposition that this state interest may justify some differential treatment—"New York might require illegitimates to prove paternity by an elevated standard of proof," *id.* at 279, 99 S. Ct., at 530 (BRENNAN, J., dissenting).

See discussion concerning Louisiana's filiation statute in text accompanying infra notes 28-39.

by citation and explicit language suggested that statutory provisions which regulate proof of filiation[20] are permissible.[21] The Court continued by observing: "After an estate has been *finally distributed*, the interest in finality may provide an additional, valid justification for barring the belated assertion of claims, even though they may be meritorious and even though mistakes of law or fact may have occurred during the probate process."[22] Applying that conclusion about a state's interest in legislation barring an illegitimate's claim, the court determined that, "[i]n this case, then, neither the date of his death [before April 26, 1977, date of *Trimble v. Gordon*] nor the date the claim was filed [after April 26, 1977] had any impact on the relevant state interest in orderly administration . . . ."[23]

The decision in *Reed* does affect the holding of the Louisiana Supreme Court in *Clivens*. That the decedent's date of death was prior to or after January 1, 1975, is no longer determinative of the issue of the right of an illegitimate child to inherit from his parent. The significance of this observation and the impact of the *Reed* case on Louisiana law can only be assessed by a consideration of the following: the application and the constitutionality of Louisiana's filiation statute;[24] the identification of illegitimate children whose proof of filiation is not governed by the filiation statute; the application of the liberative prescription statute where there is an onerous transfer to a third party;[25] the application of the thirty-year prescriptive period to an acceptance of the succession by the illegitimate child and his concomitant right to recover from the other heirs;[26] and the effect of a judgment of possession.[27]

Louisiana jurisprudence[28] and other United States Supreme Court decisions[29] have rejected assertions that Louisiana's filiation statute or

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20. See text accompanying infra notes 28-39.

21. 106 S. Ct. at 2237:

> The state interest in the orderly disposition of decedents' estates may justify the imposition of special requirements upon an illegitimate child who asserts a right to inherit from her father, and, of course, it justifies the enforcement of generally applicable limitations on the time and the manner in which claims may be asserted.

22. Id. (emphasis added).

23. Id. The Court also concluded: "The state interest in the orderly administration of Prince Ricker's estate would have been served equally well regardless of how the merits of the claim were resolved." 106 S. Ct. at 2238.

24. La. Civ. Code art. 209.

25. La. R.S. 9:5630 (1983 & Supp. 1986).

26. La. Civ. Code arts. 1030, 1381.

27. La. Code Civ. P. art. 3062.

28. See, e.g., Succession of Grice, 462 So. 2d 131 (La. 1985).

29. Pickett v. Brown, 462 U.S. 1, 103 S. Ct. 2199 (1983); Mills v. Habluetzel, 456

similar legislation of other states is unconstitutional. Furthermore, in the *Reed* opinion, as already mentioned,[30] the Court recognized that it has "upheld statutory provisions that have an evident and substantial relation to the State's interest in providing for the orderly and just distribution of a decedent's property at death."[31] As authority for this a statement, the Court cited *Lalli v. Lalli*,[32] which upheld New York's proof of filiation statute because it was directly related to the identifiable state interest in orderly devolution of property at death. If Louisiana's filiation statute is constitutional, the peremption period,[33] as well as the expiration of the grace period within which to file suit afforded certain illegitimate children[34] may prevent serious disruption of successions where the decedent died before January 1, 1975. Illegitimate children, excluded by the peremptive statute or the expiration of the grace period, could not establish their relationship to the decedent.[35] Nevertheless, the filiation statute only applies to some illegitimate children; it does not apply to illegitimate children who have been formally acknowledged[36] or

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U.S. 91, 102 S. Ct. 1549 (1982). See Spaht, Developments in the Law, 1979-1980—Persons, 41 La. L. Rev. 372, 382 (1981): "Yet, even in the United States Supreme Court decisions, the interest the state has in the quality of proof necessary to establish filiation has been recognized as important, particularly in view of the problems of stability of land titles and stale or spurious claims." (footnote omitted). See also id. n.57, quoting from Trimble v. Gordon, 430 U.S. 762, 770, 97 S. Ct. 1459, 1465 (1977), and Lalli v. Lalli, 439 U.S. 259, 271, 99 S. Ct. 518, 526 (1978).

30. See text at supra notes 19-20.

31. 106 S. Ct. at 2237.

32. 439 U.S. 259, 99 S. Ct. 518 (1978).

33. La. Civ. Code art. 209 C:

> 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. This time limitation shall run against all persons, including minors and interdicts. If the proceeding is not timely instituted, the child may not thereafter establish his filiation, except for the sole purpose of establishing the right to recover damages under Article 2315. A proceeding for that purpose may be brought within one year of the death of the alleged parent and may be cumulated with the action to recover damages.

34. 1980 La. Acts No. 549, § 4; 1981 La. Acts No. 720, § 2; both Acts are discussed in Spaht, Developments in the Law, 1981-1982—Persons, 42 La. L. Rev. 403 (1982).

35. The assumption is that the decedent is the parent of the illegitimate child. If the decedent is a relative other than the parent, the issue is whether the same proof of filiation is required. If, for example, the decedent is a sibling, must the brother or sister establish filiation to the common ancestor by some proof required to establish filiation to the parent? To prove filiation between the common ancestor and the deceased sibling, presumably the brother or sister could utilize La. Civ. Code art. 891, which defines a parent as "one who is legitimately filiated to the deceased or who is filiated by legitimation or by acknowledgement under Article 203 or by judgment under Article 209 or *who has openly and notoriously treated the child as his own and has not refused to support him.*" (emphasis added).

36. La. Civ. Code art. 203.

legitimated[37] by the parent.[38] The impact of the *Reed* decision, therefore, primarily concerns formally acknowledged children. Illegitimate children who were legitimated by their parents had the same inheritance rights as legitimate children even before January 1, 1975.[39]

If the illegitimate child can establish filiation by formal acknowledgement, he still must overcome other state statutory hurdles, just as a legitimate child must, in order to claim an interest in the succession of his parent who died before January 1, 1975. Under Civil Code article 1381, the heir "whose right was not known" may recover from the other heirs his interest in "the property remaining in kind, and of the value of whatever has been consumed or alienated. . . ."[40] The heir must, however, accept the succession within thirty years of the death of the decedent, for "[t]he faculty of accepting . . . a succession becomes barred by the lapse of time required for the longest prescription of the rights to immovables."[41] The right of the illegitimate child to assert an interest in immovable property of the deceased that has been alienated by *onerous* title prescribes in two years from the finality of the judgment of possession.[42] Interestingly enough, a sentence in *Reed v. Campbell*

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37. La. Civ. Code arts. 198, 200.

38. La. Civ. Code art. 209 A:

> 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 as to an alleged living parent 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.

(emphasis added). The article also does not apply to an illegitimate child who is presumed to be the child of the husband of the mother under La. Civ. Code art. 184, if the child seeks to establish filiation to a father other than his mother's husband. See Griffin v. Succession of Branch, 479 So. 2d 324 (La. 1985).

39. La. Civ. Code art. 199. See also Davenport v. Davenport, 116 La. 1009, 41 So. 240 (1906), which reaches the same conclusion about children legitimated by authentic act under La. Civ. Code art. 200.

40. La. Civ. Code art. 1381:

> If, after the partition an heir appears, whose death has been presumed on account of his long absence, or whose right was not known, as if a second testament unknown, until then, should entitle him to inherit with the others, the first partition must be annulled, and another must be made of all the property remaining in kind, and of the value of whatever has been consumed or alienated, in order that he may have the share of the whole to which he is entitled.

41. La. Civ. Code art. 1030. See also Kinney v. Waddell, 171 So. 2d 782 (La. App. 3d Cir. 1965); Lee v. Jones, 224 La. 231, 69 So. 2d 26 (1953); Sun Oil Co. v. Tarver, 219 La. 103, 52 So. 2d 437 (1951).

42. La. R.S. 9:5630 A (1983 & Supp. 1986):

> An action by a person who is a successor of a deceased person, and who has not been recognized as such in the judgment of possession rendered by a court of competent jurisdiction, to assert an interest in an immovable formerly owned

suggests that the judgment of possession, if it is a final distribution of property, may justify denying the acknowledged illegitimate the right to inherit. If the judgment of possession justifies denying the acknowledged child a right to inherit, the period of liberative prescription designed to protect third party transferees need not be invoked. The prescriptive period only applies if there is a judgment of possession.

The following language in the *Reed* decision suggests that the rendition of the judgment of possession may justify denying an acknowledged child the right to inherit from a parent dying before January 1, 1975: "After an estate has been *finally distributed*, the interest in finality may provide an additional, valid justification for barring the belated assertion of claims, even though they may be meritorious and even though mistakes or law or fact may have occurred during the probate process."[43] Nevertheless, the judgment of possession is only "prima facie evidence" of the relationship of the deceased to the parties recognized as heirs and legatees "and of their right to the possession of the estate of the deceased."[44] The jurisprudence[45] and the legislation[46] recognize that the judgment of possession is not conclusive. Under Code of Civil

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by the deceased, against a third person who has acquired an interest in the immovable by onerous title from a person recognized as an heir or legatee of the deceased in the judgment of possession, or his successors, is prescribed in two years from the date of the finality of the judgment of possession.

43. 106 S. Ct. at 2237 (emphasis added).

44. La. Code Civ. P. art. 3062.

45. In Quiett v. Estate of Moore, 378 So. 2d 362, 367 (La. 1979), on rehearing, the court explained:

> A judgment of possession is prima facie evidence of the right of the heirs in whose favor it was rendered to take possession of decedent's estate; however, it is not a basis for a plea of res judicata or conclusive evidence against persons having an adverse interest in or claim against the estate, such as *heirs* or creditors of the estate. *Taylor v. Williams*, 162 La. 92, 110 So. 100 (1926).

(emphasis added).

See also Jackson v. D'Aubin, 338 So. 2d 575 (La. 1976) (on rehearing); Succession of Feist, 274 So. 2d 806 (La. App. 4th Cir.), aff'd in part, rev'd in part, 287 So. 2d 514 (La. 1973).

46. La. Civ. Code art. 1381; La. R.S. 9:5630 (1983 & Supp. 1986). In discussing the reasons for the predecessor to La. R.S. 9:5630, which was La. R.S. 9:5682, enacted in 1962, the Louisiana Supreme Court in Jackson v. D'Aubin, 338 So. 2d 575, 581 (La. 1976), explained:

> While, as we stated previously, a judgment of possession is only prima facie evidence of the relationship of the deceased to the recognized heirs or legatees, the legislature has endeavored to give a measure of protection to third persons who acquire property from or through a recognized . . . heir or legatee. . . . [T]he legislature, in enacting this statute, was attempting to balance the opposing interests involved: protection of inheritance rights, especially against possible fraud or abuse of succession procedure; and stabilization of titles, through affording greater prescriptive benefits where third persons rely upon succession judgments.

Procedure article 3393, a succession may be reopened "if other property of the succession is discovered or for any other proper cause . . . ."[47] Yet, in recent years the legislature has attempted to protect *third parties* who have relied upon the judgment of possession.[48] Because it is a *judicial* event recognizing what has occurred by operation of law,[49] and because it was a probate proceeding in which the illegitimate daughter in *Reed* filed her claim,[50] it is reasonable to argue that the judgment of possession in Louisiana is the nearest equivalent to a "final adjudication" of succession property mentioned by the Court in *Reed*. It will be difficult, however, to argue the strength of Louisiana's interest in the *final* adjudication of property in a succession if *legitimate* children are not precluded from reopening the succession of a long-dead parent.

Prophetically, Judge Redmann of the Louisiana Fourth Circuit Court of Appeal, in a dissenting opinion in 1983, expressed the view that the decision of the Louisiana Supreme Court in *Succession of Clivens*[51] could not be reconciled with *Trimble v. Gordon*.[52] Arguing that the date of death of the decedent should not determine inheritance rights, Judge Redmann observed:

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47. La. Code Civ. P. art. 3393 A. According to the jurisprudence, the purpose of this article was primarily to deal with overlooked succession property. Molero v. Boss, 190 So. 2d 141 (La. App. 4th Cir. 1966), cert. denied, 250 La. 2, 193 So. 2d 523 (1967). Reopening the succession is discretionary, not mandatory, under the language of the code article. Succession of Mohana, 351 So. 2d 1287 (La. App. 1st Cir. 1977), cert. denied, 354 So. 2d 200 (La. 1978); Succession of Yancovich, 289 So. 2d 855 (La. App. 4th Cir. 1974); Danos v. Waterford Oil Co., 225 So. 2d 708 (La. App. 1st Cir.), cert. denied, 254 La. 856, 227 So. 2d 595 (1969). For examples of what is or is not "proper cause" for reopening the succession, see Succession of Lasseigne, 488 So. 2d 1303 (La. App. 3d Cir. 1986); Succession of Riggio, 395 So. 2d 361 (La. App. 1st Cir.), vacated on other grounds and remanded, 405 So. 2d 513 (La. 1981), cert. denied, 472 So. 2d 33 (La. 1985); Succession of McLendon, 383 So. 2d 55 (La. App. 2d Cir. 1980); Flanner v. Succession of Flanner, 338 So. 2d 355 (La. App. 3d Cir. 1976), cert. denied, 340 So. 2d 999 (La. 1977); Succession of Yancovich, 289 So. 2d 855 (La. App. 4th Cir. 1974); Succession of Trouard, 281 So. 2d 863 (La. App. 3d Cir. 1973).

48. See, e.g., La. R.S. 9:5630 (1983 & Supp. 1986), supra note 42; and La. Code Civ. P. art. 3393 C:

> The reopening of a succession shall in no way adversely affect or cause loss to any bank, savings and loan association or other person, firm or corporation, who has in good faith acted in accordance with any order or judgment of a court of competent jurisdiction in any previous succession proceedings.

49. La. Civ. Code arts. 934, 940.

50. 106 S. Ct. at 2236:

> The estate was still open in February 1978, when appellant formally notified the administratrix and the Probate Court of her claim to a one-sixth share of the estate. In due course, she filed a formal complaint; a jury found that Ricker was her father but that he was never validly married to her mother; and the trial court denied her claim.

51. 426 So. 2d 585 (La. 1983).

52. 430 U.S. 762, 97 S. Ct. 1459 (1977).

> The correct conclusion is that the right of an illegitimate to inherit does not derive from the Louisiana supreme court's opinion in *Succession of Brown* but from the Equal Protection Clause, U.S. Const. Amend. 14. La.C.C. 919 violated that Clause in 1974 as much as did the Illinois act that *Trimble* invalidated. La. C.C. 919 also violated the Equal Protection Clause on December 31, 1973, when Albert Toca, Jr. died.[53]

He was right.

Acceptance with Benefit of Inventory

The title of Act 602 of 1986 describes it as "relative to the administration of successions; to provide that a successor accepts a succession under benefit of inventory."[54] In fact, nothing in Act 602 explicitly concerns the administration of successions,[55] and the Act did not amend the relevant Code of Civil Procedure articles.[56] The title, however, does suggest that the author of the legislation understood that the substance of the Act would affect the administration of successions. To what extent the acceptance under Act 602 affects the administration of successions is uncertain. It may be that all successions must now be admin-

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53. Succession of Toca, 433 So. 2d 1122, 1123 (La. App. 4th Cir. 1983)(Redmann, C.J., dissenting).

54. "To enact R.S. 9:1421, relative to the administration of successions; to provide that a successor accepts a succession under benefit of inventory; to provide for the liability of the successor in such case; and to provide for related matters." 1986 La. Acts No. 602.

55. La. R.S. 9:1421 (as added by 1986 La. Acts No. 602, § 1):

> Notwithstanding any provision in the law to the contrary, including but not limited to Civil Code Articles 976 through 1013 and Civil Code Articles 1415 through 1466, every successor is presumed and is deemed to have accepted a succession under benefit of inventory even though the acceptance is unconditional, and where an inventory or descriptive list has been executed. In such case, every heir or legatee, whether particular or under universal title, shall not in any manner become personally liable for any debt or obligation of the decedent or his estate, except to the extent and value or amount of his inheritance; however, any such heir or legatee may, in the petition for possession or by a separate instrument in writing, personally obligate himself for any or all such debts or obligations.

La. Const. art. 3, § 15, which requires that "[e]very bill . . . contain a brief title indicative of its object," assures notice of the scope of the proposed legislation but does not require complete accuracy in description. See, e.g., Lafayette Parish School Bd. v. Market Leasing Co., 440 So. 2d 81 (La. 1983); Bazley v. Tortorich, 397 So. 2d 475 (La. 1981); Anzelmo v. Louisiana Comm'n on Ethics for Public Employees, 435 So. 2d 1082 (La. App. 1st Cir.), cert. denied, 441 So. 2d 1220 (La. 1983); Wiley v. Missouri Pacific R.R. Co., 430 So. 2d 1016 (La. App. 3d Cir. 1982), cert. denied, 431 So. 2d 1055 (La. 1983).

56. La. Code Civ. P. arts. 3081-3395.

istered, or it may be that the "private" administration of successions is authorized. What is less ambiguous is that an unconditional acceptance, which imposes personal liability upon the heir,[57] no longer exists if an inventory or descriptive list is made.

Unfortunately, the legislation, which may radically affect the law of successions, does not appear in the Civil Code. Act 602 adds a section to the Revised Statutes, but begins by providing: "Notwithstanding any provision in the law to the contrary, including but not limited to Civil Code Articles 976 through 1013 [acceptance of successions] and Civil Code Articles 1415 through 1466 [payment of the debts of a succession] . . . ."[58] The introductory clause of Louisiana Revised Statutes (La. R.S.) 9:1421 would affect the Code of Civil Procedure, too, even though it is not expressly mentioned. Thus, the provisions of the Civil Code and the Code of Civil Procedure, in relative harmony on the effects of an unconditional acceptance and acceptance with benefit of inventory requiring an administration, have been amended by a provision of the Civil Code Ancillaries.

A more fundamental change accomplished by Act 602 is the modification of the legal philosophy represented historically by the French phrase "le mort saisit le vif." Simplistically, this French legal principle substitutes the heir for the deceased;[59] therefore, an unconditional or simple acceptance is logically consistent. As a result of the adoption of the legal principle of "le mort saisit le vif," the statutory scheme rejects the principle that a succession is a legal entity with its own patrimony which ceases to exist upon a judgment of possession. The most recent rejection of the succession as a legal entity came with the revision of the law of intestate succession in 1981.[60] By practically eliminating the unconditional acceptance, Act 602 has done some damage to the consistency of a legal principle underlying the law of successions.

An examination of the legislation reveals internal inconsistencies. For example, after the introductory phrase, the section added by Act 602 provides that "every successor is presumed and is deemed . . . ." "Is deemed" is a matter of law, thus conclusive; whereas, "is presumed"

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57. La. Civ. Code arts. 1013, 1420, 1423, 1426-1428.

58. La. R.S. 9:1421 (as added by 1986 La. Acts No. 602, § 1).

59. See, e.g., La. Civ. Code arts. 940-946, 1608-1610; La. Code Civ. P. arts. 426, 428.

60. La. Civ. Code art. 872 (as amended by 1981 La. Acts No. 919, § 1), comment: "It permits reference to the 'estate' of the deceased as defined, but grants no separate legal existence to such an entity."

See also Lazarus, The Work of the Louisiana Appellate Courts for the 1971-1972 Term—Successions and Donations, 33 La. L. Rev. 199 (1973); 3 Marcade, Explication du Code Civil No. 47 at 33 (7th ed. 1873); 9 Aubry et Rau, Droit Civil Francais § 609 at 466 (1953).

ordinarily means a simple presumption capable of being rebutted. As the greater includes the lesser, the section provides that as a matter of law every successor[61] accepts a succession under benefit of inventory "even though the acceptance is unconditional."[62] The conversion of an unconditional acceptance into an acceptance with benefit of inventory is radical. The section continues, however, by modifying the legal conclusion: "and where an inventory or descriptive list has been executed." The conversion achieved by the new section is thus dependent upon the execution of an inventory or descriptive list; but there is no requirement that the execution occur before the unconditional acceptance or that the execution be by the heir who has unconditionally accepted. If "and where" means "if," the stronger argument is that the inventory or descriptive list must be executed before the unconditional acceptance for the heir to enjoy the benefits of limited liability.[63] Because an inventory or descriptive list must be executed before the unconditional acceptance of the heir, the impact of the new section will *ordinarily* be confined to express acceptances,[64] as distinguished from tacit acceptances.[65] No

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61. La. Civ. Code art. 876: "There are two kinds of successors . . . : Testate successors, also called legatees. Intestate successors, also called heirs."

La. R.S. 9:1421 (as added by 1986 La. Acts No. 602, § 1) adds confusion by the following sentence: "In such case, every heir or legatee, whether particular or under universal title . . . ." The legatee conspicuously absent from what should be interpreted as a merely *illustrative* reference, is the universal legatee. "A universal legacy is a testamentary disposition, by which the testator gives to one or several persons the whole of the property which he leaves at his decease." La. Civ. Code art. 1606.

62. See text of La. R.S. 9:1421 at supra note 55.

63. La. Civ. Code art. 1032:

> The benefit of inventory is the privilege, which the heir obtains, of being liable for the charges and debts of the succession only to the value of the effects of the succession, by causing an inventory of these effects to be made within the time and in the manner hereinafter prescribed.

See also La. Civ. Code art. 1054.

64. La. Civ. Code art. 988: "The simple acceptance may be either express or tacit. It is express, when the heir assumes the quality of heir in an unqualified manner, in some authentic or private instrument, or in some judicial proceeding."

La. Civ. Code art. 989:

> By the word instrument used in the preceding article, is understood any writing made with the intention of obliging himself or contracting as heir, and not a simple letter or note in which the person who is called to the succession may have styled himself the heir. Still less is a verbal declaration binding on him.

65. La. Civ. Code art. 988: "It is tacit, when some act is done by the heir, which necessarily supposes his intention to accept, and which he would have no right to do but in his quality of heir."

La. Civ. Code art. 990: "It is necessary that the intention should be united to the fact, or rather manifested by the fact, in order that the acceptance be inferred."

See also La. Civ. Code arts. 993-1003. Because any heir may execute the inventory or descriptive list which is a prerequisite to the application of La. R.S. 9:1421 (as added by 1986 La. Acts No. 604, § 1), there may be instances where the tacit acceptance of one heir follows the execution of the inventory or list by another heir.

language in the provision requires that the inventory or descriptive list be executed by the heir who unconditionally accepts. Any heir, therefore, who executes an inventory or descriptive list, affords his coheirs with the benefit of limited liability, if the coheirs thereafter accept unconditionally. It must be remembered that nothing in Act 602 prohibits an heir from accepting with benefit of inventory, to the extent that the result is different from that which occurs under the new legislation when an inventory or descriptive list has been executed.[66]

Despite the legal conclusion afforded by the new legislation, it does provide that "any such heir or legatee may, in the petition for possession or by a separate instrument in writing, personally obligate himself for any or all of such debts or obligations."[67] This clause recognizes that the legal effect of an unconditional acceptance has been reversed, but that the heir has the option to assume personal responsibility *expressly* for the debts of the deceased. The clause introduces the novel idea that the heir may be selective in assuming personal liability for the deceased's debts by virtue of the language "any or all of such debts." The assumption by the heir may be by "separate instrument in writing," which is roughly the equivalent of an express acceptance,[68] or "in the petition for possession." It is the reference to the latter as a method for assuming personal liability, combined with the reference in the title to administration of successions, that creates confusion.

An acceptance with benefit of inventory meant not only limited liability under the Civil Code,[69] but also the administration of the succession under the Code of Civil Procedure.[70] Because the new section changes the effect of unconditional acceptances with specific reference to the Civil Code, it can be argued persuasively that the authors of the legislation intended it to complement the present procedural scheme. The reference to unconditional acceptances appears in the Code of Civil Procedure articles which permit the rendition of a judgment of possession

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66. An ordinary acceptance with benefit of inventory should result in an administration of the succession, see generally La. Code Civ. P. arts. 3081-3395, while an unconditional acceptance under La. R.S. 9:1421 (as added by 1986 La. Acts No. 602, § 1) should not. See text at infra note 69.

67. La. R.S. 9:1421 (as added by 1986 La. Acts No. 602, § 1). See text of La. R.S. 9:1421 at supra note 55.

68. La. Civ. Code art. 989. See supra note 64.

69. See supra note 63.

70. La. Code Civ. P. arts. 3131-37.

Even though there must be a descriptive list filed in every succession proceeding (La. Code Civ. P. art. 2952, comment (b)), there must be an administration of the succession without proof that the heirs are entitled to simple possession of an estate under La. Code Civ. P. arts. 3001 (see infra note 71), 3004, or 3031.

without an administration of the succession.[71] For example, under article 3001, the heirs of an intestate shall be sent into possession of the deceased's property "without an administration of the succession, on their ex parte petition, when all of their heirs are competent and accept the succession unconditionally, and the succession is relatively free of debt."[72] As long as an heir has executed an inventory or descriptive list, the unconditional acceptance in the petition for possession has the effect of limiting an heir's liability to his interest in succession property.[73] Thus, one may conclude that the legislature, by use of the term "acceptance with benefit of inventory" meant *only* limited liability, not a necessary administration of the succession. The petition for possession may contain, however, the personal assumption of liability; therefore, prudence may dictate adding the following language in the petition: "unconditionally accepts, in accordance with La. R.S. 9:1421, without assuming personal liability for any debts or obligations of the deceased." Such language eliminates any possibility that the unconditional acceptance in the petition constitutes an assumption of personal liability.

The 1986 legislation significantly increases the instances in which the heir assumes only limited liability and permits, for the first time, limited liability under the "possession without administration" procedure envisioned by Code of Civil Procedure article 3001. After the judgment of possession, since neither the inventory[74] nor the descriptive list[75] necessarily contains an enumeration of the debts of the deceased, the heir must retain evidence of his payment of the deceased's debts. If a creditor of the deceased sues the heir, either the creditor must prove that the heir has received value in excess of the decedent's obligations and to that extent is obligated to him, or the heir must produce evidence

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71. La. Code Civ. P. art. 3001:

The heirs of an intestate shall be recognized by the court, and sent into possession of his property without an administration of the succession, on their ex parte petition, when all of the heirs are competent and accept the succession unconditionally, and the succession is relatively free of debt. A succession shall be deemed relatively free of debt when its only debts are succession charges, mortgages not in arrears, and debts which are small in comparison with the assets of the succession.

The surviving spouse in community of an intestate shall be recognized by the court on ex parte petition as entitled to the possession of an undivided half of the community, and of the other undivided half to the extent that he has the usufruct thereof, without an administration of the succession, when the succession is relatively free of debt, as provided above. See also La. Code Civ. P. arts. 3031-35 (testate succession without administration).

72. La. Code Civ. P. art. 3001.

73. La. Civ. Code arts. 1032, 1054.

74. La. Code Civ. P. art. 3133.

75. La. Code Civ. P. art. 3136.

that the obligations of the deceased satisfied by him are equal to or exceed the value of the assets received by him. The burden of proving the elements of the heir's limited liability and the quality of that proof are only some of the problems presented when the orderly liquidation of the decedent's estate afforded by an administration is not used.

Act 602, which adds a new section to the Revised Statutes, demonstrates the difficulty of altering a delicately balanced statutory scheme without sufficient deliberation. Even if the results are desirable, a significant modification of a legislative scheme requires consideration of the impact of the change on all related provisions and the conceptual bases underlying the scheme. Otherwise, disorganization and confusion result, instead of the order and logic which our legislation should provide.