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## THE LAW OF DESCENT AND DISTRIBUTION IN LOUISIANA

*Leslie Moses\**

THE Civil Code of Louisiana,<sup>1</sup> which deals with the great body of family law, of property law, and of contract law, both general and special, is divided into three Books. Book I is entitled "OF PERSONS," Book II is entitled "OF THINGS, AND OF THE DIFFERENT MODIFICATIONS OF OWNERSHIP," and Book III is entitled "OF THE DIFFERENT MODES OF ACQUIRING THE OWNERSHIP OF THINGS." All these books are subdivided into Titles. The "Preliminary Title" to Book III states, "The ownership of things or property is acquired by inheritance either legal or testamentary, by the effect of obligations, and by operation of law,"<sup>2</sup> and Title I of the book is called "OF SUCCESSIONS."

"Succession" is defined as the transmission of the rights and obligations of the deceased to the heirs,<sup>3</sup> and, further, it signifies "the estates, rights and charges which a person leaves after his death."<sup>4</sup> Under the common law the comparable term for "succession" as firstly defined is "descent and distribution" and as secondly defined is "the estate left by a decedent."

Before any discussion can be had on the law of descent and distribution, reference should be made to the community property system of Louisiana, which system has always been in vogue in the state. Under this system practically all property acquired by either the husband or the wife during the existence of the marriage belong to the community of acquets and gains that exists between them. Couched in informal terms, marriage in Louisiana

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<sup>1</sup> LOUISIANA CIVIL CODE of 1870.

<sup>2</sup> LA. CIV. CODE (Dart, 1945) art. 870.

<sup>3</sup> *Id.*, art. 871.

<sup>4</sup> Art. 872.

is a partnership with the husband as managing partner with the right to sell, lease, mortgage and otherwise dispose of the community property without the joinder of the wife.<sup>5</sup> The death of either spouse, of necessity, dissolves the partnership and gives the surviving spouse the right to deal with his or her half as he or she sees fit. The community property system affects any dissertation on the law of descent and distribution in this manner: the interest of the wife in the community property is hers in her own right, she does not inherit it upon her husband's death, and it has always been hers; the husband's heirs inherit his half of the community only, and he can only make testamentary disposition of that half; if the wife dies, regardless of whether it is before or after the death of her husband, her heirs inherit her interest in the community property if she dies intestate, and she can make testamentary disposition of that half. The surviving spouse, however, enjoys a usufruct on the share in the community property of the deceased spouse until death or remarriage.<sup>6</sup>

The Civil Code defines three types of successions, testamentary, legal and irregular.<sup>7</sup> Testamentary, or testate, succession is that which results when the deceased has disposed of his property by last will and testament.<sup>8</sup> The other two types are intestate successions, arising where the deceased has left no will. Legal successions are those which the law has established in favor of the nearest of kin,<sup>9</sup> devolving first on the children, or their children, next on parents and brothers and sisters, and next on collateral kindred from the nearest to the remotest degree. Irregular successions are those which are established by law in favor of certain persons or of the State in default of legal heirs.<sup>10</sup> Heirs, too, are divided

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<sup>5</sup> Art. 2334.

<sup>6</sup> Art. 916.

<sup>7</sup> Art. 875.

<sup>8</sup> Art. 876.

<sup>9</sup> Art. 877.

<sup>10</sup> Art. 878.

into testamentary, or instituted, heirs; legal, or heirs of the blood; and irregular heirs.<sup>11</sup>

### TESTATE SUCCESSIONS

With certain restrictions in the Civil Code hereafter discussed, a deceased may leave his estate to whom he pleases by proper last will and testament. There are several kinds of wills provided for in the Code, all of which are legal when drawn in the manner provided in the Code. It must be borne in mind that certain formalities are necessary to the validity of the will, and care should be exercised in drafting them and in checking them. Wills are divided into nuncupative or open testaments, mystic or sealed testaments, and olographic testaments.<sup>12</sup> Testaments, whether nuncupative or mystic, must be drawn in writing either by the testator or by someone under his dictation.<sup>13</sup> The Civil Code does not recognize verbal testaments.<sup>14</sup>

Nuncupative wills are by public act when the will is dictated by the testator to a notary public in the presence of three witnesses residing in the parish where the will is executed, or five witnesses not residing in that parish.<sup>15</sup> The will must be received and written as dictated, then read back to the testator in the presence of the witnesses without turning aside to any other act, and express mention of this fact must be in the will.

Nuncupative wills under private act are those written by the testator, or dictated by him, in the presence of five witnesses residing in the parish where written or seven not so residing.<sup>16</sup> The testator may present the will to the witnesses and declare it is his will; then it must be read by the testator to the witnesses, or by one

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<sup>11</sup> Art. 879.

<sup>12</sup> Art. 1574.

<sup>13</sup> Art. 1575.

<sup>14</sup> Art. 1576.

<sup>15</sup> Art. 1578.

<sup>16</sup> Art. 1581.

witness to the others in the testator's presence, and thereafter signed by the testator and the witnesses.<sup>17</sup>

A mystic or secret will may be written by the testator or someone under his direction, signed and then enclosed in an envelope and sealed. The testator then presents it to a notary public and three witnesses and declares the envelope contains his last will and testament. The notary draws a superscription on the envelope reciting the facts, and it is then signed by the testator, the three witnesses and the notary.<sup>18</sup>

An olographic will is one entirely *dated, written and signed* by the testator in his own hand. No witnesses or other formalities are required.<sup>19</sup> It can be made anywhere, even out of the state.

Wills made in other states or countries valid in the state or country where made, are recognized as valid in Louisiana.<sup>20</sup> Wills can be revoked by an act of revocation made in the same manner as a will; usually it is done by incorporating the statement in a subsequent will.<sup>21</sup> It should be borne in mind that the birth of a child after the execution of a will automatically nullifies that will.<sup>22</sup>

Hand in hand with the form of will is the subject of the disposable portion of one's estate. This is a principle of law unknown in most states and is called in Louisiana the "legitime" or legitimate portion. In Louisiana a testator with what are called "forced heirs" is not entirely free to dispose of his estate. For instance, a parent with one child is restricted to a disposable portion of his estate of two-thirds thereof.<sup>23</sup> In other words, he cannot dispose of more than two-thirds of his estate, for the one child has a legitime, or what you may term a guaranteed portion of one-third of the estate. Any gift of more than the disposable portion is sub-

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<sup>17</sup> Art. 1582.

<sup>18</sup> Art. 1584.

<sup>19</sup> Art. 1588.

<sup>20</sup> Art. 1596.

<sup>21</sup> Art. 1690-3.

<sup>22</sup> Art. 1705.

<sup>23</sup> Art. 1493.

ject to be set aside later, or at least reduced to the disposable portion.<sup>24</sup> If there are two children, the disposable portion is one-half, and if there are three or more children, the disposable portion is one-third.<sup>25</sup> The rule as to forced heirship applies to descendants of whatever degree, but grandchildren are counted only for the child they represent. With respect to parents, if the testator leaves no descendants but a father and mother or either, at least one-third of the estate must go to them.<sup>26</sup>

These heirs are called "forced" heirs because a testator cannot, by last will and testament, deprive them of their legitime unless he has just cause to disinherit them.<sup>27</sup> The Civil Code dictates absolute equality among children of the deceased,<sup>28</sup> and if a gift is made one prior to testator's death, it is presumed that it is to be included in that child's portion of the estate when the testator dies,<sup>29</sup> which presumption is only overcome by an express statement in the will.<sup>30</sup> Adopted children have all of the rights in the succession of their adoptive parent as legitimate children, even to the exclusion of the father and mother of the parent,<sup>31</sup> and a child in its mother's womb is considered as born for all purposes<sup>32</sup> of inheriting, provided it is born alive, even though it may live but an instant.<sup>33</sup>

Contradistinguished from the provisions with respect to forced heirs are those articles of the Code which deal with persons to whom a testator may not leave his estate, and the incapacity and unworthiness of heirs.

In considering these provisions one must refer to the fact that

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<sup>24</sup> Art. 1499.

<sup>25</sup> Art. 1493.

<sup>26</sup> Art. 1494.

<sup>27</sup> Art. 1495.

<sup>28</sup> Art. 1229.

<sup>29</sup> Art. 1230.

<sup>30</sup> Art. 1231.

<sup>31</sup> LA. CONST. (1921) art. IV, § 16, as amended, La. Acts 1944, No. 318.

<sup>32</sup> LA. CIV. CODE (Dart, 1945) art. 954.

<sup>33</sup> *Id.*, art. 955-6.

the Roman Code and the French Civil Code and, accordingly, the Louisiana Civil Code gave a great deal of thought to the preservation of the home, the sanctity of marriage and the rights of children. This is reflected in the articles on forced heirship, which recognized the duty a parent owed his children. It is further reflected in the provisions prohibiting certain dispositions of one's estate. Thus, persons who have lived together in open concubinage are prohibited from leaving immovable property to each other and are limited in the disposition of their movable property to one-tenth of their *entire* estate.<sup>34</sup> Those who later marry are excepted from this rule. Natural parents cannot leave their adulterous or incestuous children any property except an amount sufficient for their sustenance or to procure for them an occupation or profession.<sup>35</sup> Natural children, as distinguished from adulterous or incestuous children (the former being those who can and have been acknowledged, the latter being those whom the law prohibits from being acknowledged), can receive only the same as adulterous children if the parent leaves legitimate children.<sup>36</sup> If the mother leaves no legitimate descendants, then her natural children can receive her entire estate,<sup>37</sup> but in the case of the father, he can leave only one-fourth to them if he is survived by legitimate ascendants or brothers and sisters, and one-third if he is survived by more remote collaterals.<sup>38</sup> Where a father leaves the permissible portion to his natural child, he must leave the remainder of his property to his legitimate relations, and all bequests to the contrary, except those to public institutions, are null.<sup>39</sup>

Doctors and ministers of the gospel who have attended the testator professionally during his last illness cannot take under

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<sup>34</sup> Art. 1481.

<sup>35</sup> Art. 1488.

<sup>36</sup> Art. 1483.

<sup>37</sup> Art. 1484.

<sup>38</sup> Art. 1486.

<sup>39</sup> Art. 1487.

a will executed during that illness unless it is a remunerative legacy or the party is a blood relative of the testator.<sup>40</sup>

The Civil Code deals not only with the capacity to inherit, but also with the incapacity or unworthiness of heirs. The criterion of capacity to inherit is at the moment of the opening of the succession.<sup>41</sup> It should be mentioned here that a succession is said to be "opened" the moment a person has died; the language does not refer to the actual physical opening of a succession by applying to the court. Capacity of an heir is always presumed,<sup>42</sup> and the incapacity must be proved by the party alleging it.<sup>43</sup> The Code states that he who is incapable of inheriting never has been an heir while he who has been declared unworthy has forfeited his right.<sup>44</sup> Heirs are called unworthy because of their failure in some duty towards a person, and are accordingly deprived of the right to inherit.<sup>45</sup> Persons are considered as unworthy when they have been convicted of killing or attempting to kill the deceased, even though later pardoned; those who have brought some calumnious accusation against the deceased which tended to subject him to infamous punishment; and those who upon being apprised of the murder of the deceased took no steps to bring the murderer to justice.<sup>46</sup> The unworthiness is never incurred by the act itself, but must be judicially declared in a suit.<sup>47</sup> The children of an unworthy heir are not precluded from inheriting,<sup>48</sup> but children of an unworthy or disinherited heir can only inherit by representation if the heir predeceased the testator.<sup>49</sup>

Forced heirs may also be deprived of their legitime by disin-

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<sup>40</sup> Art. 1489.

<sup>41</sup> Art. 950.

<sup>42</sup> Art. 951.

<sup>43</sup> Art. 952.

<sup>44</sup> Art. 965.

<sup>45</sup> Art. 964.

<sup>46</sup> Art. 966.

<sup>47</sup> Art. 967.

<sup>48</sup> Art. 973.

<sup>49</sup> Art. 901.

herison for just cause. The cause is limited, and the disinherison must be made in the manner provided in the Code,<sup>50</sup> in one of the forms provided for last wills and testaments.<sup>51</sup> It is usually set out in the last will. The disinherison must be made by name and recite the cause,<sup>52</sup> of which there are but ten, *viz.*: if the child has attempted to strike or has actually struck the parent; has cruelly treated the parent; has attempted the life of a parent; has accused the parent of a capital crime; has refused sustenance to the parent; has neglected care of an insane parent; has refused to ransom a parent; has hindered a parent in making a will; has refused to go bond for a parent in prison; or, being a minor, has married without the parent's consent.<sup>53</sup>

On the other hand, a child can disinherit a parent but for seven causes: accusation of a capital crime; attempt upon his life; hindrance of the child in making a will; refusal of sustenance; neglect of an insane child; neglect to ransom a child; and, in addition, attempt by one parent upon the life of the other, the former being subject to disinheritance.<sup>54</sup>

The will should set out clearly the cause of the disinherison, and, in the event it is contested, the other heirs must prove the facts upon which the disinherison rests; otherwise it is null.<sup>55</sup>

#### INTESTATE SUCCESSION

If the deceased left no will, his succession may or may not be administered. If there are debts of any consequence, in all probability an administrator would be appointed to pay them and then turn over the estate to the heirs. If the debts are small, the heirs in all probability would accept the succession and be bound for the debts. In such instance the court having jurisdiction would, in

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<sup>50</sup> Art. 1617.

<sup>51</sup> Art. 1618; articles cited *supra* notes 15-19.

<sup>52</sup> Art. 1619.

<sup>53</sup> Art. 1621.

<sup>54</sup> Art. 1623.

<sup>55</sup> Art. 1624.

an *ex parte* proceeding on a simple petition of the heirs setting forth facts of death and heirship, enter a judgment placing the heirs in possession. Frequently neither administration nor simple possession judgment is entered. The heirs take possession of the deceased's property, which is a tacit acceptance of the succession and the debts. In most cases it is not necessary that the heirs be formally placed in possession by a judgment of court. What is important is knowing who are the heirs, for even though the court, in an *ex parte* order, may have placed certain persons in possession, that does not solve the question of heirship. An heir overlooked in those proceedings nevertheless is an heir and entitled to his portion of the estate.

It is proper, therefore, to discuss the rules of law applicable to all of the property in an intestate succession and to that part of the property in a testate succession that the testator has not disposed of. These rules can best be understood by discussion in special subdivisions.

- I. Where the deceased leaves legitimate children or descendants of legitimate children, the general rule is that such children or their descendants inherit the entire estate.<sup>56</sup>

The typical example is where *A* dies leaving four children, each of whom would then inherit one-fourth of the estate. If one child predeceased the parent, leaving three children of his own, his children would inherit his fourth equally. This is illustrative of the doctrine of "representation" in Louisiana; by a fiction of law they are placed in the position of their deceased parent in their grandparent's succession.<sup>57</sup> This representation takes place *ad infinitum* in direct descending lines.<sup>58</sup> Only persons who are dead can be represented, however.<sup>59</sup> This illustration further shows the difference between modes of inheriting; children inherit *per capita*,

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<sup>56</sup> Art. 902.

<sup>57</sup> Art. 894.

<sup>58</sup> Art. 895.

<sup>59</sup> Art. 899.

by heads, while their descendants inherit *per stirpes*, by roots. Possibly a better illustration is as follows: *A* dies leaving *B*, a child, *D*, a child of a predeceased child *C*, and *E* and *F*, grandchildren of *C* by another child, *G*, now dead. *A* having had two children, his estate is divided into two equal parts, one-half of which goes to *B*, his surviving child, and the other half to the heirs of *C*, his predeceased child. This other half in turn would be divided half to *D* and half equally to *E* and *F*, so that each would receive of the whole thus: *B* one-half, *D* one-fourth, *E* and *F* one-eighth each.

Note, however, that representation does not take place in favor of ascendants; the nearest relation in any degree always excludes those of a degree more remote.<sup>60</sup> In the case of collaterals, and they will be discussed in the next subtopic, representation is admitted in favor of the children of brothers and sisters.<sup>61</sup> In all cases in which representation takes place, the partition is made *per stirpes*, so that if one root has produced several branches, the subdivision is made by roots in each branch, and the members of the branch take among them by heads.<sup>62</sup>

II. Where the deceased leaves no descendants but leaves a father or mother and brothers and sisters, or descendants of deceased brothers and sisters, the father and mother and brothers and sisters inherit the entire estate.<sup>63</sup>

A typical example is where a father and mother and brother and sister survive; the estate is divided one-fourth to the father, one-fourth to the mother, and the remaining half is divided equally amongst the brothers and sisters.<sup>64</sup> If only one parent survives, one-fourth goes to the parent and the three-fourths is equally divided among the brothers and sisters.<sup>65</sup> Another example is this: *A* dies

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<sup>60</sup> Art. 896.

<sup>61</sup> Art. 897.

<sup>62</sup> Art. 898.

<sup>63</sup> Art. 903.

<sup>64</sup> *Ibid.*

<sup>65</sup> Art. 904.

leaving no descendants, *F*, a father, *S* a sister, *B* a brother, and *M* and *N*, nephew and niece of a predeceased brother. *F* takes one-fourth, *S* and *B* one-fourth each and *M* and *N* one-eighth each.

These examples have been predicated on separate property having been dealt with.<sup>66</sup> If the deceased left a surviving spouse and some community property, the inheritance with respect to the community would be different, as will be shown in the next subtopic.

III. Where the husband or wife dies intestate, leaving neither father nor mother, nor descendants, the surviving spouse inherits the deceased's interest in the community property. If, however, a father and mother, or either, is left, one-half of the deceased's interest in the community property goes to the father or mother or both, and the other half goes to the surviving spouse.<sup>67</sup>

For illustration the same example as in subtopic II can be used by adding a surviving wife *W*, and assuming the existence of community property. *F*, the father would take half the deceased's *half-interest* in the community property, and *W*, the wife, would take the other half. The collaterals would take nothing. The entire estate would end up being owned one-fourth by *F* and three-fourths by *W*, she having owned half in her own right and *not* through inheritance.

At this point it might be advisable to mention the inheritance of illegitimate children. A wife's acknowledged illegitimate child inherits to the exclusion of the husband, but a husband's illegitimate child does not inherit to the exclusion of the wife.<sup>68</sup>

IV. Where the deceased has left neither descendants, nor brothers nor sisters, nor their descendants, nor parents, but has left other ascendants, such other ascendants inherit the separate property to the exclu-

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<sup>66</sup> For the purpose of the rule under this section, if the deceased does not leave a surviving spouse, all his property is treated as separate property.

<sup>67</sup> LA. CIV. CODE (Dart, 1945) art. 915. Bear in mind that the surviving spouse owns one-half of the community property in his or her own right and *not* by inheritance from the deceased spouse.

<sup>68</sup> *Brooks v. House*, 168 La. 542, 122 So. 844 (1929).

sion of others.<sup>69</sup> The ascendants, however, inherit *per capita* and not *per stirpes*, and the nearest in degree, in either the maternal or paternal line, take all.<sup>70</sup> If there are ascendants of the same degree in both lines, the estate is divided into two equal parts, one to the maternal line and the other to the paternal line and the heirs in each line share *per capita* in their half.<sup>71</sup>

For example, *A* dies leaving no descendants, no brothers or sisters or their descendants, no father or mother, but leaves a paternal grandfather, a paternal great grandfather and a maternal great grandmother. The grandfather, being nearest in degree, takes *A*'s entire separate estate.<sup>72</sup> If a surviving spouse were left, she would inherit the entire community property.<sup>73</sup>

If the deceased left a mother, she would have inherited the entire separate estate. Following the same line, if there were a surviving spouse, too, she and the mother would have divided the deceased's interest in the community property equally.

If there were left a maternal grandmother and a paternal grandfather and grandmother, the maternal grandmother would receive one-half and the paternal grandfather and grandmother one-fourth each.

V. Where the deceased leaves no descendants, nor father nor mother, his brothers and sisters inherit his entire separate estate to the exclusion of other ascendants and other collaterals.<sup>74</sup>

For example, if the deceased leaves a brother, an aunt and a grandmother, the brother would inherit the entire separate estate.<sup>75</sup> If in addition to the brother there were a niece, the child of a predeceased brother, the estate would be divided equally between

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<sup>69</sup> LA. CIV. CODE (Dart, 1945) art. 905.

<sup>70</sup> *Id.*, art. 907.

<sup>71</sup> Art. 906.

<sup>72</sup> See note 66, *supra*.

<sup>73</sup> See Subtopic III, *supra*.

<sup>74</sup> LA. CIV. CODE (Dart, 1945) art. 912.

<sup>75</sup> See note 66, *supra*.

the brother and the niece. If a surviving spouse were left, the spouse would inherit the entire interest in the community estate.

Where brothers and sisters inherit from a deceased brother or sister and there are both whole and half blood brothers and sisters, the property is divided into two equal parts, one for the paternal and one for the maternal line. Full brothers and sisters take in each line, and half brothers and sisters take in their respective lines only.<sup>76</sup> For example, *X* dies leaving *A* and *B*, full brothers, *C* and *D*, sons of his mother by a previous marriage. *A* and *B* would each get three-eighths of the estate, and *C* and *D* would each get one-eighth of the estate; *A* and *B* inheriting one-half each on the paternal side and one-quarter each on the maternal side.

VI. Where the deceased leaves neither ascendants nor descendants, nor brothers nor sisters nor their descendants, the collateral relatives take the entire separate estate. Among collaterals those in the nearest degree take to the exclusion of all others, and take *per capita*.<sup>77</sup>

For example, if *X* dies leaving a maternal uncle, a paternal uncle and aunt, some first cousins and some distant cousins, the separate estate is shared equally among the two uncles and the aunt.<sup>78</sup> According to the codal provisions<sup>79</sup> for determining the degree of consanguinity among collaterals, the uncles and aunt are related in the third degree, the first cousins in the fourth degree, and the distant cousins in more remote degrees. It should be noted that the nearest in degree inherit equally, *per capita*, and not in respect to maternal and paternal lines.

VII. Where the deceased leaves <sup>12</sup> natural children, the rule is different with respect to the mother and the father:

(a) If a deceased woman leaves no lawful children or descendants, her acknowledged natural children inherit her estate to the exclusion of ascendants and collaterals. If she has lawful

<sup>76</sup> LA. CIV. CODE (Dart, 1945) art. 913.

<sup>77</sup> *Id.*, art. 914.

<sup>78</sup> See note 66, *supra*.

<sup>79</sup> LA. CIV. CODE (Dart, 1945) art. 892.

descendants, her acknowledged natural children inherit nothing, but are entitled to a small alimony.<sup>80</sup>

(b) If a deceased man leaves no descendants, no ascendants, no collaterals and no surviving wife, his natural children, duly acknowledged, take his estate to the exclusion of the State only.<sup>81</sup> If he leaves other heirs, the natural children are entitled to a modest alimony.

It should be noted that with respect to a man's estate, his wife inherits his property to the exclusion of his natural children, whereas with respect to a woman's estate, the husband inherits her property only to the exclusion of the State, and her acknowledged natural children exclude her husband.<sup>82</sup> To "acknowledge" a natural child means an informal acknowledgement only, such as giving it the parent's name and holding it out to the world as hers.

Adulterous and incestuous children cannot inherit at all, but may secure a small alimony from the estate.<sup>83</sup>

Natural children do not inherit from the legitimate relations of either their father or their mother,<sup>84</sup> and if a natural child dies without issue, the estate goes to the father or mother who has acknowledged it, or half to each if both have done so.<sup>85</sup> If the child leaves neither descendants nor natural parents, the estate goes to its natural brothers or sisters or their descendants.<sup>86</sup>

#### CONCLUSION

The law of descent and distribution in Louisiana is really not as complicated and as difficult as it may appear from this dissertation. If one bears in mind the details of forced heirship, testate successions are quite simple. As to intestate successions, there has been appended hereto a simple chart giving almost all of the basic

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<sup>80</sup> *Id.*, art. 918.

<sup>81</sup> Art. 919.

<sup>82</sup> Art. 924.

<sup>83</sup> Art. 920.

<sup>84</sup> Art. 921.

<sup>85</sup> Art. 922.

<sup>86</sup> Art. 923.

data necessary, which chart should prove of inestimable value to the practicing attorney who desires, at a quick glance, to ascertain the laws of inheritance in Louisiana.

### LOUISIANA LAW OF DESCENT AND DISTRIBUTION CHART.

(Personal and real property descend in the same manner.)

#### I. COMMUNITY PROPERTY

##### a. With surviving spouse and children or their descendants:

1. Surviving spouse owns in own right..... $\frac{1}{2}$
2. Children or their descendants..... $\frac{1}{2}$   
(subject to the usufruct mentioned *supra* at note 6)

##### b. Without children or their descendants:

1. Father and mother or either..... $\frac{1}{4}$
2. Surviving spouse inherits..... $\frac{1}{4}$
3. Surviving spouse owns in own right..... $\frac{1}{2}$

##### c. Without children or their descendants or parents:

1. Surviving spouse .....All

##### d. With children and their descendants only:

1. Children and their descendants.....All

#### II. SEPARATE PROPERTY

##### a. With children or their descendants:

1. Children and their descendants.....All

##### b. Without children or their descendants:

1. Father ..... $\frac{1}{4}$
- Mother ..... $\frac{1}{4}$
- Brothers, sisters or their descendants..... $\frac{1}{2}$   
(For half brothers and sisters see *supra* at note 76)

2. Surviving parent ..... $\frac{1}{4}$   
    and

    Brothers and sisters or their descendants..... $\frac{3}{4}$

##### c. Without children or their descendants or parents:

1. Brothers and sisters or their descendants.....All

##### d. Without children or their descendants or brothers and sisters or their descendants:

1. Parents or surviving parent.....All

##### e. Without children or their descendants or brothers and sisters or their descendants or parents:

1. Ascendants, nearest in degree take.....All

##### f. Without children or their descendants, brothers and sisters or their descendants, parents or other ascendants:

1. Collaterals, the nearest in degree take.....All

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