

Cite as 88 S.Ct. 1515 (1968)

which I take to mean that any reliance upon them in differentiating legal rights requires very strong affirmative justification. The difference between a child who has been formally acknowledged and one who has not is hardly one of these. Other classifications are impermissible because they bear no intelligible proper relation to the consequences that are made to flow from them. This does not mean that any classification this Court thinks could be better drawn is unconstitutional. But even if the power of this Court to improve

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on the lines that Congress and the States have drawn were very much broader than I consider it to be, I could not understand why a State which bases the right to recover for wrongful death strictly on family relationships could not demand that those relationships be formalized.

I would affirm the decisions of the state court and the Court of Appeals for the Fifth Circuit.



391 U.S. 73

Minnie Brade GLONA, Petitioner,

v.

AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY et al.

No. 639.

Argued March 27 and 28, 1968.

Decided May 20, 1968.

Rehearing Denied Oct. 14, 1968.

See 89 S.Ct. 66.

Action to recover for wrongful death of child who died as result of automobile accident. The United States District Court for the Eastern District of Louisiana granted defendants' motion for summary judgment, which decision was affirmed by the Court of Appeals, 379

1. Vernon's Ann.Tex.Rev.Civ.Stat. Art. 4675 (1952).

F.2d 545, and certiorari was granted. The Supreme Court, Mr. Justice Douglas, held that where claimant was plainly the mother of child killed in automobile accident, it would be a denial of equal protection of the laws to withhold relief to the mother merely because child wrongfully killed was born to her out of wedlock.

Reversed.

Mr. Justice Harlan, Mr. Justice Black and Mr. Justice Stewart dissented.

For dissenting opinion see 88 S.Ct. 1512.

Constitutional Law ⇐210

Death ⇐31(7)

Where claimant was plainly the mother of child killed in automobile accident, it would be a denial of equal protection of the laws to withhold relief to the mother merely because child wrongfully killed was born to her out of wedlock. LSA-C.C. art. 2315; U.S. C.A.Const. Amend. 14.

William F. Wessel, New Orleans, La., for petitioner; Leonard J. Fagot, Marvin C. Grodsky and Benjamin E. Smith, on the brief.

David R. Normann, New Orleans, La., for respondents; Frank S. Normann and Margot Mazeau, on the brief.

Mr. Justice DOUGLAS delivered the opinion of the Court.

This suit was brought in the Federal District Court under the head of diversity jurisdiction to recover for a wrongful death suffered in an automobile accident in Louisiana. The plaintiff, a Texas domiciliary, was the mother of the victim, her illegitimate son. Had the Texas wrongful death statute¹ been applicable, it would, as construed, have authorized the action.² But summary

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2. The Court of Appeals so indicated in this case. 379 F.2d, at 546, n. 2. See Galveston, H. & S. A. R. Co. v. Walker, 48 Tex.Civ.App. 52, 106 S.W. 705 (1907).

ment was granted on the ground that under Louisiana law³ the mother had no right of action for the death of her illegitimate son. The Court of Appeals affirmed, rejecting the claim that the discrimination violated the Equal Protection Clause of the Fourteenth Amendment. 379 F.2d 545. We granted the petition for a writ of certiorari, 389 U.S. 969, 88 S.Ct. 477, 19 L.Ed.2d 460, in order to hear the case along with *Levy v. Louisiana*, 391 U.S. 68, 88 S.Ct. 1509.

Louisiana follows a curious course in its sanctions against illegitimacy. A common-law wife is allowed to sue under the Louisiana wrongful death statute.⁴ When a married woman gives birth to an illegitimate child, he is, with a few exceptions, conclusively presumed to be legitimate.⁵ Louisiana makes no distinction between legitimate children and illegitimate children where incest is concerned.⁶ A mother may inherit from an illegitimate

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child whom she has acknowledged and vice versa.⁷ If the illegitimate son had a horse that was killed by the defendant and then died himself, his mother would have a right to sue for the loss of that property.⁸ If the illegitimate son were killed in an industrial accident at his place of employment, the mother would be eligible for recovery under the

Louisiana Workmen's Compensation Act, if she were a dependent of his.⁹ Yet it is argued that since the legislature is dealing with "sin," it can deal with it selectively and is not compelled to adopt comprehensive or even consistent measures. See *McLaughlin v. State of Florida*, 379 U.S. 184, 191, 85 S.Ct. 283, 287, 13 L.Ed.2d 222. In this sense the present case is different from the *Levy* case, where by mere accident of birth the innocent, although illegitimate child was made a "nonperson" by the legislature, when it came to recovery of damages for the wrongful death of his mother.

Yet we see no possible rational basis (*Morey v. Doud*, 354 U.S. 457, 465-466, 77 S.Ct. 1344, 1349-1350, 1 L.Ed.2d 1485) for assuming that if the natural mother is allowed recovery for the wrongful death of her illegitimate child, the cause of illegitimacy will be served. It would, indeed, be farfetched to assume that women have illegitimate children so that they can be compensated in damages for their death. A law which creates an open season on illegitimates in the area of automobile accidents gives a windfall to tortfeasors. But it hardly has a causal connection with the "sin," which is, we are told, the historic reason for the creation of the disability. To

3. The applicable statutory provision is set out in *Levy v. Louisiana*, 391 U.S. 68, at 69, 88 S.Ct. 1509, at 1510, 20 L.Ed.2d 441, n. 1. As the Court of Appeals noted, Article 2315 of the Louisiana Civil Code, providing for wrongful death recovery, gives a cause of action to "the surviving father and mother of the deceased, or either of them * * *." The statute does not state "legitimate" father or "legitimate" mother, but the Louisiana courts have held that a decedent must be legitimate in order for an ascendant or sibling to recover for his death. *Youchican v. Texas & P. R. Co.*, 147 La. 1080, 86 So. 551 (1920); *Buie v. Hester*, 147 So.2d 733 (Ct.App.La.1962). See also *Green v. New Orleans, S. & G. I. R. Co.*, 141 La. 120, 74 So. 717 (1917); *Jackson v. Lindlom*, 84 So.2d 101 (Ct.App.La. 1955). See also *Vaughan v. Dalton-Lard Lumber Co.*, 119 La. 61, 43 So. 926 (1907).

4. *Chivers v. Couch Motor Lines*, 159 So. 2d 544 (Ct.App.La.1964).

5. La.Civ.Code Ann. Art. 184 (1952). See *Lambert v. Lambert*, 164 So.2d 661 (Ct. App.La.1964); *Harris v. Illinois Central R. Co.*, 220 F.2d 734 (C.A. 5th Cir. 1955); cf. *Lewis v. Powell*, 178 So.2d 769 (Ct.App.La.1965).

6. La.Rev.Stat. Ann. § 14:78 (1952).

7. La.Civ.Code Ann. Arts. 918, 922 (1952).

8. La.Civ.Code Ann. Arts. 2315, 922 (1952 and Supp.1967).

9. La.Rev.Stat. Ann. §§ 23:1231, 23:1252, 23:1253 (1964); *Thompson v. Vestal Lumber & Mfg. Co.*, 208 La. 83, 119, 22 So.2d 842, 854 (1945); see Note, 20 *Tulane L.Rev.* 145 (1945).

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say that the test of equal protection should be the "legal" rather than the biological relationship is to avoid

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the issue. For the Equal Protection Clause necessarily limits the authority of a State to draw such "legal" lines as it chooses.

Opening the courts to suits of this kind may conceivably be a temptation to some to assert motherhood fraudulently. That problem, however, concerns burden of proof. Where the claimant is plainly the mother, the State denies equal protection of the laws to withhold relief merely because the child, wrongfully killed, was born to her out of wedlock.

Reversed.



391 U.S. 83

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

v.

Irving GORDON et ux.

Oscar E. BAAN et ux., Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE.

Nos. 760, 781.

Argued April 4, 1968.

Decided May 20, 1968.

Proceedings to review a decision of the United States Tax Court, 45 T.C. 71. The Court of Appeals for the Second Circuit, Moore, Circuit Judge, 382 F.2d 499, affirmed in part and reversed in part. The Court of Appeals for the Ninth Circuit, Hamley, Circuit Judge, 382 F.2d 485, reversed and remanded. Certiorari was granted. The United States Supreme Court, Mr. Justice Harlan, held that 1961 distribution of 57% of stock of transferee corporation, resulting from corporate spin-off, to stockholders of

transferor corporation, pursuant to plan whereby stockholders of transferor corporation received one stock right for each share of transferor's stock owned by them without payment of any consideration to transferor, and were entitled to trade six rights and \$16 to transferor for one share of transferee's stock, was not exempt from taxation under statute relating to nonrecognition of gain resulting from distribution of securities of controlled corporation, and thus stockholders exercising rights to purchase shares of transferee had ordinary income in amount of difference between \$16 per share and fair market value of share of transferee's stock at moment rights were exercised.

Judgment of Court of Appeals for Second Circuit reversed; judgment of Court of Appeals for Ninth Circuit affirmed; cases remanded for further proceedings.

1. Internal Revenue § 364

When corporation sells corporate property to stockholders or their assignees at less than its fair market value, thus diminishing net worth of corporation, it is engaging in "distribution of property" within purview of statute defining dividends and specifying, inter alia, that, except as otherwise provided, every distribution is made out of earnings and profits to extent thereof, and thus such a sale results in dividends to shareholders unless some specific exception or qualification applies. 26 U.S.C.A. (I.R.C.1954) § 316.

See publication Words and Phrases for other judicial constructions and definitions.

2. Internal Revenue § 494

Requirements of statute providing that certain distributions of securities of corporations controlled by distributing corporation do not result in recognized gain or loss to distributee shareholders must be applied with precision. 26 U.S.C.A. (I.R.C.1954) § 355.

3. Internal Revenue § 494

General purpose of statute providing that certain distributions of securities