

# Tableau des actions en contestation de la filiation

Compétence : tribunal judiciaire

Méthode : le choix de l'action dépend exclusivement du mode d'établissement de la filiation

Effet en cas de succès : anéantissement rétroactif du lien de filiation => mention sur l'acte d'état civil entraînant un vide de paternité ou de maternité

Source : P. ABT et C. SIMON, « Droit de la famille », 100th éd., ellipses

<p><b>La contestation de la filiation établie par l'indication du nom de la mère</b> 332 al. 1, 333, 334</p>	<p><b>Objectif :</b> prouver par tous moyens que la mère, dont l'identité est indiquée dans l'acte de naissance de l'enfant, n'a pas accouché de celui-ci (peu importe qu'elle n'en soit pas la mère biologique)</p> <p>→ <b>Supposition :</b> attribuer la maternité d'un enfant à une femme qui n'en a pas accouché</p> <p>→ <b>Substitution :</b> fait, pour la mère ou un tiers, de mettre un enfant à la place de celui dont la mère a accouché</p>	<p>Si l'acte de naissance est corroboré par une possession d'état conforme depuis <b>plus de 5 ans</b> (depuis la naissance)</p> <p>Si l'acte de naissance est corroboré par une possession d'état conforme depuis <b>moins de 5 ans</b></p> <p>Si l'acte de naissance n'est <b>PAS</b> corroboré par une possession d'état conforme</p>	<p>• <b>Principe :</b> la filiation ne peut plus jamais être contestée par quiconque</p> <p>• <b>Exception :</b> le <b>ministère public</b> peut exercer l'action en contestation de maternité pendant un <b>délai de 10 ans</b> (droit commun) à compter de la naissance Si des indices rendent la filiation invraisemblable ou en cas de fraude à la loi (336)</p> <p>• <b>Qui ?</b></p> <ul style="list-style-type: none"><li>Par l'enfant, les père et mère, celle qui prétend être la véritable mère</li><li>Par le ministère public (si indices tirés des actes eux-mêmes rendant invraisemblable la filiation)</li></ul> <p>• <b>Prescription : 5 ans</b></p> <ul style="list-style-type: none"><li>A compter du jour où la possession d'état a cessé</li><li>Si action exercée par l'enfant, suspension du délai pendant sa minorité (il peut agir jusqu'à ses 23 ans)</li></ul> <p>• <b>Qui ?</b> Toute personne qui y a un intérêt</p> <p>• <b>Prescription : 10 ans</b></p> <ul style="list-style-type: none"><li>A compter du jour de la naissance (321)</li><li>Si action exercée par l'enfant, suspension du délai pendant sa minorité (il peut agir jusqu'à ses 28 ans)</li></ul>	
<p><b>La contestation de la filiation établie par la présomption de paternité</b> 332 al. 2, 333, 334</p>	<p><b>Objectif :</b> Prouver par tous moyens que le mari de la mère n'est pas le père biologique de l'enfant</p>	<p>Si l'acte de naissance est corroboré par une possession d'état conforme depuis <b>plus de 5 ans</b> (depuis la naissance)</p> <p>Si l'acte de naissance est corroboré par une possession d'état conforme depuis <b>moins de 5 ans</b></p> <p>Si l'acte de naissance n'est <b>PAS</b> corroboré par une possession d'état conforme</p>	<p>• <b>Principe :</b> la filiation ne peut plus jamais être contestée par quiconque</p> <p>• <b>Exception :</b> le <b>ministère public</b> peut exercer l'action en contestation de paternité pendant un <b>délai de 10 ans</b> (droit commun) à compter de la naissance Si des indices rendent la filiation invraisemblable ou en cas de fraude à la loi (336)</p> <p>• <b>Qui ?</b></p> <ul style="list-style-type: none"><li>Par l'enfant, les père et mère, celui qui prétend être le véritable père</li><li>Par le ministère public (si indices tirés des actes eux-mêmes rendant invraisemblable la filiation)</li></ul> <p>• <b>Prescription : 5 ans</b></p> <ul style="list-style-type: none"><li>A compter du jour où la possession d'état a cessé</li><li>Si action exercée par l'enfant, suspension du délai pendant sa minorité (il peut agir jusqu'à ses 23 ans)</li></ul> <p>• <b>Qui ?</b> Toute personne qui y a un intérêt</p> <p>• <b>Prescription : 10 ans</b></p> <ul style="list-style-type: none"><li>A compter du jour de la naissance (321)</li><li>Si action exercée par l'enfant, suspension du délai pendant sa minorité (il peut agir jusqu'à ses 28 ans)</li></ul>	
<p><b>La contestation de la filiation établie par une reconnaissance</b></p>	<p>Contestation de la validité de la reconnaissance</p> <p>Droit commun des nullités des actes juridiques</p>	<ul style="list-style-type: none"><li>• <b>Objectif :</b> démontrer que les conditions de forme ou de fond de la reconnaissance n'étaient pas toutes réunies au jour de sa souscription</li><li>• <b>Mécanisme :</b><ul style="list-style-type: none"><li>• Nullité absolue :<ul style="list-style-type: none"><li>• <b>Qui ?</b> Toute personne qui a un intérêt</li><li>• <b>Délai :</b> 5 ans en principe</li></ul></li><li>• Nullité relative :<ul style="list-style-type: none"><li>• <b>Qui ?</b> Personne protégée par la loi</li><li>• <b>Délai :</b> 5 ans en principe</li><li>• <b>NB :</b> La reconnaissance peut alors être annulée même si elle est biologiquement exacte</li></ul></li></ul></li></ul>		
	<p>Contestation de la sincérité de la reconnaissance 332 al. 2, 333 et 334</p>	<p><b>Objectif :</b> prouver par tous moyens que la reconnaissance ne correspond pas à la réalité biologique (même si les conditions de forme et de fond sont satisfaites)</p>	<p>Reconnaissance corroborée par une PE de <b>plus de 5 ans</b></p> <p>Reconnaissance corroborée par une PE de <b>moins de 5 ans</b></p> <p>Reconnaissance <b>NON</b> corroborée par une PE</p>	<p>• <b>Principe :</b> la filiation ne peut plus jamais être contestée par quiconque</p> <p>• <b>Exception :</b> le <b>ministère public</b> peut exercer l'action en contestation du lien de filiation pendant un <b>délai de 10 ans</b> (droit commun) à compter de la reconnaissance Si des indices rendent la filiation invraisemblable ou en cas de fraude à la loi (336)</p> <p>• <b>Qui ?</b></p> <ul style="list-style-type: none"><li>Par l'enfant, les père et mère, la personne qui se prétend être le véritable parent</li><li>Par le ministère public (si indices tirés des actes eux-mêmes rendant invraisemblable la filiation)</li></ul> <p>• <b>Prescription : 5 ans</b></p> <ul style="list-style-type: none"><li>A compter du jour où la possession d'état a cessé</li><li>Si action exercée par l'enfant, suspension du délai pendant sa minorité (il peut agir jusqu'à ses 23 ans)</li></ul> <p>• <b>Qui ?</b> Toute personne qui y a un intérêt</p> <p>• <b>Prescription : 10 ans</b></p> <ul style="list-style-type: none"><li>A compter du jour de la reconnaissance (321)</li><li>Si action exercée par l'enfant, suspension du délai pendant sa minorité (il peut agir jusqu'à ses 28 ans)</li></ul>
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	<p>La contestation de la filiation établie par une décision de justice</p>	<ul style="list-style-type: none"><li>• <b>Objectif :</b> interjeter appel de la décision ou se pourvoir en cassation</li><li>• <b>Délai :</b><ul style="list-style-type: none"><li>• 1 mois pour l'appel (à compter de la notification du jugement)</li><li>• 2 mois pour le pourvoi (à compter de la notification de l'arrêt)</li></ul></li><li>• Si l'on <b>conteste la réalité ou les caractères de la possession d'état</b>, une <b>tierce opposition</b> est possible dans un délai de 10 ans à compter du jugement, ce délai étant suspendu pendant la minorité de l'enfant (324)</li></ul>		
<p>Droit commun</p>				

# Regards Sur La Filiation Sapientiale Dureacutee Changements Transcendance Sagesse Iii

**SJ Ball**



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