

It is not necessary to refer expressly to Art. 107 because par. 1 of Art. 765 says: "(1) If the donee should commit some offense against the person, the honor or the property of the donor, or of his wife or children under his parental authority." Art. 107 is a mere application of the principle in par. 1 of Art. 765, so that revocation under Art. 107 may be effected under Art. 765, par.

1, without the necessity of resorting to Art. 107.

Respectfully submitted,
JORGE BOCOBO
Chairman, Code Commission

Manila, February 24, 1951

MEMORANDUM ON THE PROPOSED AMENDMENTS TO THE
PROVISIONS OF THE NEW CIVIL CODE ON SUCCESSION
(BOOK III) EMBODIED IN HOUSE BILL NO. 1019.

ARTICLE 779

This article defines testamentary succession but fails to define legal or intestate succession. It is proposed to have this article amended so as to give the concept of legal or intestate succession. In the original draft of the Code Commission, legal or intestate succession is defined in Article 799 thus:

"Legal or intestate succession takes place by operation of law in the absence of a valid will."

The Code Commission agrees with the amendment so that Article 799 will give the concept of both testamentary and intestate successions, while Article 780 provides for mixed succession.

ARTICLE 782

An amendment to this article is proposed to read thus:

"Art. 782. An heir is a person called to the WHOLE OR AN ALIQUOT PORTION OF THE INHERITANCE either by the provision of a will or by operation of law.

"Devisees and legatees are persons to whom gifts of real and personal property are respectively given by virtue of a will."

The proposed amendment is not necessary because the word "succession" as used in this article does not mean "property" but a right, and an heir may not be entitled to the "whole or an aliquot portion of the inheritance" because of *disinheritance* or *amortishment*.

ARTICLE 815

It is proposed to amend this Article so as to read, thus:

"Art. 815. When a Filipino is in a foreign country, he is authorized to make will in any of the forms established by the law of the country in which he may be. Such will may be probated in the Philippines, AS IF EXECUTED IN ACCORDANCE WITH ITS LAWS."

There is no serious objection to the proposed amendment, although it seems that there is no necessity for the same inasmuch as if the will may be probated in the Philippines, it goes without saying that said will shall be considered as if executed in accordance with the laws of this country.

ARTICLE 838

The last paragraph of this Article is sought to be amended by adding the following: "THE RIGHT OF THE TESTATOR TO REVOKE HIS WILL, HOWEVER, SHALL NOT BE BARRED BY ITS ALLOWANCE DURING HIS LIFETIME."

The proposed amendment is a superfluous because of the provisions of Article 828, which ordains that a "will may be revoked by the testator at any time before his death", and which is in accordance with the principle that every will is revocable. Moreover, Article 777 provides that "the right to the succession are transmitted from the moment of the death of the decedent."

ARTICLE 878

The following amendment to this Article is suggested:

"Art. 878. A suspensive term OR CONDITION IN A TESTAMENTARY DISPOSITION does not prevent the instituted heir from acquiring his rights and transmitting them to his heirs even before the arrival of the term OR THE HAPPENING OF THE CONDITION."

The Code Commission begs to disagree with the proposed amendment for the following reasons:

1. This Article of the new Civil Code avoids the conflict between Articles 759 and 799 of the Spanish Civil Code.

2. Article 878 of the new Civil Code speaks only of a "suspensive term" which does not prevent the instituted heir from acquiring and transmitting his rights to his own heirs even before the arrival of the term.

The law allows the acquisition and transmission of rights before the arrival of the term because the "term" or period is *sure to come* although the exact arrival may not be ascertained.

Condition is an uncertain event, so uncertain that it may not happen; hence, the instituted heir should not acquire nor transmit any right to his own heirs before the fulfillment of such suspensive condition — which fulfillment gives rise to his right to succeed.

3. Article 884 of the new Civil Code provides that "conditions imposed by the testator upon his heirs shall be governed by the rules established for conditional obligations in all matters not provided for by this Section." In accordance with the provisions of the new Civil Code on conditional obligations, the fulfillment of *suspensive condition* gives rise to an obligation or right as the case may be. Hence, if the said suspensive condition is not fulfilled, no right or obligation arises.

ARTICLE 1027

No. (4) of this Article is proposed to be amended to read as follows:

"(4) Any attesting witness to the execution of a will, the spouse, parents, or children, or any one claiming under such witness, spouse, parents, or children, UNLESS THERE ARE THREE OTHER COMPETENT WITNESS TO THE WILL." The Code Commission has no objection to the proposed amendment.

This Article is also proposed to be amended by adding No. (5) which reads:

"(5) THE NOTARY PUBLIC BEFORE WHOM THE WILL IS ACKNOWLEDGED."

The Code Commission also accepts the proposed amendment. An amendment to Article 1035 is proposed to read as follows:

"Art. 1035. The person excluded from the inheritance by reason of incapacity SHALL LOSE HIS RIGHT TO THE LEGITIME, BUT SHOULD HE be a child or descendant of the decedent and should have children or descendants, the latter shall acquire his right to the legitime.

"The person so excluded shall not enjoy the usufruct and administration of the property thus inherited by his children."

We cannot accept the above amendment for three reasons:

1. The use of the word "person" in the first line may imply that there may be persons entitled to the legitime although they are not compulsory heirs.

2. The causes of deprivation of succession by reason of incapacity may apply to persons other than compulsory heirs. (See Article 1027 and 1032).

3. The provisions of Article 1035 as they are in the new Civil Code do not need any clarification.

ARTICLES ON SUCCESSION PROPOSED TO BE
REPEALED IN HOUSE BILL NO. 1019

ARTICLE 793

This Article of the new Civil Code provides:

"Art. 793. Property acquired after the making of a will shall only pass thereby, as if the testator had possessed it at the time of making the will, should it expressly appear by the will that such was his intention."

The Code Commission believes that the above provisions should remain in the Code for the following reasons:

1. It is necessary to prevent the occurrence of mixed succession.

2. The law should favor testate succession as much as

possible, and the provisions of this article have this policy in mind.

3. There may be cases where a person intends to have property which he may acquire subsequent to the making of his will to be distributed according to his own personal wishes.

Section 615 of the Code of Civil Procedure contains the same provisions although *on real estate only*. (See also Article 596, Lower Canada).

ARTICLE 891

This Article provides for the "Reserva Troncal" which was eliminated from the original draft of the Code Commission, but inserted by the House of Representatives.

The Code Commission would be glad to see this Article eliminated and repealed as recommended in the House Bill No. 1019. The presence of this article in the new Civil Code contravenes the fundamental philosophy of the law on succession — socialization of ownership of property, economic stability, and elimination of feudalistic hierarchy, as explained in the Report of the Commission, p. 116-117.

Respectfully submitted,
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Member, Code Commission

Manila, February 20, 1951.