MEMORANDUM OF THE CODE COMMISSION

(Continued from April Issue)

ARTICLE 902

Mr. Justice Reyes contends that the provisions of Articles 902, 989 and 998 confer the right of representation upon *the illegitimate issue of an illegitimate child;* while the *illegitimate issue of a legitimate child* is denied the right of representation by Article 992, and therefore unfair and unjustified.

In answer to this claim of unfairness and injustice, we would like to cite the provisions of Article 982:

"Art. 982. The grandchildren and other descendants shall inherit by right of representation, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions."

If the provisions of the above article are correctly interpreted and understood, do they exclude the illegitimate issue of a legitimate child? The terms "grandchildren and other descendants" are not confined to legitimate offspring.

We submit that not only legitimate but also illegitimate descendants should be included in the interpretation of Articles 902, 939 and 998. In cases of this kind, where the Code does not expressly provide for specific rights, and for that matter, all codes have gaps, equity and justice should prevail, taking into consideration the fundamental purpose of the whole law on succession which, among other things, gives more rights to illegitimate children, thereby relaxing the rigidity of the old law, and liberating these unfortunate persons from the humiliating status and condition to which they have been dumped.

It may be mentioned in this connection, that the old Civil Code fails to provide for several concurrences of heirs, but as the same have correctly said, justice and equity should prevail in such cases.

With respect to the provisions of Articles 903 and 993 allowing illegitimate children and descendants to inherit from an ascendant, but the illegitimate grandparent may not inherit from a grandson, the Code Commission has in mind that the succession of illegitimate ascendants shall be confined only to the parents and should not go beyond that degree of relationship so that his or her spouse and/or brothers and sisters shall be entitled to the same (Art. 994).

ARTICLE 904, *par.* 2

This proposed amendment is already discussed in connection with Article 864.

ARTICLE 908, *par.* 2

The Code Commission accepts the proposition of Mr. Justice Reyes by eliminating the words "that are subject to collation" found in lines 2 and 3 of the second paragraph of this article.

ARTICLE 909

The Code Commission has no objection to the substitution of the words "compulsory heirs" to the word "children" found in line 1 of this first paragraph of this article.

The further suggestion of inserting "without prejudice to the provisions of Article 1064" is not necessary because the phrase may be out of place in this section on legitime, and because the idea in Article 1064 should not be repeated here.

The additional rule also proposed may not be necessary because anything that will be in excess of the legitime shall be considered a part of the free portion, and may be given to strangers.

ARTICLE 911 (2)

The rule established in this article is different from that mentioned in Article 950. The rule established in No. (2) of Article 911 speaks of the reduction to be made of *legacies if the legitime is impaired.* The rule provided, however, in Article 950 deals with cases where the total free portion is not sufficient to pay all the legacies and devices mentioned by the testator in his will.

ARTICLE 912

The proposed amendment wholly depends upon the policy to be adopted, whether the compulsory heirs should be favored or not. As it is, the article provides that if the reduction absorbs exactly one-half (1/2) of the value of the legacy or devise, the property should go to the compulsory heirs, and this should be the case, because as between the compulsory heirs and third persons, the former shall be preferred, as the testator owes more obligations legal and moral, to his own parents, descendants and spouse.

ARTICLE 918

The proposed amendment to this article is to clarify the effects of a defective disinheritance, and the Code Commission has no objection in eliminating the phrase "annul the institution of heirs insofar as it may prejudice the person disinherited" in lines 4 and 5 of the said article, and in replacing the same with "not prevent the disinherited heir from receiving his share in the legitime."

ARTICLE 919 (7)

One of the grounds for disinheritance of children and descendants under the old Civil Code is prostitution of daughters or granddaughters (Art. 853, No. 3, Spanish Code). Under this law, sons and other male descendants are not included because prostitution can only apply to women. It seems unfair and unjust because a son or a grandson may live a life more immoral than that of a daughter, and yet they cannot be disinherited. To avoid this double standard, the new Civil Code in Article 919, No. 7, provides:

"(7) When a child or descendant leads a dishonorable or disgraceful life".

With this provision of the law, both sons and daughters are placed on the same level. Mr. Justice Reyes claims that what the testator deems "dishonorable" or "disgraceful" may not appear so to the judge. May we ask, have the Filipino people so lost their sense of moral values that they can no longer discern what is dishonorable and disgraceful life? Has the moral standard of our people come to the level that they can no longer distinguish the moral from the immoral? Is the judiciary so ignorant or morally warped that those interpreting the law and administering justice can understand only "prostitution of daughters" but can not understand what constitutes a dishonorable or disgraceful life on the part of a son?

On this point, the German Civil Code provides in Article 2333, No. (5):

"If the descendant leads a dishonorable or immoral life contrary to the testator's wishes."

Let the court establish its doctrine and propound its jurisprudence.

ARTICLE 923

The Code Commission accepts the proposed amendment to Article 923, which should constitute its first paragraph:

"A valid disinheritance not only deprives the disinherited heir of any share in the legitime, but automatically revokes any disposition in his favor chargeable to the free portion."

The above amendment shall make the effects of valid disinheritance very clear. It will also clarify the effects of restoration of the rights of a compulsory heir in case of preterition as well as those of compulsory heirs restored to their rights in case of a defective disinheritance.

ARTICLES 929 *AND* 931

There seems to be no inconsistency between these two articles. Article 929 refers to a case where the testator *owns only a part of, or interest in, the thing bequeathed,* in which case, the legacy or bequest shall be limited to such part or interest, unless the testator expressly declares that he gives the thing in its entirety.

Article 931 speaks of a *thing exclusively belonging to another,* in which case he may order that it be acquired in order to be given to the legatee or devisee.

In case the testator bequeathes an undivided share that does not belong to him as provided in Article 929, do not the provisions of Article 931 apply, which requires that it be acquired in order to be given to the legatee or devisee?

Mr. Justice Reyes asks why the new Civil Code suppressed the sublegacy permitted by Article 863 of the old Civil Code. There is nothing wrong with it, but the Code Commission believes that it is not necessary to be included inasmuch as the same is covered by Articles 925 and 952.

Article 863 of the old Civil Code provides:

"Art. 863. A legacy made to a third person of a thing belonging to the heir or to a legatee, shall be valid, and such

heir or legatee, on accepting the succession, must deliver the thing bequeated or its value, subject to the limitations established by the following article.

"The provisions of the foregoing paragraph are understood to be without prejudice to the legitime of the forced heirs."

Articles 925 and 952, par. 1, of the new Civil Code provide:

"Art. 925. A testator may charge with legacies and devises not only his compulsory heirs but also the legatees and devisees.

"The latter shall be liable for the charge only to the extent of the value of the legacy or the devise received by them. The compulsory heirs shall not be liable for the charge beyond the amount of the free portion given them."

"Art. 952. The heir, charged with a legacy or devise, or the executor or administrator of the estate, must deliver the very thing bequeathed if he is able to do so and cannot discharge this obligation by paying its value."

The legacy mentioned in Article 863 of the old Civil Code is a variety of what is called "legado de cosa ajena". In other words, the thing bequeathed does not belong to the testator but the same may belong to a third person, or to the heir, or to the legatee or devisee. From the provisions, therefore, of Article 925 and Article 952, par. 1, we maintain that they include what is intended by Article 863 of the old Civil Code.

ARTICLE 932, par. 1 and ARTICLE 933, par. 1

The two paragraphs of these two articles are said to express the same rule, and hence, it is claimed that the latter is a mere repetition of the former.

The first parts of the two paragraphs may provide for the same rule, but the *latter parts of the same paragraphs* provide for different effects. Moreover, the second paragraph of Article 923 is very different from the provisions of paragraph 2 of Article 933. By placing these two articles close to each other, the reader can readily compare their respective provisions as well as their respective effects

ARTICLE 934

The proposed amendment to this article is not necessary inasmuch as the meaning of both forms is the same.

ARTICLE 943

It is suggested that the last part of this article which provides that "but a choice once made shall be irrevocable" should be eliminated because it is a repetition of paragraph 3 of Article 940. However, Article 940 deals with the "heir, legatee or devisee, who may have been given the choice", but *"dies before making it"*, while Article 943 deals with cases where the "heir, legatee or devisee *cannot make the choice*," not only because of death but because of other causes, like disinheritance or unworthiness.

ARTICLE 950

With respect to the order of payment of legacies, please see our Comment on Article 911.

Mr. Justice Reyes contends that Article 950 which gives the order of payment of legacies and devises, does not include donations given in a marriage settlement by a future spouse to the other which is mentioned in Article 130 of the new Civil Code, and which shall be chargeable to the free portion. Article 950 gives the order of payment of various kinds of legacies and devises, taking into consideration their particular purposes and objectives. Inasmuch as the donation of future property mentioned in Article 130 may not have a particular purpose or objective, it may be classified either under No. (2) or under No. (6) of the article depending how it was given. We do not believe that such a donation be given a special preference as contended, inasmuch as it was given in consideration of marriage, and it is for this reason that the same should be treated as an ordinary donation and should fall under No. (6) of the article, unless declared by the testator to be preferential, in which case, it should fall under No. (2).

ARTICLE 957

Another paragraph is proposed to be added to this article, to read, thus:

"(4) A legacy in favor of the spouse who subsequently gives cause for a decree of legal separation, as provided in Article 106, (4) of this Code."

We beg to disagree with the proposed amendment because it is a mere repetition of Article 106, No. (4). This Article 106 provides for the effects of legal separation, and No. (4) expressly deals with the subject in both intestate and testate successions.

ARTICLE 960 (3)

The new Civil Code does not include as a cause of intestacy the case of a conditional heir who survives the testator but dies before the fulfillment of the suspensive condition. This is not necessary because if an heir subject to the fulfillment of a suspensive condition should die before the fulfillment of said condition, he shall of course acquire no rights nor transmit any to his own heirs. Hence, intestacy shall take place. Please see our comments on Article 878, *ante*.

Besides, in the case mentioned by Justice Reyes, "the suspensive condition x x x x x does not happen or is not fulfilled" within the meaning of No. 3 of Art. 960.

ARTICLES 963-967

These Articles 963 to 967 deal with the degree of relationship of persons, and the manner of computing the proximity of relationship. Mr. Justice Reyes proposes that these articles should be in Book I dealing with Family Relations.

We beg to differ. The question is whether the provisions of these articles have more relation with intestate succession or with the law on persons and family relations. We maintain that if these provisions should be embodied in Book I, they would really be out of place there. As a matter of fact, the only instance where the degree of relationship is mentioned in Book I is in connection with incestuous marriage (Article 81, No. (3)). A person will be at a loss to be reading the rules on the degree of relationship in a Book where they will have no bearing with the other provisions found therein.

The arrangement of the new Civil Code is adopted not only by the Spanish Civil Code but also by the Civil Codes of France and Switzerland.

ARTICLE 968

It is proposed that the term "accrue" used in line 3 of this article be replaced by the word "benefit" or "pass", so as to avoid confusion that may arise with the provisions of the Code on accretion, mentioned in Articles 1015 to 1023.

The term "accrue" is better than the word "benefit" or "pass" because it is more comprehensive, and it carries the meaning that the Code wants to impart. In law, "accrue" means "to come into existence as an enforceable claim; to vest as a right; as a cause of action has accrued when the right to sue has become vested". In general, it means "to come by way of increase; to be added as increase, or profit". Moreover, "accretion" is nearer to the Spanish original, "acrecer". Lastly, Article 968 deals with accretion. See also Articles 1080 and 1020.

ARTICLE 972, par. 2

The proposed amendment to this article is unnecessary, nor will the rule be incorrect without the amendment to paragraph 2 of this article. Article 972 provides for the persons in whose favor the right of representation is established, the first paragraph being in favor of the direct descending line, while the second paragraph in favor of the collateral line. Article 975 deals with a concurrence of heirs, that is, if uncles or aunts survive with nephews or nieces.

Besides, Article 975 is so near that a reference to it is unnecessary. Any one who wants to study representation would read the whole subsection 2.

ARTICLE 978

It is proposed that Article 978 be suppressed on the ground that under the new Civil Code when the spouse concurs with legitimate descendants, the said spouse "has in the succession the same share as that of each of the children", and hence, "the surviving spouse is an intestate heir together with the descendants."

Article 978 ordains:

"Art. 978. Succession pertains, in the first place, to the descending direct line."

This article assumes that there are no other heirs who may concur with the children or descendants. So that if they concur with the surviving spouse, the rule is provided for in Articles 996, 998, and 999.

Besides, Justice Reyes fails to grasp the method of the new Civil Code in Sec. 2 — "Order of Intestate Succession". By Articles 978, 985, 988, 995, 1001, and 1103, the Code names the relatives who, in the order stated, inherit the *whole estate*. Article 978 assumes that there is no surviving spouse.

(To be Continued)

A CRITICAL STUDY...

(Continued from page 219)

CONCLUSIONS AND RECOMMENDATIONS

Much of the possible difficult situations we have endeavored to present which cannot be adequately solved by the present provisions of the Code without absurd results may be remedied by eliminating the conclusive presumption of legitimacy provided for in Article 258 of the present Civil Code in any of the three cases therein mentioned. This will make the present rigors of the law more flexible to permit its rigidity yield to the realities of life.

The *prima facie* presumption of illegitimacy provided for in Article 257 (C. C.) should be reversed. The presumption of legitimacy should be the rule, but its rebuttal should be allowed under the conditions and circumstances mentioned in Article 257 (C. C.) and adding thereto the case of rape of the wife during the same period of time. Articles 255 and 259 may remain as they are subject to a modification of Article 259 (C. C.) for clarity only by incorporating to the opening paragraph thereof the following phrase, "notwithstanding the provisions of Article 255".

It is, therefore, recommended that Articles 257, 258 and 259 of the Civil Code be redrafted to read as follows:

"Art. 257. In case of the commission of adultery by the wife or rape of the wife at or about the time of conception of the child, but there was no physical impossibility of access by the husband to the wife as set forth in Article 255, the presumption of legitimacy therein provided, may be overcome by proof that it is highly improbable for ethnic reasons that the child is that of the husband. For purposes of this Article the adultery or the rape as the case may be need not be proved in a criminal case." (Patternod after House Bill No. 1019; Francisco, I Civil Code of the Philippines 683).

"Art. 258. A child born within one hundred eighty days following the celebration of the marriage is *prima facie* presumed to be legitimate."

"Art. 259. If the marriage is dissolved by the death of the husband, and the mother contracted another marriage within three hundred days following such death, these rules shall govern, notwithstanding the provisions of article 255:

(1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is disputably presumed to have been conceived during the former marriage, provided it be born within three hundred days after the death of the former husband;

(2) A child born after one hundred eighty days following the celebration of the subsequent marriage is *prima facie* presumed to have been conceived during such marriage, even though it be born within the three hundred days after the death of the former husband."

* * *

DECISION OF THE...

(Continued from page 248)

of time on a particular style of packages any registration which might issue upon its application would not be limited to use upon such packages, and the packages used could be changed by either party at any time. Ambrosia Chocolate Co. v. Myron Foster, 603 O. G. 545, 74 USPQ 307. *Under well settled authority* (General Food Corporation v. Casein Company of America, Inc., 27 C.C.P.A. 797, 108 F.2d 261 (44 USPQ 33); Barton Mfg. Co. v. Hercules Powder Co., 24 C.C.P.A. 982, 88 F.2d 708 (33 USPQ 105); Sharp & Dohme, Incorporated v. Abbott Laboratories, 571 O.G. 519, 64 USPQ 247), *the differences in packaging can not affect the right to registration.*" (underscoring supplied)

In view of the well-settled principle that an opposer need not own a trademark; a registered trademark; or have exclusive rights to a trademark, registered or unregistered; all he needs being something which is analogous to a trademark, and a showing that he would probably be damaged by the registration sought; and in view of the equally well-settled principle that the appearance of the labels bearing the rival trademarks cannot affect the right to registration of one of them, the motion to dismiss the Opposition is rejected, and the Respondent-Applicant is directed to answer the same within fifteen (15) days of his receipt of a copy hereof.

SO ORDERED.

Manila, Philippines, October 31, 1952.

(SGD.) CELEDONIO AGRAVA
Director of Patents

FOR THE SAKE OF TRUTH

BY PORFIRIO C. DAVID

I wish to make a vigorous exception to Mr. Federico B. Moreno's article ROLL OF HONOR (of judges of First Instance) as published in the Sunday Times Magazine of May 9, 1954.

I do not question Mr. Moreno's right to praise a particular judge or group of judges. For the consumption of the public, he can even raise them to the level of an Arellano, a Cardozo or Holmes. But, he has no right to do so at the expense of other judges whom he had degraded and ridiculed by publishing his conclusions about their efficiency on the basis of half-truths and mis-truths.

The proficiency of a judge cannot be correctly measured by the precise action of the Supreme Court on his appealed decisions and orders for only one year (last year) and on the applications for writs of certiorari, prohibition and mandamus decided in the preceding three years and on the basis of important cases settled by the Court of Appeals in 1952 and 1953 as published in the Official Gazette. One who is familiar with the machinary of justice, like Mr. Moreno, who is a lawyer, should know that *not* all decisions are published in the Official Gazette. Hence, to rate a judge on what might have been published of his appealed decisions in the Official Gazette alone would be the height of irresponsibility.

Take, for instance, the particular cases of Judges Barot, Moscoso and Ocampo, who are represented to have had no affirmed decisions of any sort during the period given. This is unbelievable. I regret that I do not have offhand the records of Judge Moscoso, who is in the Visayas, and of Judge Barot, who is in Pampanga. But from the records alone of Judge Ocampo as available in the Office of the Clerk of Court of the Court of First Instance of Manila, where said judge has been presiding since 1951, I can say that the conclusions of Mr. Moreno about these judges are at once preposterous and gratuitous, if not libelous.

In this connection, I am supporting my stand with the facts and figures appearing on the correct copies of Reports of Cases decided by Judge Ocampo and brought to the Appellate Courts, duly certified by the clerks in charge, which are self-explanatory.

Summarizing, I find:

Criminal cases appealed	34
Affirmed	8
Modified	3
Appeal abandoned	8
Reversed	2
Pending	13
Civil cases appealed to Supreme Court	4
Pending	2
Affirmed	2
Reversed	None
Civil cases appealed to the Court of Appeals	19
Pending	13
Appeal dismissed or abandoned	4
Affirmed	2
Reversed	None

If only to set the record straight and to correct any wrong impression which Mr. Moreno's article may have produced on the readers' minds, I have taken pains to dig up the above facts and figures.