MEMORANDUM OF THE CODE COMMISSION

(Continued from the February Issue)

This memorandum comments upon proposed amendments to Book III of the new Cvil Code. Except in regard to succession, the articles are consecutively dealth with, thus: Arts. 712, 719, 721, etc.

In the part concerning succession, the amendments are commented upon by placing together those that are proposed by the same proponent. Moreover, those suggestions not coming from either Congressman Tolentino or Justice J. B. L. Reyes are discussed together.

ARTICLE 712

Justice J. B. L. Reyes criticizes the placing of donation in Book III as one of the modes of acquiring ownership.

The Code Commission knew that there were civilists who disagreed with this arrangement, among them Sanchez Roman. However, after careful consideration, the Commission perferred to retain the arrangement of the Spanish Civil Code, for these reasons:

1. The reasonings of Sanchez Roman did not quite convince the Commission. It should be noted that the Commission adopted the solution of Sanchez Roman concerning intellectual creation and prescription and therefore included these two subjects among the modes of acquiring ownership. However, in regard to donation, Sanchez Roman did not quite convince the Commission, and preferred the reasons of Manresa found in Vol. 6 of his commentaries where he discusses the grounds for not placing donation among the contracts. Manresa says:

"Atendiendo a estos preceptos, las donaciones entre vivos son indudablemente contratos, porque hay concurso de voluntades, hay objeto y causa. Son contratos gratuitos o de pura beneficencia, cuyo objeto es la dacion de una cosa o de un derecho sobre esa cosa.

"Pero este argumento es de aquellos que, pro probar demasiado, nada prueban contra la idea del legislador, al separar la donacion como un modo especial de adquirir. Consentimiento, objeto y causa hay en las sucesiones, en el matrimonio, et cetera, y podrian estimarse tambien contratos dentro de estos limnamentos generales que tanto abarcan. El Codigo no niega que pueda estimarse como contrato la donacion, pero la estudia aparte y la considera como un modo especial de adquirir, porque no ha podido menos de observar que son demasiadas las especialidades que presenta respecto a los demas contratos ordinarios, especialidades que la acercan bastante a las sucesiones.

"A que obedece esa especialidad? La unica diferencia, dice Savigny, entre el contrato y la donacion, consiste en que aquel puede aplicarse a toda clase de relaciones de derecho, mientras que esta aplica solamente al derecho de bienes. Pero no es esto solo: no obedece le especialidad de la donacion a que sea su objeto la dacion de una cosa, y, por tanto, modo de adquirir y transmitir la propiedad, porque lo mismo ocurre en la compraventa, la permuta, el censo, etc., y a estos actos se les llama contratos y se incluyen como un modo distinto de transmitir y de adquirir. No obedece tampoco la especialidad a que constituyan las donaciones un acto de pura liberalidad, porque el mandatario que administra gratuitamente los bienes de un amigo o pariente, el gestor de negocios, en iguales casos, el que voluntariamente y sin premio ni interes alguno presta un servicio cualquiera, obran tambien gratuitamente y por mera liberalidad, y, sin embargo, estos actos son tratados por el Codigo entre los contratos.

"El caracter especial de las donaciones nace de las dos circunstancias reunidas a que nos hemos referido, no de una sola de ellas. Notese que los actos gratuitos de que hemos hecho mencion no constituyent modos de adquirir el dominio no, consisten en la dacion de cosas. Notese que los otros modos de adquirir que, como contratos, estudia el Codigo, tienen todos una causa onerosa o remuneratoria. Notese, por ultimo (articulo 1,187) que la condonacion, unico acto que puede reunir los expresados caracteres, sigue las reglas de las donaciones, como que es una verdadera donacion.

"Hay, pues, un grupo especial de actos, o si se quiere de contratos, que al mismo tiempo tienen una causa gratuita y constituyen un modo de adquirir. Este grupo esta formado exclusivamente por las donaciones.

"Pero tambien es un modo de adquirir, con causa puramente gratuita, la sucesion testada o intestada. *Luego las donaciones tienen una naturaleza muy semejante a las sucesiones. Pues de esta casi identidad de naturaleza, de esta estrecha relacion entre ambas instituciones, nace forzosamente y contra la voluntad de todo legislador que intendra desconocerlo, la especialidad de la donacion como modo de adquirir.*

"Cierto que las donaciones producen sus efectos en vida del donante, y en las sucesiones esos efectos se producen por la muerte del que dispone de los bienes; cierto que, como una consecuencia de los dicho, es irrevocable la donacion y puede revocarse el testamento hasta la hora de la muerte. Pero precisamente por esos motivos, ambas instituciones sin dejar de ser semajantes no son identicas. Si bien el heredero, continua a veces la personalidad de causante no hacemos mencion de esta circunstancia porque no es un caracter distinto todas las sucesiones, y que los legatarios y aun los mismos herederos, si aceptan la herencia a beneficio de inventario, suceden por testamento y no confuden su personalidad con la del difunto.

"Desde el momento en que hay actos por los que se transmite gratuitamente la propiedad en vida, y actos por los que gratuitamente se transmite la propiedad para despues de la muerte, la ley tiene que imponer a unos y otros actos iguales limitaciones. *Como va a prohibir a un testador que disponga libremente de sus bienes para despues de su muerte, si consiente que se desprenda de ellos gratuitamente durante su vida?* O habia que suprimir las legitimas, o era necesario limitar las donaciones.

"Ante esta necesidad, las reglas generales de los contratos no podian sevir para las donaciones. Y no se diga que cada contrato tiene su modo de ser especial, debiendo forzosamente seguir reglas distintas la compraventa que la sociedad, el mandato que la fianza, etc., porque ni nos referimos solo a las reglas especiales, ni contrato alguno, como la donacion, es, del mismo modo que las sucesiones modo de adquirir por titulo gratuito.

"Asi es que empezamos por notar que muchos que pueden contratar no pueden hacer donaciones, y que, en cambio, pueden ser donatarios y aun acentar donaciones muchos que no pueden contratar. Bajo el primer aspecto, como van a justificar el padre o el tutor la necesidad o la utilidad de que el hijo o el menor nagan donacion simple de sus bienes? Bajo el segundo, basta leer los articulos 625 y 626 para convencerse de que la capacidad para adquirir por donacion se acerca mas a la capacidad para adquirir por herencia o legado, y aun tiene menos trabas legales, porque hay menos temor de que sea onerosa la adquisicion.

"Continuamos viendo que una persona puede contratar sobre todos sus bienes, nero no todos puede donarlos, y que nadie puede dar ni recibir por via de donacion mas de lo que pueda dar recibir por testamento.

"Vemos, por ultimo, la especialidad de las reglas de la donacion para su rescision en el caso de que haya fraude de acreedores, sus especiales causas de revocacion, su reduccion por inoficiosas, y, en fin, las reglas que llenan el Codigo en el tratado de los sucesion, y no se aplican a los contratos, sino solo a las donaciones de las que ofrecen ejemplo los articulos 811, 812 817, al 820, 825, 869, 968, 1.035, 1,039, 1.040, 1044, 1046 a 1.048, etc.

"Y como todas esta reglas no son caprichosas, como obedecen a una verdadera necesidad y arrancan de la naturaleza misma de la donacion, no hay mas remedio que reconocer con cuanta razon el Codigo español, siguiendo el ejemplo de otros muchos, ha considerado a las donaciones como un modo especial de adquirir y las ha estudiado separadamente de los contratos."

2 Aside from the foregoing considerations of Manresa, the Code Commission had in mind the distinction between *actos jurídicos* and *contratos*. The former are more under the control of law than of the will of the parties. Therefore, in adoption and marriage, for example, the parties are not free to agree upon the conditions of the marriage or adoption because the law steps in for reasons of public policy to fix special conditions and limitations. The same thing occurs in regard to donation; thus there is a limit as to the amount that may be donated (Art. 750 to 752), incapacity to succeed by will is applicable to donations *inter vivos* (Art. 740); donations have special ways of revocation and reduction (Chap. IV, Title III, Book III.) in this connection, Sanchez Roman himself, in spite of his reasonings, had to define donation as "un *acto* de liberalidad" and did not use the word "contrato." He also admits that:

"x x x si puede tener el acto independiente existencia jurídica por la sola voluntad del donante, y si bajo este punto de vista, *en su origen* la donacion, como consecuencia del derecho que tenemos a disponer de lo que es nuestro, es unica y exclusivamente un acto de nuestra liberrima voluntad, sin tener para nada en cuenta el consentimiento del donatario, y *en este sentido hemos considerado la donacion* en general, *al determinar su naturaleza x x x.*"

3. But Sanchez Roman says that: "una vez concurriendo las dos voluntades de donante, y donatario por la aceptacion, ese acto unilateral viene a convertirse en una relacion contractual, y la donacion de simple acto de beneficiencia o liberalidad, transformase en un contrato," Our comment is that the perfection of the act of liberality by the donee's acceptance does not give rise to a contract but to a *donation*.

4. Lastly, there is something to be said in favor of Napoleon's view that "el contrato impone cargas mutuas a los dos contratantes, y por tanto esta expresion contrato no puede convenir a la donacion." A pure gift being a sheer act of generosity imposes no obligations on the donee. Therefore, in the common acceptance of the word "contract," it can not properly be applied to a simple donation.

With regard to the proposal of Justice Reyes that the title of tradition should be dealt with separately and not merely under the Title on Sales, that suggestion should be discussed in connection with the proposed amendment adding Title VI on tradition.

Title I. — OCCUPATION

Justice Reyes says that the Code fails to make an exception of goods found and salvaged at sea, which are governed by special rules. (Salvage Act). He further says that the Code also fails to clarify the situation of the movables cast ashore by the sea waves and those sunk and lying in the water, at the bottom of the sea or rivers.

Our comment is that, as to the first point, this matter is governed by the Salvage Act and should not be covered again in the new Civil Code.

With regard to the second class of cases, they should be the subject of special legislation. (See our comment under Art. 507.)

Title II. — INTELLECTUAL CREATION

Justice Reyes says that paragraph 4 should be amended so as to read: "(4). The discoverer or inventor with regard to his discovery or invention," omitting the words "scientist or technologist" in order that by the *ejusden generis* rule of interpretation the sentence may not be limited to technologically trained men.

We are sorry to disagree with the proposed amendment because the phrase "any other person" is broad enough to cover any other person. There is no ground to fear that if any layman, not a scientist, should make a scientific discovery any court would deny him the right to have a patent just because he is not a scientist. Moreover, there is nothing in the law on Patents which limits the right to give a patent to a scientist or technologist. In this connection Art. 742 provides that special laws govern copyright and patent.

ARTICLE 724

Justice Reyes says that this article should include trade-marks and trade-names. The suggestion is accepted. Moreover, the word "service-mark" should also be included. As amended, the article should read as follows:

'ART. 724. Special laws govern copyrights, patents, trade-marks, service-marks and trade-names."

Title III. DONATION
ARTICLE 725

Justice Reyes reiterates his suggestion that this entire title should be transferred to an appropriate place in Book IV on Obligations and Contracts. Reference is made to our comment under Art. 712.

ARTICLES 733 and 754

Justice Reyes suggests the amendment of Art. 733, by calling donations with a burden, onerous donations, so that the article will not conflict with Art. 754.

There is no contradiction between Arts. 733 and 754 because they refer to the same kind of donation with a burden, although the donation in Art. 733 is looked at from the standpoint of the *cause*, while the donation in Art. 754 is viewed from the standpoint of *effect*. In both articles the thing donated is worth more than the burden.

Castan divides donations on the basis of their *cause*, into simple and remuneratory; and on the basis of their effect, into pure, conditional and *onerous*. The very wording of Art. 733 shows that a remuneratory donation may carry with it a burden, that is to say, a donation motivated by a desire to reward services may impose a burden on the donee. This makes Art. 733 entirely consistent with Art. 754 where an onerous donation, viewed from the standpoint of its *effect*, also implies a burden.

In support of the foregoing, we quote Castan's "Derecho Civil Español," in his exposition of "Donacion" (vol. 3, pp. 96-99):

"3. *Sus clases.*—

x x x.

"B. *Por su causa o motivo.* — Se dividen a este respecto las donaciones en *simples* y *remuneratorias*. Son *simples* las que no reconocen otras causa que la liberalidad del donante; y *remuneratorias* acquellas a que alude el art. 619 del codigo civil, al decir que es tambien donacion la que se hace a una persona por sus meritos o por los servicios prestados al donante, siempre que no constituyan deudas exigibles x x x.

"C. *Por sus efectos.* — Se dividen las donaciones en puras, condicionalis y *onerosas*. El Codigo se refiere a estas ultimas al decir que son tambien donaciones aquellas en que se impone al donatario un gravamen inferior al valor de lo donado (art. 619), y que las donaciones con causa onerosa se rigen por las reglas de los contratos (art. 622). Pero esta ultima disposicion *hay que entender sera solo apicable a las donaciones impropras que impongan un gravamen equivalente al valor de lo donado; pues en las otras es natural que al excedente de la donacion sobre el gravamente se le apliquen las reglas de la donacion.*"

Our comment is that this last is a *donacion remuneratoria by its causa or motivo*.

ARTICLE 737

Congressman Arturo M. Tolentino suggests that Art. 737 be amended so as to read as follows: "The donor must have the capacity to donate at the time he makes the donation and when he learns of its acceptance."

Atty. R. M. Jalandoni also makes the same proposal.

The reason adduced is that inasmuch as under Art. 734 donation is perfected from the moment the donor knows of its acceptance by the donee, therefore, the capacity of the donor must also exist at the said moment in order that the donation may be valid.

However, the Code Commission does not believe that Art. 734 should require the capacity of the donor at the time of the acceptance by the donee is conveyed, because if, for example, the donor has become insane, his guardian's knowledge of the acceptance should be sufficient. In the case the donor should become a bankrupt, the knowledge of the acceptance communicated to the assignee should like be sufficient.

Justice Reyes proposes that it should be made clear that bankruptcy or civil interdiction of the donor after making the donation does not bar the effectivity.

However, it is quite clear from the wording of the article, that if the donor loses his capacity after making the donation, that does not rescind the donation, because it is expressly stated that the donor's capacity shall be determined *as of the time of the making of the donation*. In other words, subsequent incapacity does not affect the donation.

ARTICLE 739

Justice Reyes says that the word "void" should be changed to "voidable".

However, the intention of the Code Commission is to make these donations void from the beginning, because they are immoral or against public policy. The fact that the last paragraph refers to an action for declaration of nullity does not mean that the donation is only voidable, because even if a contract is void from the beginning, a judicial declaration to that effect is necessary. Art. 1410 provides: "The action or defense for the declaration of the inexistence of a contract does not prescribe."

In this connection, Art. 1409 provides: "The following contracts are inexistent and void from the beginning:

"x x x x x.

"(7). Those expressly prohibited or declared void by law."

The donations in Art. 739 are among the transactions prohibited or declared void by law. This is clear from the fact that the first line of Art. 739 clearly states, "The following donations *shall* be void."

ARTICLE 740

Justice Reyes proposes that the words "and *vice versa*" should be added to accord with Art. 1028. The latter article provides: "The prohibitions mentioned in article 739, concerning donations *inter vivos* shall apply to testamentary provisions."

In view of the clearness of Art. 1028, the words "and *vice versa*" need not be added to Art. 740.

ARTICLE 742

There is no vagueness in Art. 742 because Arts. 311, 316 and 320, clearly state who represent the child.

ARTICLE 749, Last Par.

Justice Reyes asks who is supposed to make the notification to the donor that his donation has been accepted. He states that it is doubtful if notaries have the power under the Administrative Code, to make the notification.

The last paragraph of this article states that the donor shall be notified "in an authentic form." The notification need not be done by the notary; it may be done by the donee himself in writing signed by him, transmitting the separate instrument of acceptance, which shall be in a public document, according to paragraph 2

ARTICLE 750

Justice Reyes proposes that donations exceeding, say ₱500, be approved by the court in order to be valid. He says this would save ulterior litigation.

The Code Commission believes that such requirement would be an expensive red-tape and would hamper the generosity of benefactors. Before the donation is approved, creditors and heirs would appear and make objections which may not be well founded.

With regard to the possibility of fraud on creditors, if any person wants to perpetrate such fraud, he usually makes a simulated sale of his property. Therefore, to be logical, it should also be required that all sales shall be approved by the court, because they may be intended to defraud the creditors.

We believe that the requirement herein proposed by Justice Reyes will be an undue interference with the citizen's freedom of action. If he is violating the law, the statutes both penal and civil are sufficiently comprehensive to make him suffer the consequences.

ARTICLE 753

Justice Reyes suggests that the last part of the first paragraph be amended to read: "There shall be no right of accretion among them *by reason of a donee's incapacity, refusal or failure to accept the donation*, unless the donor has otherwise provided."

His reasons are as follows:

1. That predecease is not applicable unless the death takes place before the donation is perfected.

2. It is rare to meet an express repudiation of donations; most of the time, the donee will simply fail to accept.

With regard to the first reason, inasmuch as Justice Reyes himself admits that death before the donation is perfected may give rise to accretion, therefore, predecease is one of the possibilities foreseen in the article. The first paragraph, therefore, provides that in such a case there shall be no right of accretion, unless the donor has otherwise provided.

With regard to the second reason, failure to act is an implied repudiation.

ARTICLE 760 Par. 3

Justice Reyes asks why adoption in paragraph 3 should refer only to a minor child, whereas Art. 337 permits adoption of a person of legal age.

The intention of the Commission is that the subsequent adoption of a minor child should be the only case where adoption may cause the revocation or reduction of the donation, for these reasons:

1. The adoption of a person of legal age is usually not to have an heir but only for purpose of expressing the adopter's affection.

2. The subsequent adoption of a person of age should not give the latter a chance to ask the donee for the revocation or reduction of donations previously made, because this would give him an opportunity to meddle with, or inquire into, past generosities of the adopter. The Code Commission believes that such would be a reprehensible act of interference on the part of the adopted person.

ARTICLE 761

Justice Reyes proposes that the fourth and fifth lines of this article be eliminated, that is to say, "taking into account the whole estate of the donor at the time of the birth, appearance or adoption of a child."

The question involved is whether the basis of computation should be the property of the donor at the time of the birth, appearance or adoption of a child, or at the time of the donor's death.

Justice Reyes says that it should be the latter. But inasmuch as the action is usually brought during the lifetime of the donor, there is no way of computing his property at the time of his death, therefore, the only way to have an approximate computation is to take into account the property of the donor at the time of the birth or appearance or adoption of the child.

But, Justice Reyes says, that testator may acquire sufficient assets after the appearance of the child to render revocation or reduction of the donation unnecessary. In such a case the revocation may be rescinded or the reduction modified upon petition of the donor.

There is some similarity in this way of computation to the case of the compulsory dowry under the old Civil Code. In accordance with Art. 1341 of the old Code, the compulsory dowry consisted in one-half of the presumptive strict legitime.

ARTICLE 762-763

Justice Reyes proposes the elimination of these two articles for the reasons he stated in Art. 761.

Inasmuch as the reasons have been refuted, these two articles should be retained.

ARTICLE 763

Atty. R. M. Jalandoni proposes that the words " or from his legitimation, recognition" be eliminated from Art. 763 because, he says, the mere birth of a child of the donor, whether the child be legitimate or illegitimate, is a ground for a revocation.

It is true that even a spurious child is entitled to a legitime under the new Civil Code. However, the relation of parent and child, that is to say, paternity and filiation, must be judicially declared in order that the spurious child may be entitled to a legitime. For this reason, the words "from the judicial declaration of filiation" are used in Art. 763.

The words "birth of the first child" refer to a legitimate child; "or from his legitimation" refer to a legitimated child; "recognition" refers to an acknowledged natural child or a natural child by legal fiction; "or adoption" refer to an adopted child. And, lastly, the words "or from the judicial declaration of filiation" refer to a spurious child.

Therefore, the amendment would not be necessary or in order.

ARTICLE 765

Justice Reyes proposes that this article should make reference to Art. 107 as an additional ground for revoking donations by reason of ingratitude.

Art. 107 provides: "The innocent spouse, after a decree of legal separation has been granted, may revoke the donations by reason of marriage made by him or by her to the offending spouse. Alienations and mortgages made before the notation of the complaint for revocation in the Registry of Property shall be valid.

"This action lapses after four years following the date the decree become final."

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 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 *unworthiness*.

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 828

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 superfluity 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 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