THY WILL BE DONE by Atty. Angelo M. Cabrera

DISINHERITANCE BY OMISSION?

We often hear it in tagalog movies of yesteryears. *"Hindi kita pamamanahan*," a father angrily threatens his daughter who refuses to kowtow to her parents' wish for her to marry a man of their choice, perhaps the son of a business partner or *kumpadre*. And so the father writes a last will and completely omits and makes no mention of the daughter in the distribution of his wealth.

I remember a particular participant in one of my estate planning seminars in Davao who narrated to me his practice of regularly revisiting and revising his will, depending on the state of his relationships with his children. "When one of my children quarrels with me," he said, "I rewrite my will and removes that child. But when we kiss and make up, I restore the child in the will.

Is the act of omitting an heir in a last will equivalent to disinheritance?

No.

Article 854 of the Civil Code provides that the preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious.

Preterition consists in the omission in the testator's will of the forced heirs or anyone of them, either because they are not mentioned therein, or, though mentioned, they are neither instituted as heirs nor are expressly disinherited (Nuguid vs. Nuguid 17 SCRA 450).

This simply means that compulsory heirs, who are entitled by law to be given their shares in the inheritance, cannot be disregarded in the will. Any act of omitting compulsory heirs in the direct line, such as children, will effectively annul the institution of heirs and throw open to intestate succession the entire inheritance. In such a case, all compulsory heirs shall be entitled to their respective lawful shares in the inheritance including the person that the testator had intended to be disinherited. In other words, the act of omission will only produce the opposite result because such act will nullify the very intention of the testator to disinherit the omitted heir.

Does it mean therefore that we cannot disinherit compulsory heirs?

No. Disinheritance is allowed under our laws but this cannot be done by exclusion or an act of omission. Rather, it is done by an expressed provision in the will. It

requires that such intent to disinherit be explicitly mentioned in the will, stating the reasons therefor and those reasons must be based on grounds provided by law.

In one case, a testator named Nemesio wrote a will before his death instituting his brother Segundo as heir to his entire wealth inspite of the fact that Nemesio had a legally adopted daughter named Virginia. He added a stipulation saying that in case Segundo predeceases him, the share shall go to Segundo's children. Segundo did die before the testator and in 1984, after the death of Nemesio, the will was presented to the court for probate by one of Segundo's children. The probate was opposed by Nemesio's wife Rosa and their legally adopted daughter Virginia on the ground that they were preterited.

The Supreme Court ruled that insofar as the widow Rosa is concerned, Article 854 of the Civil Code may not apply since the spouse is a compulsory heir but not in the direct line.

But as for the legally adopted daughter of Nemesio, under Article 39 of the Child and Youth Welfare Code, adoption gives to the adopted person the same rights and duties as if he were a legitimate child of the adopter and makes the adopted person a legal heir of the adopter. It cannot be denied that Virginia was totally omitted and in the will of the testator. Neither can it be denied that she was not expressly disinherited. Hence, this is a clear case of preterition of the legally adopted child.

The Supreme Court ruled that the universal institution of the children of Segundo to the entire inheritance of the testator results in totally abrogating the will because the nullification of such institution of universal heirs – without any other testamentary disposition in the will – amounts to a declaration that nothing at all was written. (G.R. No. 72706 October 27, 1987).