

Preterition

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.

This means that for purposes of succession, when a will completely excludes at least one of the compulsory heirs in the direct line (referring to children or parents), the will shall be invalidated and intestate succession shall take place.

Question: Is there preterition when a will simply disinherits an heir without instituting any heir?

The following case answers this question.

Fact: An estate owner wishes to exclude his son in the distribution of his estate. The son used the estate owner's name to take out a loan and then caused the loan to default. The estate owner writes a holographic will but instead of the usual content of a will which states who gets what, he writes a *Kasulatan sa Pag-alis ng Mana* where he disinherits one of his sons. He does not institute any of his other children in the will.

Issue: Was there preterition?

Held: With regard to the issue on preterition, the Court believes that the compulsory heirs in the direct line were not preterited in the will. It was, in the Court's opinion, S****o's last expression to bequeath his estate to all his compulsory heirs, with the sole exception of A****o. Also, Segundo did not institute an heir to the exclusion of his other compulsory heirs.

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