

SENATE
S. B. No. 1256

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Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

In Article 941 of the Civil Code, a legacy of general personal property is valid even if nothing of the same kind exists in the estate. If the said property does not form part of the estate, the administrator or executor must acquire the property subject of the legacy.

A different set of rules applies for devises. The validity of a devise of indeterminate real property depends on the existence of said property. The administrator is not obliged to acquire the property if it does not form part of the estate.

The difference in rules is a result of an adaptation of Roman law which treats personal property with more liberality. This rationale is no longer relevant simply because personal property is easier to acquire and dispose of. Hence, there is no compelling reason to apply a different set of rules for a legacy of general personal property on the one hand and a devise of indeterminate real property on the other hand.

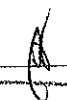
Both must be treated equally, such that a legacy or devise can only be valid if the property given exists in the estate of the decedent.

Miriam Defensor Santiago

MIRIAM DEFENSOR SANTIAGO

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AN ACT
AMENDING REPUBLIC ACT NO. 386,
ALSO KNOWN AS THE CIVIL CODE OF THE PHILIPPINES,
ARTICLE 941

Be it enacted by the Senate and the House of Representatives of the Philippines,
in Congress assembled:

SECTION 1. The Civil Code, Article 941, is hereby amended to read as follows:

“Article 941. A devise of indeterminate real or
PERSONAL property shall be valid only if there be
property of its kind in the estate.

The right of choice shall belong to the executor or
administrator who shall comply with the legacy by the
delivery of a thing OF THE KIND DESIGNATED IN
THE LEGACY.”

SECTION 2. Separability Clause. - If any provision, or part hereof is held invalid
or unconstitutional, the remainder of the law or the provision not otherwise affected shall
remain valid and subsisting.

SECTION 3. Repealing Clause. - Any law, presidential decree or issuance,
executive order, letter of instruction, administrative order, rule or regulation contrary to,
or inconsistent with, the provisions of this Act is hereby repealed, modified or amended
accordingly.

SECTION 4. Effectivity Clause. - This Act shall take effect fifteen (15) days after
its publication in at least two (2) newspaper of general circulation.

Approved.