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NOV 21 1982

SENATE

Senate Bill No. 880

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INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

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EXPLANATORY NOTE

The Civil Code, Article 941, provides that a legacy of a generic personal property is valid even if nothing of the same kind exists in the estate. Such a property must exist in the estate for a devise of indeterminate real property to be valid. The administrator of the estate must acquire the property, which is the subject of the legacy, if the said property does not form part of the estate.

On the other hand, the administrator is not so obliged if the property, which does not form part of the estate, is real property and is the subject of a devise. Thus, there is a difference in the rules, depending on whether the property is personal or real. This is a result of an adaptation of Roman Law which treats property with more liberality.

The rationale behind Roman law is no longer relevant simply because personal property is easier to acquire and dispose of. There is no compelling reason to apply different rules for a legacy of generic 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.

In view of the foregoing, early passage of this proposed measure is earnestly requested.

  
JINGGOY EJERCITO ESTRADA  
Senator


FIFTEENTH CONGRESS OF THE REPUBLIC  
OF THE PHILIPPINES  
First Regular Session

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SENATE

Senate Bill No. 880

APPROVED BY: 

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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 House of Representatives of the Philippines in Congress assembled:*

**SECTION 1.** Article 941 of Republic Act No. 386 is hereby amended to read as follows:

"Article 941 - A legacy of generic personal property shall be valid [even if there be no] **IF THERE EXISTS** things of the [same] **DESIGNATED** kind in the estate.

A device of indeterminate real property shall be valid only if there be immovable 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** [which is neither of interior nor of superior quality].

**SEC. 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.

**SEC. 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.

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

*Approved,*