[62] 76 O. G. 7630, 7635.
[63] Cariño vs. Insular Government of the Philippine Islands, 212 U.S. 449, 462-463; Legarda vs. Saleeby, 31 Phil. 590, 594; Angeles vs. Samia, 66 Phil. 444, 448; Bautista vs. Dy Bun Chin, (CA) 49 O. G. 179, 183; Dañes vs. Ayangco, 6 CAR (2s) 392, 398.
[64] Republic vs. Reyes, 72 O. G. 9694, 9701.
[65] Opinion of the Secretary of Justice No. 140, September 18, 1974.
[66] Ayog vs. Cusi, 118 SCRA 492, 498.
[67] Opinion of the Secretary of Justice No. 185, August 26, 1976.
[68] Pindangan Agricultural Co. vs. Schenkel, 83 Phil. 529, 539-540.
[69] Black's Law Dictionary, 5th ed., p. 658.
[70] Opinion of the Secretary of Justice No. 151, October 19, 1973.
[71] Mani Lim Piano vs. Li Ton, CA-G, R. No. 20775-R, March31, 1965.
[72] Black's Law Dictionary, 5th ed., p. 653.
[73] Ballentine's Law Dictionary, 3rd ed., p. 557.
[74] Ramirez vs. Vda de Ramirez, 111 SCRA 704, 712.
[75] Land Registration Commission Consulta No. 88, May 7, 1956.
[76] Republic vs. Quasha, 46 SCRA 160, 168.
[77] Ibid. at pp. 175-176.
[78] Rellosa vs. Gaw Chee Hun, 93 Phil. 827, 833.
[79] Municipal Government of Caloocan vs. Choan Huat & Co., Inc. 96 Phil. 88, 94.
[80] Opinion of the Secretary of Justice No. 212, November 27, 1975.
[81] Opinion of the Secretary of Justice No. 160, September 23, 1975.
[82] Opinion of the Secretary of Justice No. 157, September 12, 1975.
[83] Opinion of the Secretary of Justice No. 188, Series of 1975.
[84] Opinion of the Secretary of Justice No. 216, December 10, 1975.
[85] Record of the Batasan, January 21, 1981, p. 53.
[86] Ibid., p. 54.
[87] Record of the Batasan, January 22, 1981, p. 77.
[88] Ibid., p. 79.
[89] Record of the Batasan, January 21, 1981, p. 46.
[90] Record of the Batasan, January 28, 1981, p. 135.
[91] Record of the Batasan, January 21, 1981, p. 42.
[92] Ibid., p. 56; Record of Batasan, January 28, 1981, p. 136.
[93] Record of the Batasan, January 22, 1981, p. 70.
[94] Record of the Batasan, January 28, 1981, p. 137.
[95] Record of the Batasan, January 22, 1981, p. 70.
[96] Loc. cit.
[97] Record of the Batasan, January 21, 1981, pp. 54-55 and 59.
[98] Record of the Batasan, December 15, 1981, p. 2035.
[99] Ibid., p. 2038.
[100] Ibid., p. 2040.
[101] Ibid., pp. 2040 and 2050.
[102] Ibid., pp. 2036 and 2042.
[103] Ibid., p. 2037.
[104] Ibid., p. 2035.
[105] Ibid., p. 2050.
[106] Ibid., p. 2037.
[107] Ibid., p. 2049.
[108] Ibid., p. 2047.
[109] Ibid., p. 2048.
[110] Ibid., p. 2063.
[111] Ibid., p. 2044.
[112] Ibid., pp. 2048 and 2051.

PRETERITION: IN THE LIGHT OF RECENT DECISIONS — PART II

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FOREWORD:

Any attempt at simplification is often met with obstacles. While in almost every instance, the objective is to bring the law to the level of an ordinary man's understanding, the task is constantly made more difficult by novel albeit confusing judicial pronouncements which add further complications to the perplexed provisions of law, and thus result in havoc in the mystified mind of the bewildered man. Such a situation is true in the interpretation of the statutory provision regarding preterition. While the ruling in the case of *Nuguid vs. Nuguid*[1] has settled the conflicting views relative to the effects of preterition, the more recent ruling in the case of *Solano vs. Court of Appeals*[2] has brought back established jurisprudence to a state of confusion and disarray. This development prompted the writer to prepare a sequel to a legal treatise published two years ago, dealing precisely on the matter.[3]

The last two paragraphs of the aforecited work read as follows:

> "Two years later, the case of *Neri vs. Akutin* (72 Phil 322) reversed the ruling in the *Escuin* and *Eleazar* cases. The court, through Justice Moran, annulled totally the institution of heirs, and did not consider the free portion of the estate as legacy to the instituted heirs. Said the court:
>
> > In the instant case, while children of the first marriage were mentioned in the will, they were not accorded any share in being disinherited. It is therefore, a clear case of preterition as contended by appellant. x x x. Except as to legacies and betterments which shall be valid insofar as they are not inofficious preterition avoids the institution of heirs and gives rise to intestate succession. In the instant case, no such legacies or better ments have been made by the testator. *Mejoras or betterments must be expressly provided according to Article 825 and 828 of the Civil Code and where no express provision therefore is made in the will, the law would presume that the testator had no intention to that effect.* (Underscoring supplied)

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This ruling was reiterated in the case of *Nuguid vs. Nuguid* where the Supreme Court; through Justice Sanchez, annulled completely the institution of heirs on the ground of preterition, without considering the free portion of the estate as a legacy to the instituted heir. Thus:

> Legacies and devisees merit consideration only when they are so expressly given as such in the will. Nothing in Article 854 suggests that the mere institution of a universal heir in a will – void because of preterition – would give the heir so instituted a share in the inheritance. As to him, the will is inexistent. There must be, *in addition to such institution, a testamentary disposition granting him bequests or legacies apart and separate from the nullified institution of heirs.* (Underscoring supplied)

This Ruling has not yet been reversed to date."

With the ruling of the Supreme Court in the *Solano* case now being part of the law of the land, there is now a doubt as to the soundness and reliability of the doctrine laid down in the *Nuguid* case. While these two cases resulted in two different conclusions, the Supreme Court in the *Solano* case, did not abandon the ruling in the *Nuguid* case. Instead, the Court in a mysterious tone, refused to apply the doctrine laid down in the *Nuguid* case in the following tenor:

> "The case of *Nuguid vs. Nuguid, et. al.,* reiterating the ruling in *Neri vs. Akutin, et. al.,* which held that where the institution of a universal heir is null and void due to preterition, the will is a complete nullity and intestate succession ensues, is not applicable herein because in the *Nuguid* case, only a one-sentence will was involved *with no other provision except the institution of the sole and universal heir; there was no specification of individual property; there were no specific legacies or bequests.*[4] (Underscoring supplied).

As it will be illustrated forthwith, there is hardly any difference between the factual bases of the aforecited two cases. Thus, the diverse conclusions reached by the Supreme Court only serve to cast serious doubts as to which of the two rulings would be controlling. At this point, this sequel will pick up the discussion from the antecedent work referred to above.

I. Factual Basis of the *Solano* Case:

Meliton Solano, a resident of Tabaco, Albay, married Pilar Riosa. The latter died. On a world tour, he met a French woman, Lilly Gorand, who became his second wife in 1928. The union was short-lived as she left him in 1929. In the early part of 1930, Solano started having amorous relations with Juana Garcia, out of which affair were born Bienvenido Garcia and Emeteria Garcia in 1931 and 1935 respectively. During his lifetime, Solano recognized the Garcias as his children by acts of support and provision of their education.

In 1935, Solano started living with Trinidad Tuagnon. Three children were born out of this relation, but only Zonia Ana Tuagnon, born in 1941, survived.

During the Japanese occupation, specifically on November 29, 1943, Solano obtained a divorce decree from Lilly Gorand. On December 29, 1943, Solano and Trinidad Tuagnon executed a document acknowledging Zonia as a natural child and giving her the right to use the surname Solano. The document was duly registered with the Local Civil Registrar.

On January 18, 1969, Solano executed his Last Will and Testament, instituring Zonia as his universal heiress to all his personal and real properties in Camalig, Tabaco, and Malinao, all in the Province of Albay, except for five parcels of land in Bantayan, Tabaco, Albay, which were given to Trinidad Tuagnon in usufruct. This will was submitted for probate by Solano himself during his lifetime. On March 10, 1969, the Court of First Instance of Albay, in Special Proceedings No. 842, admitted the will to probate.

On July 7, 1969, Bienvenido and Emeteria Garcia filed an action for compulsory recognition against Solano. The latter denied paternity, but did not live long enough to get a favorable decision. On February 3, 1970, Solano died. In view of the foregoing, the court hearing the action for compulsory recognition filed by the Garcias, ordered Zonia to be substituted in lieu of the deceased, considering that she was the only surviving heir of the decedent mentioned in the will which was previously admitted to probate. Zonia entered her appearance as substitute defendant, and asked the court that she be permitted to assume her duties as executrix of the probated will with the least interference from the Garcias, who were as she claimed, mere pretenders to be illegitimate children of Solano.

During the hearing of this action for compulsory recognition, the court specified the issues to be dealt with; namely (1) the question of the recognition of the Garcias; (2) the correct status of Zonia; (3) the hereditary shares of each in view of the probated will. In a decision rendered by the presiding judge, Bienvenido and Emeteria Garcia were declared adulterous children of Solano; Zonia was likewise declared an adulterous daughter of the decedent; and that the children shall share equally in the estate of the deceased, without prejudice to the legacy given to Trinidad Tuagnon.

From this judgment, Zonia appealed to the Court of Appals, which court affirmed *in toto* the ruling of the trial court. Thus, this petition for review on certiorari.

II. Pertinent Issue:

The respondent Court of Appeals upheld the ruling of the trial court awarding the entire estate of Meliton Solano to the three adulterous children; namely, Bienvenido Garcia, Emeteria Garcia, and Zonia Ana Solano. Obviously, the respondent court agreed with the ruling of the trial court that as recognized spurious children, Bienvenido and Emeteria were entitled to proportionate shares in the estate of Meliton Solano. Thus, the complete omission of the former in the will of Solano resulted in preterition, rendering the institution of Zonia as universal heiress, void.

III. The Pertinent Provisions of Law and Jurisprudence:

Article 854 of the Civil Code defines preterition and provides for its effects. It reads:

> "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."

> "If the omitted compulsory heir should die before the testator, the institution shall be effectual, without prejudice to the right of representation."

Preterition results in the annulment of the institution of heirs. Consequently, the institution becomes ineffective. But legacies and devises, insofar as they do not exceed the portion of the estate freely disposable by the testator, shall be respected. Consequently, a distinction between heir on the one hand, and a legatee or devisee on the other, is material in the proper determination of which grant or bequest shall remain unaffected by preterition.

Article 782 of the Civil Code is the provision squarely in point. It reads as follows:

> "An heir is a person called to the succession 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."

While the law attempted to distinguish between the concept of an heir on the one hand, and a legatee and devisee on the other, much is left to be desired. For any person given a gift in the will shall qualify as either an heir (because he is called to succession by virtue of a will), a legatee (if he is given a specific movable property), or a devisee (if given a specific immovable property). Thus, a person given a particular car in the will of testator, is both an heir and a legatee for he is the recipient of a movable property and called upon to succeed by virtue of a will. Likewise, a person given a parcel of land in the will of a testator, is both an heir and a devisee for he is the beneficiary of an immovable property, and called upon to succeed by virtue of a will. Consequently, the distinction must lie elsewhere.

The Spanish commentator Manresa thus suggested that an heir is a person called upon to succeed to the entire estate or an aliquot portion thereof. A legatee is a person called upon to inherit a specific movable property; and a devisee is a person called upon to inherit a specific immovable property. On this point, Justice J.B.L. Reyes had this to say:

> "The distinction between heir and legatee is not drawn with precision, and yet the distinction is all-important for articles 854 (preterition) and 918 (disinheritance) provide cases where the institution of heirs is void, but the legacies remain valid. The code omits to state the fundamental difference: that heirs are instituted to the whole or to an aliquot portion thereof, i.e., to the whole or to a fraction of the whole; while a legatee or devisee is given individualized items of property. As noted by Ferrara (Rev. Der. Priv. 1923), the quality of heirs does not depend on the appellation given by the testator; it does not arise *ex voluntate, sed ex re.*"[5]

From the foregoing, it is apparent that the designation of the testator in the will is not controlling in the determination as to whether or not a beneficiary thereunder is an heir, a legatee, or a devisee. It is likewise evident that a legatee must be called upon to inherit a particular movable property, and a devisee, a particular immovable property. Consequently, there can be no legacy or devise created by mere inference or implication from a reading of the testamentary dispositions. The legacy or devise must be a deliberate, carefully considered, and intentional gift of a movable and immovable property, respectively. It cannot be created by an impetuous reading of a testamentary disposition which does not specify the property to be given.

The importance of the distinction between an heir on the one hand, and a legatee or devisee on the other, cannot be overlooked either in the case of preterition or in the case of an invalid disinheritance. As stated earlier, preterition annuls the institution of heirs, without prejudice to the effectivity of legacies and devises which are not otherwise inofficious. In the case of an invalid disinheritance, the Code has this to say:

> "Art. 918 – Disinheritance without a specification of the cause, or for a cause the truth of which, i.e., contradicted, is not proved, or which is not one of those set forth in this Code, shall annul the institution of heirs insofar as it may prejudice the person disinherited; but the devises and legacies and other testamentary dispositions shall be valid to such extent as will not impair the legitime."

Disinheritance is the only statutory right available to a testator to vindicate a grievous wrong done to him by an heir. It involves the deprivation of a compulsory heir's right to his legitime, in retribution for past affronts on the person or honor of the testator, his spouse, ascendants and descendants. It is, in a way, characterized by vindictiveness on the part of the testator, who even during the last moments of his life, failed to forgive and reconcile with the offending heir.[6]

As an extraordinary remedy which can indeed be abused by the testator, the law has provided safeguards meant to control the otherwise unbridled privilege of the testator. Thus, a testator may invoke the right to disinherit a compulsory heir only for causes specified by law.[7] It can only be validly exercised by executing a valid will which must state the ground therefor.[8] The ground invoked by the testator must be proved, should the disinherited heir deny the same.[9] And finally, the cause for disinhertance must be one of those mentioned by law.[10] And even if the exercise of the right to disinherit be properly done, still the law tempers the harsh effect thereof by allowing the children and descendants of the disinherited heir to exercise the right of representation.[11]

When any of the requirements stated above is not met, a clear case of an invalid disinheritance arises. As such, Article 918 will squarely apply and thus frustrates the testator's attempt to deprive a compulsory heir of his right to the legitime. However, Article 918 does not restore full successional rights to the affected heir. For, as specifically stated, the institution of heirs shall only be annulled to the extent the invalidly disinherited heir is prejudiced. Thus, the recovery of said heir is necessarily limited to his share in the legitime. Needless to say, legacies and devises, not otherwise inofficious, shall remain valid.

It is along this line where the distinction between preterition and invalid disinheritance should be drawn. While in either case a compulsory heir is deprived of his legitime, the pertinent provisions of law governing the effects of preterition and invalid disinheritance provide for different remedies to an aggrieved heir. Under article 854, preterition "shall annul the institution of heirs;" whereas under article 918, an invalid disinheritance "shall annul the institution of heirs insofar as it may prejudice the person disinherited."

The difference can very well be seen by illustrations. The extent of the annulment of the institution will vary depending on whether there is a case of preterition or whether there is a case of defective disinheritance.

Case 1. The testator instituted his two legitimate children, A and B, as universal heirs to an estate of ₱90,000.00, subject to a legacy of ₱30,000.00 in favor of X. C, another legitimate son, was preterited. Divide the estate.

Solution: The preterition of C annuls the institution of A and B as universal heirs, without prejudice to the legacy of X which does not impair the legitimes of the compulsory heirs. Thus:

X	gets ₱30,000.00 as legacy
A	gets ₱20,000.00 as intestate share
B	gets ₱20,000.00 as intestate share
C	gets ₱20,000.00 as intestate share
Total	₱90,000.00

The institution of A and B is annulled resulting in intestacy insofar as the balance of the estate is concerned, after the payment of the legacy of X. It will be noted that C, the preterited heir, gets not only his share of the legitime, but also a portion of the free disposal.

Case 2. The testator instituted his two legitimate children, A and B as universal heirs to an estate of ₱90,000,00. subject to the legacy of ₱30,000.00 in favor of X. The testator in the same will, disinherited C, a legitimate son, for a reason not stated in the will. Divide the estate.

Solution: The disinheritance of C is void because the cause for disinheritance was not specified in the will. Thus, applying Article 918, the institution of A and B shall be annulled to the extent that C was prejudiced. C is entitled to receive at least his legitime. The legacy given to is not inofficious and should therefore be respected.

Consequently, the estate should be divided as follows:

X	gets ₱30,000.00 as legacy
C	gets ₱15,000.00 as his legitime
A	gets ₱15,000.00 as his legitime, plus 7,500.00 as an instituted heir
B	gets ₱15,000.00 as his legitime, plus 7,500.00 as an instituted heir
Total	₱90,000.00

It will be noticed that were it not for the defective disinheritance of C, A, and B would have received ₱30,000.00 each. But because C was prejudiced to the extent of ₱15,000.00, the institution of A and B was annulled or reduced to an extent sufficient to cover the legitime of C.

The foregoing illustrations clearly demonstrate the difference between preterition and defective disinheritance as to their respective effects. Preterition should result

in the total annulment of the institution of heirs; whereas a defective disinheritance results only in partial annulment of the institution. In the case of *Neri vs. Akutin*[12] the Supreme Court, speaking through Justice Moran, annulled completely the institution of heirs as a consequence of the preterition of compulsory heirs. The Court rejected the argument that the preterition of some compulsory heirs should result in the partial annulment of the institution, or in effect, a reduction or abatement of the institution only to the extent the preterited heirs were prejudiced. Justice Moran emphasized that if preterition would result only in partial annulment of the institution, then the distinction between the effects of preterition and invalid disinheritance would simply vanish. The Court further explained:

> "But the theory is advanced that the bequest made by universal title in favor of the children by the second marriage should be treated as *legado* and *mejora* and, accordingly, it must not be entirely annulled but merely reduced. This theory, if adopted, will result in a complete abrogation of articles 814 and 851 of the Civil Code.[13] If every case of institution of heirs may be made to fall into the concept of legacies and betterments reducing the bequest accordingly, then the provisions of articles 814 and 851 regarding total or partial nullity of the institution, would be absolutely meaningless and will never have any application at all. And the remaining provisions contained in said article concerning the reduction of inofficious legacies of betterments would be a surplusage because they would be absorbed by article 817[14] Thus, instead of construing, we would be destroying integral provisions of the Civil Code.
>
> The destructive effect of the theory thus advanced is due mainly to a failure to distinguish institution of heirs from legacies and betterments, and a general from a special provision. With reference to article 814, which is the only provision material to the disposition of this case, it must be observed that the institution of heirs is therein dealt with as a thing separate and distinct from legacies and betterments. And they are separate and distinct not only because they are distinctly and separately treated in said article but because they are in themselves different. Institution of heirs is a bequest by universal title of property that is undermined. Legacy refers to specific property bequeathed by a particular of special title. The first is also different from a betterment which should be made expressly as such (article 828). The only instance of implied betterment recognized by law is where legacies are made which cannot be included in the free portion (article 828). But again an institution of heirs cannot be taken as a legacy.
>
> It is clear, therefore, that article 814 refers to two different things which are the two different objects of its two different provisions. One of these objects cannot be made to merge in the other without mutilating the whole article with all its multifarious connections with a great number of provisions spread throughout the Civil Code on the matter of succession. It should be borne in mind, further, that although article 814 contains two different provisions, its special purpose is to establish a specific rule concerning a specific testamentary provision; namely, the institution of heirs in a case of preterition. Its other provision regarding the validity of legacies and betterments if not inofficious is a mere reiteration of the general rule contained in other provisions (articles 815 and 817) and signified merely that it also applies in cases of preterition. As regards testamentary dispositions in general, the general rule is legitime of the forced heirs shall be reduced on petition of the same in so far as they are inofficious or excessive (article 817). But this general rule does not apply to the specific instance of a testamentary disposition containing an institution of heirs in case of preterition, which is made the main and specific subject of article 814. In such instance according to article 814, the testamentary

> disposition containing the institution of heirs should be not only reduced but annulled in its entirety and all the forced heirs, including the omitted ones, are entitled to inherit in accordance with the law of intestate succession. It is thus evident that, if, in construing article 814, the institution of heirs, therein dealt with is to be treated as legacies of betterments, the special object of said article would be destroyed, its specific purpose completely defeated, and in that wise the special rule therein established would be rendered nugatory. And this is contrary to the most elementary rule of statutory construction. In construing several provisions of a particular statute, such construction shall be adopted as will give effect to all, and when general and particular provisions are inconsistent, the latter shall prevail over the former." [15]

In sum, the idea the Court tried to convey was that the framers of the law distinguished between the effect of preterition and the effect of an invalid disinheritance. The proper interpretation of the said statutory provisions must maintain said distinction. Ergo, any construction which would tend to obliterate such distinction would result in the mutilation of the law.

IV. The Effect of Preterition Under the Solano Ruling:

After affirming the finding of the Trial Court that the Garcias were recognized adulterous children of the deceased Solano, and after confirming the fact that said adulterous children were preterited on account of the institution of Zonia T. Solano as universal heiress, the Supreme Court proceeded to determine the effect of such preterition. Said the Court:

> "x x x x. However, contrary to the conclusions of the courts below, holding that the entire will is void and intestacy ensues, the preterition of the Garcias should annul the institution of Zonia as universal heir only insofar as the legitime of the omitted heirs is impaired. The will, therefore, is valid subject to that limitation. It is plain that the intention of the testator was to favor Zonia with certain portions of his property, which, under the law, he had a right to dispose of by will, so that the disposition in her favor should be upheld as to the one-half (1/2) portion of the property that the testator could freely dispose of. Since the legitime of legitimate children consists of one-half (1/2) of the hereditary estate, the Garcias and Zonia each have a right of participation therein in the proportion of one-third (1/3) each. Zonia's hereditary share will therefore, be 1/2 + (1/3 of 1/2) of the estate, while the Garcias will respectively be entitled to 1/3 of 1/2 or 1/6 of the value of the estate.
>
> As heretofore stated, the usufruct in favor of Trinidad Tuagnon over the properties indicated in the will is valid and should be respected."[16]

This dictum need not be analyzed in order to arrive at the conclusion that the Supreme Court simply reduced the inheritance of Zonia in order to satisfy the legitimes of the two other compulsory heirs of the testator. In sum, the free portion of the estate was awarded to Zonia, on top of a one-third (1/3) share of the legitime. A novelty is introduced in this case, for the Court did not even consider the free portion of the estate as a legacy or devise to Zonia. The Court simply inferred that from a reading of the will, it was obvious that the testator wanted to favor Zonia. Thus, the convenient escape from the ruling in the case of *Neri vs. Akutin* cited above. It must be recalled, however, that while the wishes of

the testator as expressed in his will, is the law which should govern the disposition of his estate, the fundamental requisites of law, both as to extrinsic and intrinsic validity of a will, must be fully satisfied before any such disposition can be given any effect. Simply stated, the law recognize the right of a person to control, to a certain extent, the disposition of his properties to take effect upon his death. But the law also requires that the exercise of such right be in consonance with existing rules and regulations. It would seem, therefore, that the Supreme Court in this case gave undue weight to the testamentary dispositions of the decedent, to such an extent that the legal consequences of failing to abide by the rules on legitimes were totally ignored. This dictum, therefore, is clearly contrary to the provision of Article 854 of the New Civil Code which states that the preterition of a compulsory heir in the direct line "shall annul the institution of heir."

The disastrous consequences of this ruling may be summarized as follows:

1. There is a marked difference between preterition and invalid disinheritance. There is no dispute on this point. A long list of decisions will support this premise. As to the effects of preterition and invalid disinheritance, the law is very specific. Preterition results in the annulment of the institution of heir, according to Article 854. An invalid disinheritance results in the annulment of the institution insofar as the invalidly disinherited heir is concerned. This is clear from the provision of Article 918. Briefly stated, the annulment of institution in case of preterition is total; but the annulment of the institution in case of an invalid disinheritance is partial. Therefore, when the Court in the *Solano* case affirmed the preterition of the Garcias, it should have totally annulled the institution of Zonia, to be consistent with Article 854. In invoking the novel concept of giving as much effect to the testamentary disposition as possible, the fundamental distinction between the effects of preterition and an invalid disinheritance was totally obliterated.

2. Article 906 of the New Civil Code provides that a compulsory heir who is given by the testator anything less than his legitime may demand the full satisfaction of the same. In exercising this right, the aggrieved compulsory heir may demand or insist on the reduction of the shares of the other heirs. But this article contemplates a situation wherein the aggrieved heir was not totally omitted in the will of the testator. Thus, the remedy of partial reduction of the shares of the other heirs. Now, the ruling in the *Solano* case may also be confused with the remedy provided for in Article 906. As to effect therefore, there is hardly any distinction among (a) preterition; (b) invalid disinheritance; and (c) partial impairment of the legitimes.

3. It is a fundamental principle of construction that in construing a provision of law, its entirety must be considered. It requires that nothing should be added or subtracted from the law being interpreted. This elementary principle of construction was totally ignored by the Supreme Court in the *Solano* case. Article 854 categorically stated that preterition shall "annul the institution of heir." But in the dispositive portion of the said case, the Court opted to annul the institution only partially. In sum, the phrase "shall annul the institution of heir" as found in Article 854 was interpreted to mean "shall annul the institution of heir insofar as it may prejudice the preterited heir." Perhaps it is about time to inquire whether or not the Supreme Court has the power amend the law.

4. The *Solano* ruling does not supersede the *Nuguid* case. In fact, the Court observed that the *Nuguid* case was not applicable to the *Solano* case because "in the *Nuguid* case, only a one-sentence will was involved with no other

provision except the institution of the sole and universal heir; there was no specification of individual property; there were no specific legacies or bequests."[17] However, it would seem that the annulment of the institution of heirs in the case of preterition does not depend on whether or not there are legacies or devises. The plain dictum of Article 854 is the annulment of the institution, respecting only legacies and devises which are not inofficious, if there be any. Consequently, it would be foolish to resort to partial annulment simply because of a legacy given to the common-law wife, and resort to total annulment if no such legacy was given. For otherwise, the extent of the annulment of the institution would be completely determined by the existence or absence of any such legacy or devise. NO sound principle of construction can ever justify this conclusion.

5. The ruling in the *Nuguid* case was totally misunderstood. In the said case, the nullity of the entire will arose from the fact that the will contained a single testamentary disposition designating a sole and universal heir. Consequently, when the preterition of the compulsory heirs was ascertained, there was no other testamentary disposition which could be given effect. Thus, the entire will was declared void. This is clear from a reading of the pertinent portion of the decision, to wit;

> "The disputed order, we observe, declares the will in question a complete nullity. Article 854 of the Civil Code in turn merely nullifies the institution of heir. Considering, however, that the will before us solely provides for the institution of petitioner as universal heir, and nothing more, the result is the same. The entire will is null."[18]

Evidently, it was never the intention of the Court to declare the entire will void simply because it only had one disposition. As correctly stated therein, preterition annuls only the institution of heirs. But because after annulling the same, nothing is left to be enforced, then there would in effect be no difference between the annulment of the institution and the annulment of the entire will.

But the said portion of the decision in the *Nuguid* case was used by the same Court in justifying the partial annulment of the institution in the *Solano* case. In trying to distinguish between the two cases, the Court alleged that there were no legacies or bequests in the *Nuguid* case, but there was a legacy given in the *Solano* case. The result: the questionable conclusion that the presence of a legacy in the *Solano* case precluded the total annulment of the institution of the universal heir.

Finally, one question remains to be answered. In case of preterition, what results? Following the doctrine laid down in the *Nuguid* case, the institution is totally annulled. According to the *Solano* case, the institution is annulled only to the extent that the preterited heir is prejudiced. The *Solano* case stated in very explicit terms that the *Nuguid* doctrine has not been abandoned yet. In case of preterition therefore, what rule do we follow?

V. Conclusion:

There is hardly any doubt that the *Solano* ruling only led to confusion. What had already been definitely settled in the *Nuguid* case was beclouded and destabilized by the *Solano* ruling. Consequently, one may ask this question: In case of preterition, should the institution of heirs be annulled; or should the preterited heir be merely granted his legitime? This is the question which the Supreme Court should now try to answer.

FOOTNOTES:

1. L-23445, 23 June 1966, (17 SCRA 449)
2. L-41971, 29 November 1983, (126 SCRA 122)
3. Preterition – In the Light of Recent Decisions, Ateneo Law Journal, Vol. XXVII, No. 1, (October 1982)
4. Solano v. Court of Appeals, supra p. 133
5. J. B. L. Reyes, Observations on the New Civil Code, Vol. XV, Lawyer's Digest, No. 11, 30 November 1950, cited in Paras, Civil Code of the Philippines, Annotated, Vol. III, p. 24, (1981 ed.)
6. Article 922 – "A subsequent reconciliation between the offender and the offended person deprives the latter of the right to disinherit, and renders ineffectual any disinheritance that may have been made."
7. Article 915 – "A compulsory heir may, in consequence of disinheritance, be deprived of his legitime, for causes expressly stated by law."
8. Article 916 – "Disinheritance can be effected only through a will wherein the legal cause therefor shall be specified."
9. Article 917 – "The burden of proving the truth of the cause for disinheritance shall rest upon the other heirs of the testator, if the disinherited heir should deny it."
10. Article 919 – "The following shall be sufficient causes for the disinheritance of children and descendants, legitimate as well as illegitimate:
    (1) When a child or descendant has been found guilty of an attempt against the life of the testator, his or her spouse, descendants or ascendants.
    (2) When a child or descendant has accused the testator of a crime for which the law prescribes imprisonment for six years or more, if the accusation has been found groundless;
    (3) When a child or descendant has been convicted of adultery or concubinage with the spouse of the testator;
    (4) When a child or descendant by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made;
    (5) A refusal without justifiable cause to support the parent or ascendant who disinherits such child or descendant;
    (6) Maltreatment of the testator by word or deed, by the child or descendant;
    (7) When a child or descendant leads a dishonorable or disgraceful life;
    (8) Conviction of a crime which carries with it the penalty of civil interdiction."

    Article 920 – "The following shall be sufficient causes for the disinheritance of parents or ascendants, whether legitimate or illegitimate:
    (1) When the parents have abandoned their children or induce their daughters to live a corrupt or immoral life, or attempted against their virtue;
    (2) When the parent or ascendant has been convicted of an attempt against the life of the testator, his or her spouse, descendants or ascendants;
    (3) When the parent or ascendant has accused the testator of a crime for which the law prescribes imprisonment for six years or more, if the accusation has been found to be false;
    (4) When the parent or ascendant has been convicted of adultery or concubinage with the spouse of the testator;
    (5) When the parent or ascendant by fraud, violence, intimidation, undue influence causes the testator to make a will or to change one already made;
    (6) The loss of parental authority for causes specified in this Code;
    (7) The refusal to support the children or descendants without justifiable cause;
    (8) An attempt by one of the parents against the life of the other, unless there has been reconciliation between them."