

## DEAD MEN AND TALL TALES

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## INTRODUCTION

A theologian will define death as the separation of the soul from the body; and a civilist, on the other hand, will define death as the extinguishment of the civil personality.<sup>1</sup> Both definitions seem to imply that death brings about the complete termination and the total impossibility of any juridical relation or intercourse between the living and the dead. For, from the theologian's point of view, no rights and obligations can accrue between the living and the corpse, much less between the former and the soul. And from the civilist's point of view, since juridical capacity is the fitness to be the subject of legal relations<sup>2</sup> and since death extinguishes juridical capacity, it follows that the dead have no juridical capacity, and hence incapable of being the subject of legal relations. It sounds so simple. But if there is truth in the saying that "There is intricacy in simplicity", the more will its truthfulness become apparent in the consideration of death and its consequences.

It is not seldom that the dead whom we know we have buried haunt us from their graves, not through fond memories as the sentimentalist would call it, nor in the form of ghosts as the highly imaginative will term it, but rather in the form of domestic and property relations, and rights and obligations which they leave behind, or which accrue after their death. So that it is not seldom also that through litigation, we have to drag a dead man to court; or it is the other way around, the dead man compels us to litigate in court.

The situation presented in this thesis is a typical example of those instances where a man does not retire peacefully to his grave, but on the contrary leaves a cause for dissatisfaction among those whom he leaves behind.

\*Ll. B., 1959.

<sup>1</sup> Art. 42 Civil Code of the Philippines.<sup>2</sup> Art. 37 *Id.*

The cause for dissatisfaction is a libelous writing in his last will and testament, a writing derogatory to the honor of an individual.

The question presented is whether libel may be committed in a will and if in the affirmative, whether the testator, living or dead, can be sued and be held liable for the defamatory imputation.

## LIBEL

The word "libel" is used to denote both the defamatory matter published and the felony committed by the person publishing it.

As understood in the first sense, a libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.<sup>3</sup>

At common law, the law makes the publication of libel punishable as a crime, not because of injury to the reputation but because the publication of such articles tends to affect injuriously the peace and good order of society. Under the common-law theory, which is embodied in some of the statutory provisions on the subject, the criminality of a defamatory statement consists in the tending to provoke a breach of the peace.<sup>4</sup>

Many of the modern enactments however, ignore this aspect altogether and make a libelous publication criminal if its tendency is to injure the person defamed, regardless of its effect upon the public. The present Philippine law on libel conforms to this modern tendency.<sup>5</sup>

For libel to exist, the following elements must concur:

- 1) There must be an imputation of a crime, or of a vice or defect, real or imaginary, or of any act, omission, condition, status, or circumstance;
- 2) The imputation must be made publicly;
- 3) It must be malicious;
- 4) The imputation must be directed at a natural or juridical person, or one who is dead;
- 5) The imputation must tend to cause the dishonor, discredit, or contempt of the person libeled;

<sup>3</sup> Art. 353 Revised Penal Code.<sup>4</sup> CLARK, CRIMINAL LAW 463 (1915 ed.).<sup>5</sup> *People v. del Rosario*, 86 Phil. 163 (1950).

6) It must be in writing, by means of radio, phonograph, painting, theatrical exhibition or any similar means.<sup>6</sup>

Libel is not committed if any of these elements is missing.

### MALICE

That malice is an essential ingredient of the plaintiff's case in actions for libel or slander has been affirmed frequently by the authorities. Various definitions of the term malice have been enunciated, the most common being that malice in its legal sense means a wrongful act, done intentionally, or with evil intent, without just cause or excuse or as the result of ill-will. Malice does not necessarily imply spite against any individual, but rather, in many instances, merely a wanton disposition grossly negligent of the rights of others.<sup>7</sup> Our Supreme Court has defined malice as a term used to indicate the fact that the defamer is prompted by personal ill-will or spite and speaks not in response to duty, but merely to injure the reputation of the person defamed. The term malice implies an intention to do ulterior and unjustifiable harm.<sup>8</sup>

Malice is the essence of libel. But it is a condition of the mind which the law imputes to the intentional doing of the wrongful act and not necessarily a feeling of hatred or ill-will. The fact of publication of libelous matter, or speaking slanderous words, is prima facie evidence of malice, and there is no necessity of proving express malice. A man is presumed to intend the ordinary and natural result of his own willful acts, and if that willful act injures and defames a fellowman, he will be taken to have so intended, and he cannot screen himself by disclaiming such intent. The inference of malice is a necessary and natural consequence of such a wrongful act. In a legal sense any act done willfully and purposely to the prejudice and injury of another, which is unlawful, is, as against that person, malicious.

Malice implies willfulness and is evidenced by a wrongful act intentionally done in disregard of the right of others. Although the law will imply the necessary malice when the words are actionable in themselves, yet the circumstances under which the words were spoken may repel or rebut the implication of malice which arises from the mere fact of speaking the words.<sup>9</sup>

<sup>6</sup> II REYES, THE REVISED PENAL CODE 572 (1958 ed.); People v. Andrada, (CA) 37 O.G. 1783.

<sup>7</sup> 17 R.C.L., Libel and Slander § 63 (1917).

<sup>8</sup> U.S. v. Cañete, 38 Phil. 253 (1918).

<sup>9</sup> KELLEY, CRIMINAL LAW 710-11 (2nd ed.).

If the publication is shown to have been made with justifiable motives, the malicious intent, which is presumed from the mere fact of the publication of defamatory matter is negated. In other words, the existence of justifiable motives and a good intention imply the absence of malice. When the evidence is all in and the defendant has shown the existence of good intention and justifiable motives, he is entitled to an acquittal; otherwise, the publication is considered malicious and he must be convicted.<sup>10</sup>

But if there is malice in fact or express malice, justifiable motives cannot exist. The law will not allow one person to injure another by an injurious publication, under the cloak of "good ends" or justifiable motives. Article 354 of the Revised Penal Code relieves the plaintiff from the necessity of proving malice simply when no justifiable motives are shown, but it does not relieve the defendant from liability under the guise of justifiable motives when malice is actually proved.<sup>11</sup>

### Classes of Malice

Malice may be divided into two classes: malice in law and malice in fact.<sup>12</sup> Malice in law is a presumption of law which springs from every defamatory imputation and dispenses with the proof of malice, when the defamatory words from which the presumption arises, are shown to have been uttered or published. Malice in fact is the personal ill-will, hatred, or purpose to injure that prompted the offender to utter or to publish the defamatory language.<sup>13</sup> Malice in fact in its legal sense means a wrongful act, done intentionally or with evil intent, without just cause or excuse, or as the result of ill-will or a wanton disposition grossly negligent of the rights of others. It implies a desire and an intention to injure.<sup>14</sup>

Malice in law simply means a general wickedness of intent on the part of a person; a depraved inclination to do harm or to disregard the rights or safety of mankind generally, the existence of which sentiment is made manifest by mischievous or injurious acts on the part of him who entertains them. It is a presumption of law and dispenses with the proof of malice when words which raise such presumption are shown to have been uttered. This form of malice is not necessarily inconsistent with an honest or even laudable purpose and does not imply ill-will, personal malice, hatred or a pur-

<sup>10</sup> ALBERT, THE REVISED PENAL CODE 826 (1948 ed.).

<sup>11</sup> *Ibid.*

<sup>12</sup> 16 Cal. Jur.; Libel and Slander § 10 (1924).

<sup>13</sup> *Id.* § 11-12, ALBERT, *op. cit. supra* note 10 at 825-826.

<sup>14</sup> II FRANCISCO, REVISED PENAL CODE 1548 (2nd ed.).

pose to injure. It will be imputed where a defamatory publication is made without sufficient cause or excuse. As will be seen however, malice is not presumed in case the matter charged as libelous is a privileged communication or constitutes constructive criticism of a matter of public interest, and its absence in cases of defamatory imputations is established by the proof of good motives and justifiable end.<sup>15</sup>

#### *Malice in a Will*

Considering the nature of a last will and testament, and the attending solemnity, motives, and purpose that accompany its execution, the question may be asked: could malice ever be present in the execution of a will?

The presence of malice in fact, may be admitted to be inconsistent with the character and purpose of a will, but it must be remembered that, as pointed out by an eminent author,<sup>16</sup> malice in law is not necessarily inconsistent with an honest or even laudable purpose and does not imply ill-will, personal malice, hatred, or a purpose to injure. It will be imputed where a defamatory publication is made without sufficient cause or excuse.

The fact may also be pointed out that not all wills are prepared *in articulo mortis*. So that the solemnity that may be present in the execution of a will by a person in contemplation of death, may not be necessarily present in the execution of a will of a person in the prime of health.

It is submitted that malice in law may be present in defamatory matters written in a will, and since malice in law is sufficient for a charge of libel, malice may attend the execution of a will.

### PUBLICATION

Since the basis of an action for defamation is damages for the injury to character in the opinion of other men, in order to render defamation of any kind actionable, there must be a publication thereof.<sup>17</sup> Publication may be effected by delivering the libelous matter, by sending it by mail, reading it, exhibiting it, or communicating its purport in any other manner to any person other than the person libeled. The communication may be in words or by signs, gestures, or caricatures. Such communication may appear in a letter, post-

<sup>15</sup> *Ibid* U.S. v. Prautch, 10 Phil. 562 (1908).

<sup>16</sup> II FRANCISCO, *op. cit. Supra* note 14 at 1548.

<sup>17</sup> 53 C.J.S., Libel and Slander § 79 (1948).

card, or writing on the outside of the envelope, telegram, or in motion pictures. The libel may also, obviously, be very effectually published by writing or fixing it up in a public place, as on a wall; and this would be a most offensive method of making it known, especially if the wall happened to be in a much frequented thoroughfare.<sup>18</sup>

To render defamatory words actionable, the law requires that the imputation be made publicly, so that if the words were uttered to the person concerning whom they are spoken, no one else being present or within hearing, they are not actionable. With respect to written words, the law is silent with reference as to what constitutes publication of defamatory matter.<sup>19</sup>

Publication is the communication of the defamatory matter to some third person or persons.<sup>20</sup> The general rule is that the communication of libelous, or the uttering of slanderous matter to the person defamed alone does not amount to a publication sufficient to sustain a civil action for damages, or in other words, that communication to a third person is essential to actionable publication. This general rule is based on the theory that the action for libel or slander contemplates compensation for wounded feelings only when accompanied by an injury to or impairment of one's reputation with others, as in other cases of tort, where there must be some damage to the person or property, which may however be aggravated by the mental suffering attending the injury. In other words the civil action is based upon damage to character or reputation. If the defamatory matter is not seen or heard by anyone except the defamer and the defamed, damages to character or reputation cannot result, since a man's reputation is the estimate in which others hold him, and not what he thinks of himself. Moreover, the words must be understood by the hearer. Thus, words spoken in a foreign language must have been heard and understood by at least one person other than the speaker to make them actionable. It would seem to follow also that from the language used, aided if necessary by extrinsic circumstances, the hearer should be able to identify the person defamed. It has been held however that if the words are understood, it is not necessary for the hearer to know who is speaking or who is defamed.<sup>21</sup>

<sup>18</sup> II FRANCISCO, *op. cit. supra* note 14 at 1552-1553.

<sup>19</sup> ALBERT, THE REVISED PENAL CODE 827 (1948 ed.).

<sup>20</sup> II REYES, *op. cit. supra* note 6 at 574; *People v. Atencio*, (CA) G.R. No. 1135-R.

<sup>21</sup> 33 Am. Jur., Libel and Slander § 90 (1941).

*What constitutes publication?*

The Supreme Court is undecided on the question of what constitutes publication in libel. In one instance it was held that "It is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read or seen by a person other than himself."<sup>22</sup> If this ruling is followed, certainly the execution of a will is sufficient publication because a testator by executing a will may be charged with the knowledge that such will, will of necessity be probated. Hence any malicious imputation in the will, will become public knowledge at the probate proceedings.

In another instance the Supreme Court held that: "To hold that publication of libel may be presumed in all cases where one knowingly parts with the immediate custody thereof under circumstances which, by any possibility, expose it to be read or seen by another, would be equivalent to a holding that publication will be presumed in all cases where one parts with the immediate custody of an alleged libel."<sup>23</sup> Tested by this decision the mere execution of a will is not sufficient publication as required by law. It is only when the will is probated that publication takes place.

Which of these decisions obtains in this jurisdiction? In this melee, the Court of Appeals cannot offer any light, since its decisions are just as confusing. At any rate it is submitted that since the *Lopez v. Delgado* case is the more recent case, it is the ruling in that case which must be followed. Therefore, for purposes of the libel Law, the defamatory matter in the will is published only upon its probate, unless its contents had earlier been read or seen by a person other than the testator.

## LIBEL IN A WILL

If a libelous will is probated during the lifetime of the testator no legal difficulty will arise. All the essential elements of libel occur and concur during his lifetime. The cause of action in favor of the person defamed accrues during the aforementioned time. So that if no criminal action is brought till after the death of the testator, it is both legal and equitable that the action be dismissed, because as provided by the Revised Penal Code, death extinguishes both personal and pecuniary liability.<sup>24</sup> It is equitable that the action will not be allowed to prosper because no one but the offended

party shall suffer for the delay in the enforcement of his right. If an action based on *culpa aquiliana* to claim damages (without here discussing the possibility of whether the action will prosper or not) is brought against the executor of the testator, the situation is well taken care of by Rule 88 of the Rules of Court.

*Revocation of a Will*

A will may be revoked by the testator at any time before his death. Any waiver or restriction of this right is void. A will may be revoked at pleasure. Revocation is an act of the mind, terminating the potential capacity of the will to operate at the death of the testator, manifested by some outward and visible act or sign, symbolic thereof.<sup>25</sup> Revocation takes place during the lifetime of the testator.<sup>26</sup>

No will shall be revoked except in the following cases:

- (1) By implication of law; or
- (2) By some will, codicil, or other writing executed as provided in case of wills; or
- (3) By burning, tearing, cancelling, or obliterating the will with the intention of revoking it, by the testator himself, or by some other person in his presence, and by his express direction. If burned, torn, cancelled, or obliterated by some other person, without the express direction of the testator, the will may still be established, and the estate distributed in accordance therewith, if its contents, and due execution, and the fact of its unauthorized destruction, cancellation, or obliteration are established according to the Rules of Court.<sup>27</sup>

It is submitted that revocation under the first two cases will not bar any action that might be brought by a person injured by the libelous imputation found in the will. With regards to case No. 3, it is submitted that if the burning, tearing, cancellation, or obliteration of the will occurs before the libelous imputation has been read or seen by any person other than the person defamed, and if the burning, tearing, cancellation or obliteration is complete with respect to the defamatory part, the revocation of the will also revokes the libelous imputation. It has to be borne in mind that the essence of libel is the injury to the reputation of a person. Conse-

<sup>25</sup> GARDNER 224 as cited in III TOLENTINO, CIVIL CODE OF THE PHILIPPINES 116.

<sup>26</sup> II Bonet as cited in *Ibid.*

<sup>27</sup> Art. 830 New Civil Code.

<sup>22</sup> U.S. v. Urbiña, 1 Phil. 471 (1902); U.S. v. Crame, 10 Phil. 135 (1908).

<sup>23</sup> Lopez v. Delgado, 8 Phil. 26 (1907).

<sup>24</sup> Article 89 Revised Penal Code.

quently, if some injury or damage has already been done, the revocation of the will cannot restore or repair the damage done.

To support the above deduction it may be pointed out that the recognition of an illegitimate child does not lose its legal effect even though the will wherein it was made should be revoked.<sup>28</sup>

#### *Liability of Deceased*

However, suppose the libelous will is probated after the testator's death. It is this situation which brings in legal difficulties. Granting but not necessarily conceding that libel was committed by the testator in his will, since probate occurs after his death, the cause of action in favor of the person defamed accrues only after the death of the testator. So the question comes up, can the testator be held liable for the libelous imputation?

It has to be admitted that criminal prosecution is out of the question by virtue of Article 89 of the Revised Penal Code which provides that: "Criminal liability is totally extinguished by the death of the convict, as to the personal penalties." It would certainly be most impractical to criminally prosecute a dead man, for obvious reasons.

Inevitably this question arises: can a civil action to demand civil liability arising from crime be successfully brought:

- a) without bringing a criminal action or
- b) even if no criminal action can be brought?

The civil liability of the accused and consequently, the indemnity which he may be sentenced to pay to the offended party cannot be regarded as a part of the penalty provided for the offense charged.<sup>29</sup> The indemnity for damage in a criminal action being purely civil in nature and independent of the penalty imposed, the judgment therefor may be enforced within the period provided for in section 6 of Rule 39 of the Rules of Court.<sup>30</sup>

Analogy may be drawn from Article 12 of the Revised Penal Code. Under this article, there is a crime, but no criminal;<sup>31</sup> so there cannot be a criminal prosecution. Yet a civil action to enforce liability may be brought. So it can be seen that for the successful prosecution of the civil action arising from crime, it is not necessary that the crime can be successfully prosecuted.

<sup>28</sup> Art. 834 *Id.*

<sup>29</sup> *U.S. v. Heery*, 25 Phil. 600 (1913).

<sup>30</sup> *Quiming v. de la Rosa*, 67 Phil. 406 (1939).

<sup>31</sup> I PADILLA, CRIMINAL LAW 164-165 (1957 ed.); GUEVARA, THE REVISED PENAL CODE 18 (1957 ed.).

There is another remedy open to the offended party. He can bring an independent civil action, a tort action. This is allowed under Article 33 of the New Civil Code. The only limitation is that he cannot recover under both.

The question whether or not an independent civil action for the collection of damages in libel cases can be brought independently of the criminal action has been settled in the affirmative by the Supreme Court in the case of *Carandang v. Santiago*<sup>32</sup> where it held that Art. 33 of the New Civil Code uses the words "defamation", "fraud", and "physical injuries" in the ordinary sense, there being no specific provision in the Revised Penal Code defining these terms. Consequently, the action for damages may be brought under Art. 33 of the New Civil Code.

#### *Enforcement of Liability*

This analysis, however, of the possible bases of an action to claim damages against the deceased testator for defamatory remarks in his will will prove useless and will amount to nothing if it is discovered that, under our jurisprudence, a cause of action in favor of another, which accrues after the death of the person against whom the action is to be brought, cannot be entertained in court.

An attempt is here made, to find some analogy or inference, from which some light can be obtained which can be availed of in tackling this question. According to Art. 268 of the New Civil Code, an action to claim legitimacy may be brought by the child during his lifetime and the same may be brought against the parents even after the death of the latter. And according to Art. 285 of the same code, natural children may bring an action for recognition against their parents even after the death of said parents, if the parents die during the minority of the child, or if after the death of the parents, a document should appear of which nothing had been heard, and in which either or both parents recognize the child.

Of course it may be brought up in argument that in the two instances cited, the cause of action in favor of the children accrued before the death of the parents. But then the question may be asked: When the testator executes a libelous will, can it not be said that all the elements of libel exist, even before it is probated, having in mind the decision of the Supreme Court in the case of *U.S. v. Ortiz*,<sup>33</sup> wherein it was said that a libel is published if the accused knowingly parts with the immediate custody thereof, under cir-

<sup>32</sup> 51 O.G. 2178 (1955).

<sup>33</sup> 8 Phil. 752 (1906).

cumstances that exposed it to be read or seen by a person other than himself?

Perhaps it will be profitable to inquire into the nature of the estate of a deceased person. Said the Supreme Court in the case of *Limjuco v. Intestate Estate of Fragante*,<sup>34</sup> "Within the philosophy of the present legal system and within the framework of the constitution, the estate of Fragante should be considered an artificial or juridical person for the purposes of the settlement and distribution of his estate which, of course, include the exercise during the judicial administration thereof of those rights, and fulfillment of those obligations of his which survive after his death. An injustice would ensue from the opposite course."

May the estate of a deceased person therefore be made a party defendant in a libel case which is filed in order to collect damages? According to the Revised Penal Code a juridical person is liable for libel.<sup>35</sup> A corporation may be held responsible in an action for the publication of a will.<sup>36</sup> An action to recover damages for an injury to person, is among those actions which survive and which therefore may be brought against the executor.<sup>37</sup>

There is a school of thought which does not agree with the ruling of the Supreme Court in the case of *Limjuco v. Int. Est. of Fragante*. It is argued that the rights to the succession are transmitted from the moment of death of the decedent.<sup>38</sup>

Therefore, if the property of the inheritance passes to the heirs upon the death of the testator, how can the estate possess a juridical personality?

However, it must be pointed out that under the provisions of the Spanish Civil Code, the heir succeeded the deceased to all his rights and obligations irrespective of the value of the estate. Only when he accepted the inheritance "with benefit of an inventory" was he not held liable for the debts and obligations of the deceased beyond the value of the property. Under the New Civil Code, the inheritance includes all the property, rights and obligations of a person which are not extinguished by his death.<sup>39</sup>

Therefore, it is submitted that the dead man may be held civilly liable, specifically his estate. As was held in the case of *Limjuco*

<sup>34</sup> 45 O.G. No. 9, 397 (1948).

<sup>35</sup> Art. 360 Revised Penal Code.

<sup>36</sup> See *Washington Gas Light Co. v. Lansden*, 172 U.S. 534 (1899).

<sup>37</sup> Rule 88 § 1.

<sup>38</sup> I CAGUIOA, CIVIL LAW 674-675 (1955 ed.); *Ibarle v. Po*, G.R. No. L-5046, Feb. 27, 1953; *Osorio v. Osorio* 41 Phil. 531 (1921).

<sup>39</sup> Art. 776, New Civil Code.

v. *Int. Est. of Fragante*, the estate of a deceased person has a juridical personality and is an extension of the personality of the deceased. Hence any action that accrues in favor of third persons may be brought against the estate. It has been held that a corporation maybe held responsible in an actions for the publication of a libel.<sup>40</sup>

The fact that the testator is dead is no bar, it is submitted, to the bringing of the civil action to recover civil liability, since the pecuniary liability pertains to the offended party and is not a part of the penalty. As well illustrated in Art. 12 of the Revised Penal Code, persons therein enumerated are civilly liable although there cannot be a criminal prosecution.

Furthermore, it will also be worthwhile mentioning that death is not one of the causes that extinguishes civil liability. So the death of the testator may not be set up as a defense to defeat the claim. In addition, this defense cannot be set up because the action is brought precisely against the estate as a separate juridical personality and not against the dead testator, considering that the libel was committed after the personality of the testator was replaced by the personality of his estate. Hence the libel can be imputable to the estate.

Therefore a dead man may be held liable for libel in a will.

<sup>40</sup> See *Washington Light Co. v. Lansden*, 172 U.S. 534 (1899).