

Dead Men and Tall Tales

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The Note revolves around the issue as to whether libel may be committed in a will and if so, whether the testator, living or dead, can be sued and held liable for a defamatory imputation. Preliminarily, it discusses the five (5) elements that concur to produce libel, that is: (1) an imputation of a crime, or of a vice or defect, real or imaginary, or of any act, omission, condition, status, or circumstance; (2) publication; (3) malice; (4) directed at a natural or juridical person, or one who is dead, and; (5) tend to cause dishonor, discredit, or contempt of the person libeled. On the matter of libel in a will, the Note distinguished between a will probated during the lifetime of the testator and that which is probated after the testator's death. The former gives rise to a cause of action during the testator's lifetime such that a criminal action brought till after his death must be rightfully dismissed on the strength of Article 89 of the Revised Penal Code which states that death extinguishes both personal and pecuniary liability. However, it is noted that revocation by implication of law or by will (codicil or other writing executed as provided in the case of wills) does not bar an action based on libelous imputation found in a will. With regard to burning, tearing, cancelling or obliterating the will with the intention of revoking it, the same will only exonerate the testator from liability if the act of destruction occurs prior to the will being seen or read by any person other than the person defamed; the burning, tearing, cancellation or obliteration must also be complete with respect to the defamatory part. Where the libelous will is probated after the testator's death, the Note explains that while criminal liability has been totally extinguished by the death of the offender, his civil liability still remains. The remedy of the offended party thus is to bring either a civil action arising from a crime or through an independent civil action or a tort action. Verily, he may not recover under both. Said liability may be enforced against the estate of the offender, as ruled by the Court in *Limjuco v. Intestate Estate of Fragrante* (___ Phil. ___ (1948)), because the same is to be considered an artificial or juridical person for purposes of its settlement and distribution, which include the exercise of those rights, and fulfillment of those obligations which survive his death. The fact that the testator is

dead does not preclude a civil action to recover civil liability as the pecuniary liability pertains to the offended party and is not part of the penalty. Further, death is not one of the causes that extinguish civil liability.