BOOK REVIEWS

PROBLEMS IN PROBATE LAWS: MODEL PROBATE CODE. Lewis M. Simes and Paul E. Basye. Michigan Legal Studies. The University of Michigan Press, 1946. Pp. LI, 782. $10.00.

This book consists of two main parts: the first is a Model Probate Code with comments containing the rationale of the important sections prepared by the Model Probate Code Committee of the American Bar Association; the second is a series of monographs on various aspects and problems of probate law by Professors Lewis M. Simes and Paul E. Basye. A summary of existing American statutes of important questions dealt with in the Code are compiled in the appendix.

The Model Probate Code is a careful codification of American Probate law which is improved at certain points to the end that the current demands for clarity, coherence, efficiency and economy in the probate system may be answered. Among those improvements are those found in the provisions relating to probate court organization, initiation of administration without notice, time schedule for speedy administration, dispensing with administration, provisions which insure only one contest to wills, reduction in the number of appeals, and ancilliary administration. A noteworthy feature of the Code is that it is a complete compilation not only of procedural but likewise of substantive probate law; it contains a designation of the shares which the heirs take in the inheritance of a decedent. Besides this, the kindred law on guardianship is incorporated in the Code.

The five monographs on probate law problems are the result of exhaustive research on the important aspects of probate law which were considered by the makers of the Code. They serve as masterful explanations therefor.

In this jurisdiction, we have had in the past a prolific number of litigations engendered in the field of probate. This fact, coupled with the recent revision of the Civil Code on the law of descent are strong arguments why the Philippines should join in the extensive movement for codification and reform of probate law currently going on in many states. While a comparative study between the Model Probate Code and our law on the subject will reveal many similarities in their provisions, much more advanced improvements on probate law are to be found in the former. This book will be of invaluable assistance in the drafting of a probate code for the Philippines since it is so worded as to admit of modification to suit local conditions.

JUAN T. SANTOS
Professor of Remedial Law
University of the Philippines

CASES AND OTHER MATERIALS ON INTERNATIONAL LAW. Third Edition. Edited by Manley O. Hudson. St. Paul, Minn.: West Publishing Co., 1951. pp. xliii, 770. $8.50.

It was Professor Christopher C. Langdell of the Harvard Law School who in 1870 revolutionized legal education in America by introducing the case system as a basis for teaching law. While at first the system did not gain acceptance, at present probably all American law schools use it in its general outlines. A modified method is used in Louisiana which, proud of its peculiar Spanish-French code plus common law, uses much the same system as that employed in the Philippines, i.e. a combined study of statutory provisions and cases.

The case system has been the recipient of severe criticisms.[1] Some criticisms have even been flippant. For instance the story is told that a law student was asked to find the case law on theft, a saddle having been stolen. He went over the reported cases diligently and then informed that although he found cases dealing with theft of horses and carriages he could not find any involving saddles. He then concluded that there was no case law applicable to the theft of the saddle. But a much more serious indictment against the case system is that law teachers find it relatively easy to put a casebook together so that they have almost given up the writing of treatises. A casebook is necessarily limited in scope, giving as it does only a cluster of principles on a legal topic. Most often than not it is necessary to resort to a treatise for the elaboration of a legal principle or to give meaning to a difficult case or group of cases. The absence of satisfactory treatises has been so much felt that of late several American law teachers have produced books containing not only cases but also textual material.[2]

Whatever may be the short-comings of the case system, Briggs[3] says that the law of nations is probably best taught by the casebook method. Indeed this must be so, because in International Law we find limited materials which would correspond to municipal legislation. Austinian assumptions seem to have no place in the law of nations.

Where the case system is used in teaching and studying International Law, a casebook is not merely convenient; it is indispensable. A casebook on International Law differs materially from an ordinary casebook dealing with local law. Since the former has an international scope, it must necessarily include cases decided the world over and in many instances cases have to be translated in the medium of instruction. Anyone at all familiar with the facilities of an ordinary law library can easily realize that its resources are inadequate to meet the requirements of an International Law course

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[1] For a modern appraisal of the case system, see Edwin W. Patterson, *The Case Method* in Journal of Legal Education, Autumn, 1951. Another interesting article is *Legal Education in the United States . . . An Australian View* by Geoffrey Sawer found in University of Western Australia Annual Review, December, 1950.

[2] Notable examples are: Casner and Leach, *Cases and Text on Property* (1950) and Briggs, *The Law of Nations: Cases, Documents, and Notes* (1938).

[3] Briggs, *supra*, Preface.

conducted by means of the case system. And even where library resources are adequate, a casebook saves wear and tear on the library and the student also.

Manley O. Hudson, by virtue of his many accomplishments, is probably the most eminently fitted in the American scene to edit a casebook on International Law. He is Bemis Professor of International Law at the Harvard Law School and from 1936 to 1946 he was a Judge of the Permanent Court of International Justice at The Hague. He is a prolific writer and by ordinary standards the quality of his writings easily qualifies him as an authority on International Law. But Judge Hudson will certainly disclaim that he is an authority on International Law because he says that no writer can be regarded as an authority unless he has been dead for at least 100 years. However, in the case of the famous Italian jurist Dionisio Anzilotti, who died only in 1950, Judge Hudson often admiringly refers to him as "god Anzilotti." It may be that in Judge Hudson's dictionary a god is inferior to an authority.

The present edition of Judge Hudson's casebook is shorter than the previous edition by several hundred pages. While many new materials have been added, reports of some cases have been pruned and others entirely eliminated. The former chapter on international regulation of commerce and industry has been removed and its contents distributed or omitted.

The reviewer fails to appreciate the editor's decision in moving forward as Chapter 2 the chapter on pacific settlement of international disputes. It is true that the work being done by the United Nations highlights the necessity of settling, by peaceful means, disputes that may endanger international peace, security and justice. But it would seem that it is desirable to inculcate first in students the fundamental principles of the course before exposing them to the rules on pacific settlement of international disputes.

The present casebook, like the previous editions, contains a number of Editor's Notes which are informative rather than expository. Perhaps it would have been better if Judge Hudson had adopted the method of Professor Briggs, whose work has already been mentioned, who included textual material in his book in the form of extensive notes. The reviewer has been told that Judge Hudson is reluctant to make doctrinal statements but this reported attitude is hardly consistent with his many published writings especially those which have appeared in the American Journal of International Law. On the other hand it may well be that this seeming defect is precisely one of the meritorious qualities of the book. Because of the lack of textual material a student using Judge Hudson's casebook will have to use his analytical powers to the full aside from inducing him to conduct his own search of relevant information guided by the many footnotes contained in the book. But whatever may be said of Judge Hudson's casebook there is no doubt whatsoever in the mind of the reviewer that it is a superior work of scholarship worthy of the editor's world famous name.

VICENTE ABAD SANTOS
Associate Professor of Law
University of the Philippines

BRIEF WRITING AND ORAL ARGUMENT. By Edward D. Re. With a Foreword by James S. Brown, Jr. New York. Oceana Publications. 1951. Pp. x, 150, $3.50.

Briefmaking and oral argumentation are two phases of the art of advocacy in which the lawyer engaged in appellate practice must be adroit and skilled. Excellence in these as well as in other phases of the said art—as counselling, legal draftsmanship, and trial practice—can best be acquired through experience. However, the initiate can learn from books the basic principles underlying an effective brief and a clear convincing oral argument. A book on the subject has been written by Professor Edward D. Re of the faculty of St. John's University Law School who modestly claims his work to be "a standing introduction for the advocate about to argue his first appeal."

Inasmuch as "teaching law and making lawyers" are two different aspects of legal training, law schools include in their curricula courses on Moot Court, Legal Clinic, Practice Clubs, and Legal Writing, in which the students' mastery of substantive and procedural laws and their knowledge of trial technique are displayed and tested. From the facts supplied by his "client," the student chooses the material ones, expounds his theory of the case, selects the best legal remedy or defense available, prepares the necessary pleadings, and handles the trial in the practice-court of origin or appellate tribunal, as the case may be. Judge Frank in his "Courts on Trial" expressed the view that moot court trials are "not the equivalent of serious lawyer-work." Many, including the reviewer, share the opinion of the author, discussed in the first part of his work, that since the student is trained to think, write, and act as a lawyer should when confronted with a legal problem, his moot court participation is of invaluable help to him later as a practitioner.

Great care and painstaking labor visibly mark each of the four different parts into which the book has been divided. The arrangement of the materials is clear, orderly, concise, and logical. Use of sub-titles contributes to clarity and the presence of overlapping is not more than what the nature of the subject demands. Part II on brief writing discusses the appellant, respondent, and reply briefs, while Part III explains the art of oral argumentation on appeal. The brief is broken down to its component parts, the importance of each part being stressed, and the different parts being exemplified. The author emphasizes that the ABC of legal writing-accuracy, brevity, and clarity—should also be applied to briefmaking. Logical analysis and clear thinking are indispensable to effective briefwriting. Clarity of expression usually goes hand in hand with clarity of thought so that attention should also be given to the details of expression and style. Happily the author follows his own admonitions as shown by the book's simple unaffected style which avoids legal flourishes whenever possible, yet attractive by its simplicity, and praiseworthy for its precision and clarity of expression.

A high judicial authority, no less than Mr. Chief Justice Hughes, counselled the practitioners never to submit an appealed case with-

out an oral argument. The work of the advocate in the conduct of a case reaches its culminating point in the oral argument before the appellate tribunal. As stated by the author, the oral argument is the last chance to win a case that up to that time may have been considered as lost. To the courts, it is a great time-saving device for determining the essentials of the case and for clarifying the issues. The argument being oral, warmth and intimacy, absent in the printed briefs, are generated or bred between the judge and the advocate. Oftentimes the speech may successfully persuade where the printed word has miserably failed. Thus the pleader must have a pleasing attractive personality and must present his "best foot forward" by discussing his best argument at the outset.

Be it in the brief or in the oral argument, the advocate must observe the professional courtesies towards the adverse counsel and must maintain an attitude of respect and deference towards the court. As stated in the foreword by Mr. James S. Brown, Jr., President of the Brooklyn Bar Association, among the merits of the book the foremost is its contribution towards "bringing back the glory of the golden era of the profession" through the observance of high ethical standards by giving all the considerations a brother in the profession is entitled, and by observing all the respect which the dignity of the court demands. No attempt should be made to mislead. Whether knowingly or unknowingly, a case which has already been reversed, distinguished, or overruled, should never be cited to represent the state of the law at the time of the appeal. Whenever a case is cited, the advocate must engage in the process of running-down or "Shepardizing" a case for it is well-known that "law is a living growth, not a changeless code."

In Part IV of his work, the author treats of trial briefs and memoranda of law. The trial brief which is drafted to aid counsel in the trial of the case, embodies the lawyer's strategy or plan of attack with reference to his case from its inception to its termination. A trial brief may also be drafted for submission to the court in which case it is more popularly designated as a "trial memorandum" and a trial brief may also be furnished the adverse party, in both of which the contents must essentially differ from the trial brief proper which is retained by counsel for his own use. A memorandum of law which analyzes a factual situation and answers the legal problem presented, may be submitted to the court or may be prepared merely for the use of the law office. Trial briefs and memoranda of law as availed of in this jurisdiction, but local courts do not require the submission of trial memoranda. The student and the practitioner shall greatly profit from the author's discussions which can readily be adapted to the existing rules of court and the demands of local practice. The bibliography is broad and an index makes the book the more handy and useful. In short it can truly be said that legal literature is made the richer by this recent contribution of Professor Re which is valuable not only from the scholarly but from the literary standpoint as well.

BIENVENIDO C. AMBIÓN
Assistant Professor of Law
University of the Philippines