REFERENCE DIGEST

REMEDIAL LAW: PROBLEMS AFFECTING SETTLEMENT OF ESTATES. In the settlement of estates of deceased persons, the most pressing problem is the delay in the judicial settlement of estates. Aside from the human element, the author points out the following causes for the delay:

First: The multiplicity of appeals allowed in special proceedings under Section 1 of Rule 105. It should be noted that the two year period fixed by Section 15 of Rule 89 for the settlement of an estate begins to run from the grant of letters testamentary or of administration. But before letters testamentary may be granted, the court must first allow the will. And if an appeal is taken from the judgment allowing or disallowing the will, two or three years may elapse before the judgment becomes final and letters testamentary or of administration are granted. In addition there are others such as the order of the probate court appointing an executor or administrator which is also final and appealable; the order of the probate court authorizing a sale or mortgage of the property of the deceased is final and appealable; and paragraphs (b), (c) and (d) of Section 1 of Rule 105 expressly allow an appeal from the order of the probate court which determines who are the lawful heirs or the distributive share of the estate to which such person is entitled.

Second: The pendency of actions against the executor or administrator for the recovery of real or personal property from the state or for the enforcement of a lien thereon or for the recovery of damages for injury to person or property; the pendency of actions by the executor or administrator for the recovery or protection of the property or rights of the deceased; or for the foreclosure of mortgage belonging to the estate of the deceased. The remedies suggested are:

First: In case of appeal from the judgment allowing or disallowing the will, much time may be saved by increasing the powers of the special administrator;

Second: As regards the appeal taken from an order determining the lawful heirs or the distributive shares, provision may be made for the retention of the disputed assets until the final determination of this question;

Third: With respect to the pendency of ordinary actions by or against the executor or administrator, a suggested remedy is to substitute the heirs for the executor or administrator so that the special proceeding could be closed.

In extra-judicial settlements and summary settlements there are also problems that deserve consideration:

First: Extra-judicial settlement is allowed only if the deceased left no will and if the deceased left a will, the heirs must first present the will to the court for probate;

Second: Where the property inherited by the child is worth more than ₱2,000, the father or mother should not only file a bond but they are also required to render periodic accountings and obtain judicial authority for the sale or encumbrance of the property of the child.

Third: The rule requires that the extrajudicial settlement be made in a public instrument and registered in the office of the Register of Deeds for the purpose of giving constructive notice to creditors.

Fourth: Section 3, Rule 74 provides that the court before allowing a summary partition, may require the distributees of personal property to file a bond conditioned for the payment of any just claim which may be filed within two years. However, there is no provision requiring a bond in the extrajudicial settlement of personal property.

Fifth: Section 2, Rule 74 authorizes summary settlement of estates whenever the gross value does not exceed ₱6,000.00. It is believed that the amount is too small considering present day values.

Sixth: All real properties received under extrajudicial or summary settlements are subject to a two year lien which, in the case of Torrens titles, are annotated on the back thereof. This lien is an obstacle to subsequent transactions regarding the real property. (Jose Feria, *Problems Affecting Settlement of Estates,* IX THE LAW REVIEW No. 1 at 1622 (1958) ₱2.00 at UST, Manila. This issue also contains: Dean Ramon T. Oben, CHURCH AND STATE RELATIONSHIP; Cecilio Pe, RELIGION AND THE PUBLIC SCHOOLS: A COMPARATIVE SURVEY)

THE PRESENT STUDY OF LAW (A REALISTIC APPROACH): Inferior scholastic marks are in many cases directly attributable to either of two causes:

a) The students concerned do not know how to study effectively;

b) They are not mentally prepared to begin the study of law. Those who belong to the latter category are those who cannot speak and write grammatically; those who lack the rudiments of logic, and finally those who are lazy to study. These students, to put it bluntly have no place in any College of Law in any University or Institution. The author then states that the mental inadequacy of some college students is due principally to faulty, easy-going instruction and scholastic leniency in the grade schools, almost all of which are operated by the government. This perhaps is easily explained. First, the educational authorities have inserted into the curriculum many subjects which should not be there. Secondly, it would seem that in the interest of our government finances, promotion to

the next higher grade is practically a must. With regard to effective studying, the author mentions six various steps, namely: Reading, Analysis, Comprehension, Remembering, Application and Expression. The first step then for a law student is to *read* the legal provisions and cases assigned. But the art of reading is a highly intellectual one. Reading requires intense concentration, otherwise *analysis*, which is the dissection of what is being read into its component parts, cannot take place. Then there is comprehension or the superb understanding of the subject matter which follows logically after a thorough analysis of the same has been achieved, provided that the analysis is backed up by research, both intensive and extensive. Then comes *remembering*, which according to the author, is an art which must be practised, cultivated and developed. Various memory aids have been devised; the most common is what is usually denominated as a "keyword". The author gives various examples of keywords, one of them being FAME — Fraud, Accident, Mistake and Excusable Negligence. (Edgardo L. Paras, *The Present Study of Law*, 2 LYCEUM OF THE PHILIPPINES LAW REVIEW, Nos. 1-2, at 16-30 (1957). ₱2.00 at Lyceum of the Philippines, Intramuros, Manila. This issue also contains: Jose P. Laurel, *Unity For Survival: An Appeal*)

CONSTITUTIONAL LAW: NEEDED: A NEW CONSTITUTION FOR A NEW PHILIPPINES. When frauds and terrorism in the elections of 1949 outraged the sense of justice and democratic faith of our people we found that our Constitution had no provision which could provide legal redress to the citizenry itself whose collective will was cruelly frustrated: similarly, when the executive summarily suspended the privilege of the writ of *habeas corpus* in 1950, precisely not long after the fraudulent and terror-ridden elections of the year before, the representatives of the people in Congress which, in the democratic system is, and has always been, the constitutional defense bastion of the citizens' right, found themselves impotent to restrain or countervail the Executive's exercise of a specific power in so tyrannical and oppressive manner. Questions have also arisen whether the presidential term of four years with reelection should be discarded in favor of a six-year term without consecutive reelection.

With the growth and development of social peace and democratic institutions in our young Republic it becomes apparent that a constitution framed and adopted several decades ago has been outmoded by changes brought about by a new era. Inevitably the question of whether adjustments in our Constitution could be made piece-meal or whether an entirely new constitution should be written, ordained, and ratified, presents itself for resolution. An eminent authority on Constitutional Law comes up with an answer that constitutional amendments will not do; the need is for an entirely new constitution.

The present Philippine Constitution was written and adopted when the Filipinos were still, legally and technically, subjects of a foreign power; they were not completely free; they could not therefore express, or manifest, in the charter they wrote while still under foreign sovereignty, their true aspirations and best genius. Thus the Constitution, as it is today, bears all the imprints of a fundamental law for a non-sovereign people.

A constitution, then, that was written by a nation during the period of subjection is not the kind of fundamental law which fits its political and social life after the nation has assumed full sovereign, free and non-subject status. Our present Constitution, in short, not having been written, adopted, ratified by fully sovereign Filipinos, is not, and should not be the most fitting and suitable constitution for us, now that we are completely free and fully sovereign as a people.

President Quezon and the president of the convention, now Senator Claro Recto, as well as all the delegates had one eager desire obsessing them during the framing of the Constitution: To have a constitution which would, on one hand, meet with no objection from the President of the United States or his political advisers and, on the other hand, receive the overwhelming ratification of the Filipino electorate. Thus, the 1935 Constitution, which is our Constitution today, was framed with a view to pleasing two masters — the highest authority of the sovereign power, the U.S. President, and the Filipino electorate though this enjoyed at the time but an imperfect sovereignty.

Contemporary history has shown rather dramatically that it is not only a newly-free nation that needs to work hard and earnestly at writing a good constitution to express its sovereignty and noblest aspirations, but that a people long used to the life and ways of freedom may sometimes also need to write a new constitution in order to meet changed circumstances of national life, new problems, and therefore new aspirations. Thus we see, in this year 1958, the constitutional committee of Indonesia laboring with vigor and dedication on the writing of a constitution that shall embody their ideals and suit their status and social, cultural and economic ideals. Thus we saw, likewise, the foremost democracy of western Europe, France, in midsummer of 1958, working feverishly and with a deep sense of destiny on a fundamental revision of her fundamental law.

We live in the world and must live with the world. (Jose P. Laurel, *A Constitution of Free Filipinos*. VI FAR EASTERN LAW REVIEW No. 3, at 287-295 (1958). ₱2.50 at FEU Manila. This issue also contains: Aruego, *The Riddles of the Constitution;* Mendoza, *The Suspension of the Writ of Habeas Corpus;* Benitez, *For a Stronger Civil Service.*)