

PROPERTY
RIGHTS

of
SOVIET CITIZENS

by
MIKHAIL S. LIPETSKER

1946

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By

Mikhail Lipetsker



PUBLISHED BY "SOVIET NEWS"

London, 1946

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NOTE ON THE AUTHOR

Mikhail Semyonovich Lipetsker was born in Moscow in 1906, the son of a doctor.

He graduated from Moscow University in 1927, and then served for a number of years as legal adviser to the All-Union Textile Syndicate, the People's Commissariat of Light Industries of the U.S.S.R. and other bodies. Later, he became senior councillor to the Central Arbitration Authority, the highest court of economic jurisdiction in the Soviet Union.

In 1931 he began teaching civil law in higher educational establishments, and since 1936 has devoted himself exclusively to academic and teaching activities. He is now senior research worker at the Institute of Law of the Academy of Sciences of the U.S.S.R. and lecturer at the Moscow College of Engineer Economists.

Mikhail Lipetsker is the author of a number of books on Soviet law dealing with property, contracts and housing. He wrote several of the sections of the textbook on civil approved law used in Soviet law schools.

On the outbreak of war with Germany, Lipetsker joined the Red Army as a volunteer. He served as an officer and was twice decorated. He was discharged in 1943, having been wounded twice.

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I

WHAT THE SOVIET CONSTITUTION SAYS

The principles underlying the system of property ownership in the Soviet Union are defined in the first chapter of the Constitution of the U.S.S.R. The system is such as to preclude all element of chance or fortuity in the distribution of property. The Constitution divides all property into two major groups: *means of production* and *articles of consumption*.

The means of production are the land, natural deposits, waters, forests, mills, factories, mines, means of transport, post, telegraph and telephones, trading, insurance and banking establishments, machinery, municipal enterprises, and so on.

Articles of personal consumption include all things needed for the subsistence of citizens, such as dwelling houses, household furniture and utensils, articles of personal use and convenience, clothing and food.

Quite distinct legal categories govern the ownership of the means of production and that of articles of consumption.

All the major means of production—those capable in any way of influencing the economic life of the country as a whole—are *socialist*, or *public property*. They belong to the state, to co-operative enterprises (including collective farms) or to public organisations. The products of such enterprises, as well as their revenues, belong to the state, the co-operative societies or the public bodies, as the case may be.

The socialist ownership of the means and instruments of production constitutes the economic foundation of Soviet society.

Socialist ownership means that all the major industrial establishments and all the main implements and means of production belong, not to individuals, but to society as a whole, as represented by the state, co-operative enterprises or public organisations. They are operated, not in the

selfish interests of individuals, but for the benefit of society as a whole.

It is socialist property that makes national-economic planning possible in the U.S.S.R. The socialist enterprises are run for the benefit of society as a whole. This, too, is the purpose of the national-economic plans. That the managements of socialist enterprises would put any difficulty in the way of the plans is therefore inconceivable. On the contrary, since the purposes for which the socialist enterprises are run coincide with the purposes of the national-economic plans, the latter have the whole-hearted support and co-operation of the managements. It is this that makes economic planning so effective in the U.S.S.R.

Planning is an extremely important factor in Soviet economy. It facilitates the expedient and harmonious development of all branches of economic endeavour and assures priority to those branches whose expansion is most essential to the welfare of society at any given period. The tempo of economic life is not governed by chance, it is scientifically determined. We therefore find no disproportion between the various branches of Soviet economy, while crises, unemployment and similar economic disasters are totally precluded. All this, in the final analysis, is due to the fact that socialist property is the dominating form of property in the Soviet Union.

When, on 22nd June 1941, Hitler Germany suddenly and treacherously attacked the U.S.S.R., the Soviet Government was able without loss of time to mobilise industry and place it on a war footing. Industrial plants were speedily removed from the area threatened by the Nazi invasion and transplanted to the eastern regions of the country, where they were reassembled and restarted with equal rapidity. This was made possible chiefly by the system of economic planning.

Socialist property helps to increase the national wealth of the Soviet Union. That share of the product of labour which, under other conditions, would be appropriated by the private owner of the means of production, goes in the U.S.S.R. to augment the national wealth and to improve the standard of living of the people as a whole.

Soviet society is in a position to set aside considerable sums annually to increase the productive capital of the country. In the five-year period, 1933-37, over 180,000 million roubles were assigned for this purpose. The effect was to double the capacity of industry (raising it to more than ten times that of 1913), to increase the carrying capacity of the railways two and one-quarter times, the aggregate power of the tractors employed in agriculture nearly three times (from 3,200,000 HP to 9,300,000 HP), and the number of harvester combines more than six times (from 25,400 to 153,000).

The Soviet Union has built up a first-class industry, a large-scale, highly-mechanised agriculture, and a well developed transport system. From a backward, agrarian country, it has become a great industrial power which, for the extent and modernity of its equipment, holds one of the foremost places in the world.

Fivefold Increase in National Income

Together with the steady increase in the national wealth, the national income of the Soviet Union grows, and the people's general standard of living rises. In the period 1933-37 the national income of the U.S.S.R. rose from 48,500 million to 105,000 million roubles.* Let us recall that the national income of Tsarist Russia in 1913 amounted to 21,000 million roubles.

Wages rose likewise. In 1929 the average wage of an industrial worker was about 800 roubles per annum; in 1933 it had risen to 1,513 roubles, and by 1938 to 3,477 roubles per annum. The average return received by the collective farmers for their labour in this same period increased two and a-half times in money, and nearly four times in kind (agricultural produce).

As wages increase, the value of the free medical, cultural and social services enjoyed by the population increases likewise. In the period 1933-37 the state built 20,500 schools (the total number of pupils attending primary and

* All values in this book are calculated at the prices which prevailed in the U.S.S.R. in 1929; in other words, the value of the rouble in that year is taken as the standard of measurement throughout.

secondary school rising from 23,300,000 to 33,200,000). Budget appropriations for public health—chiefly for building and maintaining hospitals and medical centres—increased in this period more than sevenfold—from 900,000,000 roubles in 1933 to 6,927,000,000 roubles in 1937.

A striking index of the improving welfare of the citizens of the U.S.S.R. was the expansion of retail trade—from 61,300 million roubles in 1933 to 162,900 million roubles in 1937. Total balances on savings bank accounts increased in this period from 213 million roubles to 4,500 million roubles—or over twentyfold.

All citizens of the Soviet Union have an equal right to a life of well-being. This does not mean, of course, that the standard of living of all is the same, that wealth is divided among them equally. Living standards largely depend upon the amount and skill of labour performed, the size of the family, and so on. But Soviet citizens are not divided into proprietors and non-proprietors, i.e., into those who own the means of production and those who own nothing but their labour-power. All citizens of the U.S.S.R. are members of a society in which all the major means and implements of production are commonly owned. For that reason they cannot be called non-proprietors. They are all—with rare exceptions—employed in socially-owned establishments operating socially-owned means of production. Consequently, there are no class antagonisms in the U.S.S.R., and the conflict between “employer” and “worker” does not exist.

Socialist Property is Sacred

The socialist ownership of the means and instruments of production constitutes the economic foundation of the Soviet system. Article 131 of the Constitution of the U.S.S.R. reads: “It is the duty of every citizen of the U.S.S.R. to safeguard and strengthen public, socialist property as the sacred and inviolable foundation of the Soviet system, as the source of the wealth and might of the country, as the source of the prosperous and cultured life of all the working people. Persons committing offences against public, socialist property are enemies of the people.”

State property belongs to Soviet society as a whole, and is operated by the state exclusively for the benefit of the people.

The Constitution of the U.S.S.R. lays down that the state owns all the land, forests and waters, natural deposits, mills, factories, mines, rail, water and air transport, post, telegraph and telephones, the banks, large state-owned agricultural enterprises (state farms, machine and tractor stations, and the like), municipal enterprises and the bulk of the houses in the cities.

State property thus includes all chief features of the national economy. Holding these key positions, the Soviet state is able to exercise economic influence on the co-operative societies and even on private citizens and thus to direct their activities so as most effectively to promote the fulfilment of the national economic plans.

The co-operative organisations*—the collective farms, and the producer and consumer societies—own their property as distinct from that of the state. Nevertheless, they do not function for the benefit of their members alone, but of Soviet society as a whole, and their activities are guided and determined by the state national-economic plan.

The co-operative organisations own some small producer establishments—handicraft workshops, lumbering or mining enterprises, and so on—as well as retail and wholesale trading establishments. But only the agricultural producer co-operatives—in other words, the collective farms—are of major economic importance. However, their own actual capital is relatively small; their chief means of production—the land, the tractors and combines of the machine and tractor stations—belong to the state, which, however, is directly interested in furthering the growth and development of the collective farms.

The property of public organisations—e.g., trade unions, youth organisations, sports societies, cultural and scientific societies and other voluntary associations of Soviet citizens—is classed in the same category as the property of the co-operative societies and collective farms.

* See Chapter IV, p. 28.

The laws defining state property, the methods of protecting it, and the procedure by which it may be levied as the result of law suits, differ in many respects from those governing co-operative (collective farm) property.

The overwhelming majority of Soviet citizens are employed in socialist enterprises, working in state or co-operative establishments, and receiving remuneration in accordance with the quantity and quality of work performed.

Citizens who are unable to work owing to old age or ill-health, and nearly all students, receive state support in the form of pensions, allowances or stipends. The state maintains homes in which orphans, old age pensioners and the incapacitated may live if they have no relatives or friends willing and able to look after them.

Incomes from work, as well as pensions, allowances and students' stipends, are used by the citizens at their discretion for the satisfaction of their needs—for the purchase of articles of consumption and convenience, food, clothing and so on. Such articles are their personal property.

Personal property consists chiefly of money and articles of consumption; only rarely of means of production.

Rural inhabitants (that is, chiefly collective farmers) may have their subsidiary plots; grow vegetables and fruit, keep cattle, poultry and bees, and acquire the necessary agricultural implements and facilities for the purpose.

However, these subsidiary holdings are not intended to serve as their principal means of subsistence, but only as an addition to the income derived from participation in social (collective) production. Their produce is intended primarily for personal consumption. The implements of labour employed in such subsidiary husbandries cannot therefore be regarded as means of production.

Personal property is at the full and complete disposal of its owner. Articles of personal property may be bought, sold, donated or pledged at the owner's discretion. They may not, however, be used as means of exploiting the labour of others, or as objects of profiteering or usury. On the

death of the owner of personal property, it is inherited by his heirs.*

The state is interested in augmenting the prosperity of its citizens, and therefore protects personal property. The Constitution says: "The right of citizens to personal ownership of their incomes from work and their savings, of their dwelling houses and subsidiary household economy, their household furniture and utensils and articles of personal use and convenience, as well as the right of inheritance of personal property of citizens, is protected by law."

The state encourages and aids citizens in acquiring personal property. A person who desires to build himself a house, for example, will be granted a plot of land free of charge; the government will also supply him with building material on easy terms, will provide him with technical advice and plans free, and will grant him loans (repayable in a period of up to seven years) at two per cent. interest. A collective farmer who desires to buy a cow for his own use may obtain it from the government on credit, repayable in instalments.

Private Enterprises

Participation in collective production is voluntary. A Soviet citizen who does not desire to work in socialised enterprise may engage in private enterprise—in farming, handicrafts, or in one of the liberal professions.

Private enterprise is permitted, provided that it is individual; in other words, that it is carried on without hired labour.

Although sanctioned by law, private enterprise is not popular in the U.S.S.R. In 1938 only 5.6 per cent. of the population were so engaged. Since they may not employ hired labour, the size of these private establishments is necessarily very small. In that same year not more than 0.7 per cent. of the national income was derived from private enterprise. The influence of private enterprise, therefore, on the economy of the country is insignificant.

The property rights of small private enterprises differ

* See also "Legal Rights of the Soviet Family," *Soviet News*, 18.

very little in legal status from those held by personal property. The laws governing them will be discussed later in our chapter on Personal Property Rights.

Private enterprise is relatively prevalent only in the Soviet Republics of Latvia, Lithuania and Estonia, and, to a lesser extent, in Moldavia, where the collective farm movement is only in its early stages. The majority of the peasants still carry on individual farming.

It should be noted that, in contradistinction to the other Soviet republics, the laws of Latvia, Lithuania and Estonia do not prohibit the employment of hired labour on privately owned farms or in private owned workshops. The number of hired workers must not, however, exceed three per establishment.

II

THE RIGHTS OF PROPERTY

The basic principles of the Soviet system of property are laid down in the Constitution of the U.S.S.R. It defines the various forms and species of property and their role and place in the Soviet economic system. The legal status of property is defined by the civil laws of the U.S.S.R. and of the Union Republics.

The right of property is the most extensive of Soviet civil rights, and is fully protected by the state.

The owner may perform any act he pleases with regard to his property, except such acts as are expressly forbidden by law or limited by contract.

Everything on the territory of the Soviet Union has an owner. An ownerless thing is inconceivable. If a thing loses its owner—for instance, if the owner dies without leaving heirs—it automatically becomes the property of the state. For instance, the Civil Code of the R.S.F.S.R. states: "Property whose owner is unknown, or which has no owner, becomes the property of the state." This principle is also expressed in the codes of the other republics.

The right of property is a civil right which takes pre-

cedence over all others, and in the event of collision with other rights it is upheld against them in law.

Implications of the Property Right

The Civil Code states: "The owner has the right, within the limits established by law, of possessing, using and disposing of his property." Possession, use and disposition are hence the primary attributes of the property right.

The right of possession means that the owner can decide where to keep his property, demand its restitution if it happens to fall into the hands of others, subject it to any physical process, or even destroy it. The right of use means that he may derive advantage from its useful properties and appropriate its fruit and increment. The right of disposition means that he may sell, exchange, give it away or pledge it, in other words, terminate or limit his ownership rights in it.

The owner may personally exercise the rights of possession or use of his property, or make over these rights to other persons. But he himself may only exercise the right of disposition; he may not transfer it to another.

The owner has very wide liberty of action with regard to his property and, as a rule, may do with it whatever he thinks fit. However, certain limitations are established by law. For example, he may not use his property in a way calculated to jeopardise the interests of the state, or of society, or of other individuals, nor may he use it for speculative purposes or to derive unearned income from it. Other limitations are stipulated by the law of the U.S.S.R. with regard to specific forms of property—state, co-operative (collective farm) or personal. We shall later deal with these limitations.

In specific cases the law imposes certain obligations on the property owner. Dwelling houses, for example, must be kept in a state of repair. Owners of cattle are obliged to insure them.

The Protection of Property

Property rights are protected in the U.S.S.R. by criminal, administrative and civil law.

The criminal law imposes penalties for crimes against property. The chief criminal offences are theft, robbery, embezzlement, squandering (of property held in trust or by contract or lease), swindling, blackmail and deliberate destruction of the property of others.

Socialist property is the basis of the prosperity and welfare of the country and of its citizens, and is accordingly more securely safeguarded than other forms of property. The Act for the Protection of the Property of State Enterprises, Collective Farms and Co-operative Organizations regards offences against socialist property as the most serious of crimes and equivalent to attempts to subvert the Soviet system. Theft of socialist property on a large scale, whether overt or covert, or whether accompanied by violence or not, is liable to severe penalties, up to and including death by shooting and confiscation of property.

Other offences against socialist property are likewise liable to more severe penalties than are similar offences against the property of individual citizens. For example, petty theft from a private person, in the case of a first offence, is punishable by corrective labour (which is not accompanied by incarceration) for a term of three months; a petty theft committed against a state factory or institution, or against a co-operative or public organisation is liable to a term of up to one year's imprisonment.

The summary protection of property is the function of the militia (police) and other bodies entrusted with the maintenance of public order. It is their duty to prevent or put an end to any violations of property rights, acting either on their own initiative or on complaint. The summary protection of property operates only if the violation is accompanied by force or violence. If no force or violence is employed (e.g., appropriation of property held in trust), protection is afforded by the courts. It is also the duty of the police to recover stolen property.

The protection of the courts may be invoked by bringing suit against the offender. The court may, as the case may warrant, recover the property for the owner from the unlawful possessor, or forbid the performance of acts viola-

ting the right of the owner, or award damages for injury to or destruction of the property.

An owner has the right to demand the restitution of his property by an unlawful possessor. Not only is possession arising out of theft or misappropriation unlawful; so is also the acquisition of property from the thief or misappropriator.

State property may be recovered not only from an unlawful possessor, but also from one who has acquired it from an unlawful possessor in good faith.

As to property belonging to co-operative or public bodies, or to private individuals, its recovery may be required in all cases from persons who know, or who should know, that its possession is unlawful, and from bona fide purchasers only if the possession of the property by the lawful owner did not terminate of his own free will, e.g., as a result of theft or loss. If, however, a co-operative or public body or private person turned over the property to a third person (e.g., for use or for safe keeping) and the latter violated his trust and sold the property to a bona fide purchaser, no demand for its recovery from the bona fide purchaser may be made.

A bona fide purchaser is one who acquires a thing from an unlawful possessor not knowing, and not being in a position to know, that the latter has no right to the thing.

It is all one in the eyes of the Soviet law where the bona fide purchaser acquired the property at issue—whether at an auction, in the open market, or from a private person.

This rule does not extend to money and banknotes and to bearer certificates containing a promise to pay a definite sum. These cannot be recovered from the bona fide holder under any circumstances, even if they were stolen from or lost by the owner, or if the owner was the state.

In addition to demanding the restitution of his property, the owner may sue the unlawful possessor for all the fruits and income the latter may have derived from it, or could have derived from it under normal conditions. If the property was not acquired in good faith, the owner may demand the fruits and income from it for the entire period it was in the possession of the unlawful holder; if

the holder, however, honestly believed that he had lawfully acquired the property, he can be made to return only the fruits and income derived from it after he learned that his possession of it was unlawful.

The unlawful holder, on the other hand, may in certain circumstances demand from the owner compensation for necessary expenses incurred by him for the preservation of the property during the period for which the owner is entitled to compensation for the fruits and income derived from it.

The property right may be violated not only by depriving the owner of the possession of his property, but also by preventing him from enjoying its possession or from disposing of it. The owner may seek redress against such violations by bringing suit for the removal of the obstacles to the enjoyment of his property or by demanding an injunction on acts interfering with his right. He may likewise apply for sanction to remove the obstacles himself at the expense of the offender.

At the same time he may claim damages for any loss incurred. If the property itself has been injured, the defendant can be made to restore it to its former condition, or—if that is impossible—to make compensations for the injury done.

III

STATE PROPERTY

As we have said, state property is the chief form of socialist property. Its legal status accordingly differs from that of other forms of property in certain very material aspects.

There are no limits to the kind of things the state may own. State ownership may extend to any form of property without exception.

The land, its natural deposits, the forests, waterways and railways are owned exclusively by the state. It also enjoys monopoly of foreign trade and insurance.

There are certain important means and instruments of production over which a state monopoly has not been established. But once such a monopoly is established, it cannot be terminated.

This rule applies to industrial plants and transport services, railway rolling stock, sea and river craft, telegraph and telephone plants and equipment, power stations, grain elevators, cold storage plants and municipal enterprises, installations and dwelling houses.

Such objects, if they belong to the state, cannot be sold or made over to co-operative and public bodies or to private persons, nor can they be pledged as collateral. Similarly, they cannot be levied by order of court for the satisfaction of creditors.

The Council of People's Commissars of the U.S.S.R. has the right to establish exceptions to this rule and to sanction in individual cases the cession of state property to co-operative or public organisations.

This rule applies only to such instruments and means of production as form part of the state productive capital. Machinery produced by a state-owned factory is not part of that factory's means of production; it is a product, a commodity, and may therefore be sold to a co-operative or public organisation. But any machine that becomes part of the means of production of a state enterprise remains state property unalterably.

State property belongs to the Soviet state, as the sole representative of the will of the Soviet people. The right of state property is vested exclusively in the state. It, however, exercises that right through numerous state bodies, institutions and enterprises, many of which are "juristic persons," or corporate bodies.

All state property is divided into three categories: union, republican and local.

Union property is owned by the Union of Soviet Socialist Republics and is administered by the Government of the U.S.S.R. and its institutions and enterprises. The operation of this property is planned by the Union Government and financed out of the budget of the U.S.S.R. The results

of operation (profit or loss) in the final analysis are also reflected in the budget of the U.S.S.R.

Republican property is owned by one or other of the Union (Constituent) Republics or Autonomous Republics of the U.S.S.R.

Local property belongs to one or other of the local government bodies (regional, district, city or rural Soviets of Working People's Deputies).

The operation of republican or local property is planned by the governments of the Union (or Autonomous) Republics and by the local Soviets respectively, and is operated by institutions or enterprises controlled by these governments or Soviets. The results of their operation are reflected in their budgets.

The jurisdiction of the U.S.S.R. over republican or local state property is limited to the general planning of their operation (the plans themselves being carried out by the republican governments and the local soviets) and to levying All-Union taxes on them. The Union Republics stand in similar relation toward the property of the local government bodies within their territories.

In respect to union and republican enterprises located in their territory, the local soviets exercise the right of maintaining public order and security and enforcing sanitary regulations and municipal requirements. They may also levy local rates and taxes on them. But they may not interfere in their operation, direct the character of their activities, or appropriate any of their property. This holds true of the relations of the Union Republics toward All-Union property and enterprises located in their territory.

The U.S.S.R., the Union and autonomous republics and the local soviets administer and operate their properties in two ways. Part they retain under their own administrations, operating them through bodies which are regarded in civil law as part of the machinery of government (Union, Republican, or local) and are not "juristic persons" (corporate bodies). Such property is "budget," or fiscal property.

For the administration and operation of the other properties, the government of the U.S.S.R., the govern-

ments of the Union and autonomous republics and the local soviets set up special organisations, known as business organisations ("trusts"). A programme or plan of production is assigned to each of them and they are endowed with state property sufficient for the fulfilment of the plan, after which they are separate and independent corporations as regards their operations and their property. They decide for themselves the methods of fulfilling the plans assigned to them, enter into all necessary transactions for the purpose, and utilise their property as they deem fit.

The business enterprises have no connection with the budget; they perform their operations with the property vested in them and answer with this property for their debts and obligations. But at the end of each year of operation they turn over the larger part of their profits to the Union, republican or local treasury, as the case may be (part of the profits is retained by the management of the enterprise and is used for perfecting methods of production, for improving the conditions and amenities of the staffs and for awarding premiums to distinguished workers).

Inasmuch as the state business enterprises are separate and independent as regards their operations and properties, they are independent corporations, or "juristic persons," in the eyes of the law. The Civil Code states: "State enterprises and combinations of state enterprises that operate on business lines and are not financed from the budget are independent juristic persons unconnected with the treasury."

As independent juristic persons, the state business enterprises exercise independent right over the state property with which they have been endowed. They may dispose of this property or perform transactions with it, provided, of course, they do not violate the law or the provisions of their charter. Their property can only be levied for their own debts. The Statute of State Industrial Trusts reads: "A trust answers for its obligations only with such of its property as may be levied under the law. The general state treasury and the local soviets are not answerable for the debts of a trust, nor is a trust answerable for the debts of the state or of the local soviets."

How Fiscal Property is Administered

The principal forms of "budget," or fiscal property are: military material, communications (post, telegraph, telephone and radio establishments and institutions), school buildings and equipment, hospitals and other social and cultural institutions, government and administrative premises.

Fiscal property is administered by government departments and bodies, whether central, republican or local (soviets). These bodies are not juristic persons (corporations or "artificial persons"). All expenses connected with the administration (and exploitation) of fiscal properties are met out of the respective central (Union), republican or local budgets, while all revenues obtained from them pass into these budgets. Any debts that may be incurred in these operations are likewise a charge on the budgets.

The powers of these bodies with respect to the property under their administration are limited. They may only perform such business operations with them as are directly necessitated by their functions.

Naturally this restriction of the rights of possession, use and disposal relate only to the administrative bodies themselves, not to the state as a whole, whose rights with regard to state property are not limited in any way. The higher organs of state authority may entrust any functions or tasks to the fiscal institutions, and thereby determine at their own discretion the limits of the latter's rights of possession, use and disposal of fiscal property.

Fiscal property may not be levied by legal process for the debts of fiscal institutions. Judgments passed by the courts against fiscal institutions are not enforced by the legal authorities, but are responded to by the treasury (by the People's Commissariats of Finance of the U.S.S.R., or the Union or Autonomous republics, or by the financial departments of the soviets), and, furthermore, not at the expense of the property under the administration of the fiscal institutions, but out of appropriations in the budget of the government concerned.

Land, Forests and Waters Belong to the State

A special category of property, which is under the direct management of the state (acting through its administrative bodies) and which is not turned over to state business enterprises, comprises land, forests and waters. The status of these forms of property is as follows:

The land, natural deposits, forests and waters belong to the state. They cannot become the property either of juristic persons (corporations) or of private persons. Nor can they be made objects of commerce or of civil transactions: they cannot be bought, sold, exchanged, presented in gift, bequeathed, etc. Any transaction which overtly or covertly involves the alienation of land, forests or waters is invalid, and the parties to such transactions are liable to imprisonment, to forfeiture of the use of the object of the transaction, and to confiscation of pecuniary or other material benefits derived from the transaction.

Inasmuch as the land, natural deposits, forests and waters may not be alienated, they have no assessable value.

The land, natural deposits, forests and waters are controlled by state administrative bodies. For example, arable land, forests not set aside for industrial exploitation and non-navigable rivers, lakes and ponds are under the control of the People's Commissariat of Agriculture; urban land is controlled by the city soviets; forests assigned for industrial exploitation are controlled by the People's Commissariat of the Timber Industry, while navigable rivers and lakes, their banks and shores, ports and wharves, etc., are controlled by the People's Commissariat of the River Fleet. All coal deposits are administered by the People's Commissariat of the Coal Industry, all oil deposits by the People's Commissariat of the Oil Industry, and so forth.

As a rule, the use and exploitation of useful land, forests, waters and mineral deposits are entrusted to state business enterprises, co-operative and public organisations, and private persons. In fact, the functions vested in the government administrative bodies in relation to such property are virtually limited to distributing it among the actual users and to exercising supervision over the way it is used. Only rarely are they exploited by the government adminis-

trative bodies directly, instances being the land on which roads, city streets, squares and parks are laid out, the forests in water conservation zones, and so on.

The Collective Farms Hold 916,370,000 Acres of Land

The bulk of the arable land of the Soviet Union has been placed at the disposal of the farmers who till it. In 1937 about 87.5 per cent. of the arable land, or 916,370,000 acres was being cultivated by collective farms and individual peasants, while only 12.5 per cent., or over 125,970,000 acres, was at the direct disposal of the government land departments or operated by state business enterprises.

In most cases land, forests, waters and natural deposits are placed at the disposal of state business enterprises, co-operative and public organizations and private persons free of charge. A small tax, known as "land rent," is however, payable on land assigned for building or business purposes. Enterprises and organizations which have been assigned land for warehouses or for purpose of freight handling on the territory of railway stations, ports and wharves are obliged to bear a share of the expenses of protecting and maintaining the stations, ports or wharves. In some cases payment has to be made for the use of sea fisheries and of certain mineral deposits.

Collective Farms Hold Their Land in Perpetual Tenure

The period of tenure of the above-enumerated properties is in most cases unlimited. In particular, the Constitution of the U.S.S.R. states that the land occupied by the collective farms is secured to them "in perpetuity." The tenure of the land held by a collective farm can be terminated, or any part of the land withdrawn from it only by special decision of the government, the Council of People's Commissars of the U.S.S.R. The period of tenure of the land held by individual peasants, of the household plots of collective farmers, and of land, forests and mineral deposits operated by state business enterprises, is likewise unlimited.

Land, forests, waters and natural deposits are assigned only for specifically defined purposes in each case. If they are used for other purposes (e.g., if land assigned for building purposes is ploughed up for cultivation) the administra-

tive authorities may recover them. Tenure may also be terminated if, for instance, farm land is left uncultivated for a definite number of years in succession, mineral deposits are not worked, and so on.

If the holder decides no longer to exploit the land, forest, water area or mineral deposits placed at his disposal, he may not sell, lease, or otherwise transfer it, but must return it to the administrative body which has control over it.

If a person purchases a house, he automatically acquires tenure of the plot on which it stands. Tenure, where the holder is a physical person ("natural person") may be transmitted by inheritance.

Besides direct use of land, forests, waters and deposits, Soviet law also sanctions subsidiary use as, for example, for hunting, fishing (apart from commercial fishing in special fisheries, for which direct tenure is required), bee-keeping, pasturing, grass cutting, or gathering berries, mushrooms and firewood. These uses are in all cases the prerogative of the holder, although he must exercise them himself and may not cede them to others for profit.

The administrative authorities may give permission for conceding such subsidiary uses to persons other than the occupier of the property, as, for instance, for commercial hunting and trapping, bee-keeping, and the gathering of fruit and berries for sale, but only on condition that the rights and interests of the occupier are not injured thereby.

Special permission is not required for the use of water for drinking or household purposes, for the gathering of firewood, wild fruits, berries or mushrooms for personal use, or for hunting as a sport (except on government reservations or commercial hunting preserves) or for amateur fishing, all of which are open to all citizens.

Basic Capital and Working Funds of State Business Enterprises

The property operated by the state business enterprises is divided into two categories—basic capital and working funds—each with a different status in the eyes of the law.

Basic capital comprises buildings, machinery, tools and other productive equipment, means of transport, animals used for draught, productive and breeding purposes; and so on.

When a state business enterprise is formed it is furnished by the state with basic capital sufficient for the performance of the functions defined in its charter and for the fulfilment of the production quotas assigned to it. This is its registered capital which is at its full and exclusive disposal.

The enterprise may build up or acquire further capital as the necessity arises. But this new capital must be such as is needed for the performance of the functions outlined in the charter of the enterprise and must be sanctioned by the plans of capital development and investment endorsed by the higher authorities. The undertaking of capital development or the acquisition of means of production not sanctioned in the plans are considered criminal offences.

State business enterprises may acquire (build up or purchase) new basic capital only with funds assigned to them out of the government budget (central, republican or local, as the case may be). They may not acquire new basic capital out of their working funds. These appropriations from the budget are made for specified purposes (for the construction of specific buildings, the purchase of specified machinery, and so on), and may not be expended for any other purpose. If not utilized in whole or in part by the end of the fiscal year, the appropriated sums revert to the treasury. The grants made to state business enterprises for capital expansion are not loans advanced by and repayable to the state. They are, in fact, the state's investments in industry.

The dimensions of these appropriations for capital expansion will be seen from the following figures: in the period of the First Five-Year Plan (1929-32) they amounted to 51,000,000,000 roubles; in the period of the Second Five-Year Plan (1933-37) to 115,000,000,000; in the period of the Third Five-Year Plan (1938-42) they were planned to amount to 181,000,000,000 roubles.

The enterprises are in duty bound to employ their

basic capital to the maximum effect and fruitful advantage, as well as to safeguard it and to keep it in good repair.

A state business enterprise may loan or lease its basic capital if this is necessitated by the functions defined in its charter (a state office hiring out building machinery would be a case in point), or by the very nature of its capital (a factory which has built houses for its employees naturally rents the dwellings to them), or if special sanction is obtained from the higher authorities.

It may not part outright with any portion of its basic capital without the order or permission of the government, or of the administrative bodies to which it and the prospective acquirer of the property are subordinated. The transfer is made without remuneration; the value of the transferred property is simply written off the capital of the disposer and on to the capital of the acquirer. Basic capital, however, which is transferred by a state business enterprise to a co-operative or public organization must be paid for by the acquirer, although instalments spreading over a period of up to five years are permitted.

The basic capital of a state business organization may not under any circumstances be mortgaged or pledged as collateral security. Nor can it be levied for the satisfaction of the enterprise's creditors. If the enterprise is wound up, its basic capital reverts to the higher authority to which the enterprise was subordinated, no matter if the claims of creditors are met or not.

The working capital of a state business enterprise consists of its stocks of raw material, fuel, partly-finished goods, finished goods and cash, as well as of all other property which does not form part of its basic capital.

Working capital is assigned to an enterprise by the higher authority to which it is subordinated in quantity sufficient to enable it to carry out its production programme (plan). It may employ its working capital any way it deems fit for the fulfilment of its plan; it may sell it, pledge it, or acquire other working capital, no special sanction from the higher authorities is required for such transactions.

Disposals or acquisitions of working capital by state business organizations must be in return for equivalent values. It may not be transferred or otherwise disposed of without proper remuneration.

Only this working capital may be used to satisfy the claims of creditors. It may be levied for this purpose by decision of court. When a state business enterprise is wound up, it is its working capital that is used to meet its liabilities, any residue going to the higher authority to which the enterprise was subordinated.

IV

COLLECTIVE FARM AND CO-OPERATIVE PROPERTY*

Collective farm and co-operative property are one of the forms of socialist property and a pillar of Soviet society, helping to promote the wealth and strength of the Soviet Union and the prosperity of its citizens.

On January 1, 1937, the co-operative organizations (including the collective farms) owned 8.7 per cent. of the total productive capital of the U.S.S.R. On that same date the collective farms owned 20.3 per cent. of the total means of production employed in agriculture.

Co-operative organizations and collective farms may own any kind of property over which the state does not exercise a monopoly and which is needed for the exercise of the functions specified in their statutes. Their chief forms of property are their livestock, implements, buildings and the products of their enterprise.

Prosperity of the Collective Farms

The law sets no limits to the amount of property collective farms, or co-operative or public organizations may own. In 1938 the property belonging to collective farms was estimated at a total of over 24,000,000,000 roubles, or an average of about 100,000 roubles per collective farm. Their incomes are even more significant. The annual in-

* See also "Co-operatives in the Soviet Union," *Soviet News*, 18.

come of a collective farm in that year averaged 70,000 roubles. In the case of 8,623 collective farms, income ranged from 250,000 to 500,000 roubles; in 3,070 farms, from 500,000 to 1,000,000 roubles; and in 769 it exceeded one million roubles. In the period 1939-41 the number of collective farms with annual incomes of over one million roubles increased considerably, especially in the cotton-growing regions of the Central Asian republics.

The laws governing the property rights of co-operative organizations also extend to public, political, trade union, educational, scientific, sports and similar associations and societies.

All co-operative and public organizations are voluntary associations. Their original capital is acquired out of the contributions of their members, either in money or in kind. Co-operative organizations are usually brought together in federations or leagues, depending on their character and type of activity.

The property of a co-operative organization is separate and distinct from that of the state and of all other co-operative or public organizations. No government body or official may interfere in the use or disposal of the property of collective farms or co-operative bodies, or give orders as to what they should produce or not produce, apart from the assignments laid down in the national-economic plan.

The Law on the Functions and Organization of Producer Co-operative Societies states that "an artel (producer co-operative) has the sole and independent disposal of its working capital and property." The Law for the Strengthening of Collective Farms and for the Promotion of Agriculture forbids government bodies or state trading bodies to appropriate or dispose of the funds or property of collective farms and instructs the Procurator's Office to take strict measures against all persons violating this law. This rule applies also to all other co-operative organizations.

Co-operative (collective farm) property may only be levied upon for payment of debts by the decision of a court, or, in a national emergency, by a special decision of the Council of People's Commissars in each case.

Levying upon such property in all other cases is a criminal offence.

The law states that all enterprises, buildings, equipment or other property ceded by co-operative or public organizations to state bodies, institutions or enterprises must be paid for at their full value.

Collective farms and co-operative organizations may obtain loans from banks for the purpose of capital expansion.

The statutes of all co-operative bodies contain the provision that the organization must conduct its business activities, and hence employ its property, in accordance with the production programme assigned to it in the government plan. Clause 6 of the Model Rules for Collective Farms, for instance, reads: "The collective farm undertakes to conduct its activities in a planned way, strictly observing the programmes of agricultural production laid down by the organs of the Workers' and Peasants' Government, and its obligations to the state."

The relations of co-operative organizations to the national-economic plan differ from those of the state business enterprises. The activities of the latter are entirely governed by plan: they exist solely and exclusively for the carrying out of the national-economic plan, and may not engage in any operations which do not promote its fulfilment, even if they do not necessarily interfere with it. This is not so in the case of collective farms and co-operative organizations. Their first duty is to fulfil their production programmes under the plan, but they may engage in other activities and operations providing they are sanctioned by their statutes and do not interfere with the fulfilment of the plan.

The products and profits derived by collective farms and co-operative organizations from their operations belong solely to them and may not be appropriated by the government or by the co-operative federations. This, of course, does not preclude the payment of government taxes and dues. The method of disposal of their products and profits is laid down in their statutes. Part of the products, an amount defined by the national economic plan, is sold to

the government; another part goes to the reserve and to a sinking fund; another part is paid into a fund for the benefit of sick or disabled members and for the maintenance of orphans of deceased members; part may be used for capital expansion. The rest is distributed among the members in proportion to the work they have performed.

The Soviet state is interested in promoting and encouraging the productive capacity of the co-operatives. The law therefore contains a number of provisions designed to prevent reduction or squandering of their productive capital.

For example, a co-operative organization may sell part of its means of production only if the fulfilment of the government plans is not jeopardized thereby. It may only be disposed of to other co-operative or public bodies, or to state enterprises, but not to private persons. Machinery, raw materials, fuel, etc., purchased by a co-operative organization under the government's plans of distribution, but which it is eventually unable to use, may be sold by it only with the sanction of the appropriate government authority.

As long as a co-operative organization exists and functions, only its working capital, but not its basic capital, may be levied upon for the satisfaction of its creditors. In the event of its liquidation, however, all its property, including its basic capital, goes into the receiver's fund for the meeting of its liabilities.

A word should be said on the mutual liabilities of co-operative organizations and the members thereof.

On joining a co-operative organization (collective farm, producer or consumer society, etc.) a member pays an entrance fee and a share contribution. The entrance fee is always payable in money; the share contribution may be in kind (implements of production, goods, raw materials). The entrance fee is payable at once; the share contribution may be extended over a given period, as laid down in the rules of the co-operative or by the general meeting of its members.

The entrance fee is not recoverable under any circumstances. If a member leaves one co-operative organization

and joins another belonging to the same union (federation) he again pays an entrance fee.

The share contribution is refundable. If a member joins another society belonging to the same co-operative union, the value of his share contribution is transferred to his credit there. When a member resigns or is expelled from a co-operative organization, his share contribution is returned to him. If it was originally paid in kind, he receives back its equivalent in cash. On the death of a member, the value of his share contribution is paid to his heirs. When a co-operative organization goes into liquidation, the residue of the share capital is divided among the members in proportion to their contributions after all of the organization's liabilities have been met.

A member of a co-operative organization is answerable for its obligations and losses to the extent of his share contribution. If during his period of membership the organization has incurred a loss, on resignation a proportionate share of the loss is deducted from the share capital refunded to him. A request for the return of share contributions is not considered a first charge on the organization, and it is only met if provision has been made to satisfy all other obligations.

Members of public organizations* pay an entrance fee and regular (monthly, quarterly or annual) membership dues. Neither entrance fee nor membership dues are refundable on resignation or expulsion.

V

PERSONAL AND FAMILY PROPERTY

The personal property of citizens is protected by law.

There are limitations on the kinds of property private citizens may own. They may not own land, forests, mineral deposits, nor means of production which can only be ex-

* See bottom of p. 11.

ploited with the help of hired labour. They may own weapons, explosives, military equipment, telegraphic and radio-telegraphic equipment, radium, helium, powerful poisons and the like only with the permission of the proper government authorities.

All other forms of property may be owned by private citizens. The most common objects of personal property are money, banknotes, securities, articles of personal use and convenience, household furniture, books, works of art, radio sets, sports goods, automobiles, houses, domestic animals and poultry and simple agricultural implements and tools (provided they are not used for the exploitation of the labour of others).

Statistics for 1936 show that in that year private citizens owned nearly 1,000,000 dwelling houses in urban areas and over 19,000,000 houses in rural areas, 1,776,000 horses, 36,117,000 cows and oxen, 40,756,000 sheep and goats, 19,700,000 pigs; and securities (state loan certificates) to the value of nearly 15,000,000,000 roubles.

There is no limit to the amount of personal property a citizen may own. In particular the law sets no limit on savings.

Ferapont Golovaty's Two Aircraft

No exact data as to the prosperity of individual citizens is available, for no such figures are compiled either by the statistical or the revenue authorities. But some light on the wealth of some Soviet citizens may be obtained from the following facts.

In 1942-43 a fund was started in aid of national defence. Hundreds of thousands of persons contributed five, ten, twenty thousand roubles and more in money or valuables. Several thousand persons donated from one to two hundred thousand roubles each, among them scientists, writers, artists, engineers, priests, as well as workers and collective farmers. An instance in point is a collective farmer named Ferapont Golovaty, who, in 1942, purchased out of his own funds a warplane for 100,000 roubles, and in the following year yet another, both of which he donated to a famous air force regiment of the Red Army.

Although the law does not restrict the amount of personal property a citizen may own, such restrictions may be voluntarily imposed upon themselves by groups of citizens—at least as regards certain kinds of property.

The Model Rules for Collective Farms provide that their members undertake not to own over and above a certain quantity of livestock and beehives. The number varies with the character of the different regions and ranges from one cow, two calves, two sows and their litters, 10 sheep or goats and 20 beehives in the predominantly agricultural regions, to 10 cows (not counting calves), 10 horses, 10 camels, 150 sheep or goats, in the predominantly cattle-raising regions.

The underlying consideration behind this rule is that the common enterprise of the collective farm should serve as the main field of activity and source of income of its members, and that their personal husbandry should bear a subsidiary character.

The Right of Personal Property is Inviolable

A government body or official may not confiscate or even requisition for equivalent compensation property belonging to private citizens or in any way violate or restrict their right of enjoyment of their personal property. The Constitution of the U.S.S.R. states that "the right of citizens to personal ownership . . . is inviolable."

The only exception sanctioned by law is in case of national emergency (e.g., time of war) or of natural calamity, when the government may requisition personal property for proper compensation. Furthermore, the sentence imposed by a court for certain criminal offences may include confiscation of property. A court may also order a distraint upon personal property for non-payment of taxes or debt.

But not all articles of property of private citizens may be subject to distraint. Certain things are exempt, e.g., a definite minimum of clothing, household furniture and utensils, a three months' stock of fuel, food needed for the subsistence of a farmer's family until the new harvest, or, in the case of an urban family, for three months; tools, implements, books, etc., needed by the debtor or by any

member of his family for the exercise of his trade or profession; agricultural machines or implements; a definite quantity of livestock; dwelling houses, and structures which form an essential part of a farmer's husbandry; a definite quantity of seed and of fodder for livestock, and the ungathered crop of field, garden or orchard.

Exemption also extends to savings bank deposits, share contributions in co-operative societies, or insurance premiums on property which is itself not liable to distraint.

Distraint may be levied only on 20 per cent. of monthly wages or salaries. However, 50 per cent. of wages and salaries may be levied in cases of distraint for non-fulfilment of orders on which advances have been made by state, co-operative or public bodies, or in compensation for misappropriated property, or for non-payment of alimony or maintenance to infirm or disabled members of the defaulter's family. Pensions and allowances may be distrained upon only for non-payment of alimony, and that must not exceed 30 per cent. of the pension or allowance.

The owner is free to use or dispose of his personal property in any way he thinks fit. No government body or official may restrict his right or order him to use or dispose of his property in any particular manner. There are, however, certain exceptions to this rule, to wit:—

Personal property may not be used for the exploitation of the labour of others, nor for the acquisition of unearned income (e.g., by profiteering or usury).

Articles whose possession and use require the sanction of some administrative body may be disposed of only to that body. For example, the owner of an aeroplane may sell it only to the Civil Aviation Board; and the possessor of a rifled firearm may sell it only to the People's Commissariat of Home Affairs.

Gold, silver, platinum and metals of the platinum group, in the form of bullion or ore, as well as foreign currency and securities, may be sold only to the State Bank.

The owner of "museum valuables" (objects of art, ancient and historical relics, etc.) registered by the People's Commissariat of Education, may not destroy them or sell them abroad.

Owners of pedigree cattle may slaughter them only with the permission of the veterinary authorities.

The owner of a dwelling house may let any part of it he does not care to occupy himself, but the rent he exacts for it must not be more than 20 per cent. in excess of the rent paid for similar space in government-owned houses.

The possession of personal property does not involve any additional obligations; the owner, for instance, is not subject to additional taxation. There is no property tax in the U.S.S.R. with the exception of a tax on horses owned by individual peasants (i.e., peasants not belonging to collective farms).

However, since the Soviet state is anxious to promote the welfare and prosperity of its citizens, it makes it incumbent on owners of large and important pieces of property to see to their proper maintenance and upkeep. Owners of houses must keep them in a proper state of repair, and, in the event of an owner's deliberately failing to do so, and allowing his house to fall into dilapidation, the local soviet may apply to the court to have the house turned over to the state. In practice, it has to be established that there were no extenuating circumstances, that the owner was able, but unwilling, to make the necessary repairs.

Owners of houses or other buildings, livestock, crops, fruit orchards, as well as the tools of a handicraft or trade are obliged to insure them against fire, damage or other accident.

To sum up, it may be said that the only restrictions imposed on the right of personal property are designed to prevent its being used for unearned income and the exploitation of the labour of others, and to ensure the proper maintenance and most effective use of such objects of personal property as are of national economic importance (dwelling houses, pedigree stocks, etc.). In all other respects the right of enjoyment of personal property is unrestricted.

*Right of Inheritance**

Personal property is transmittable by inheritance.

Under Soviet law the right to inherit belongs to all citizens, irrespective of sex, age, nationality or social origin or status. The amount that can be inherited is unlimited; when a person dies, his property, no matter how large, passes to his heirs. Until 1942 an inheritance tax was imposed, but in that year it was abolished and since then no tax or dues of any kind are levied on legacies.

All things that are objects of personal property may be inherited. However, if the owner had to have special permission to possess a certain property, it cannot be inherited unless the heir can receive similar permission. Nor are pensions or allowances, or similar benefits which are the perquisites of specific individuals, inheritable. Similarly, if the deceased was a member of a co-operative society, the privileges attaching to his membership thereof do not pass to his heirs, but only the right to the refund of his share contribution.

Soviet law recognizes two methods of inheritance; inheritance by law and inheritance by bequest. It does not recognize inheritance by contract.

Inheritance by law takes place in cases where no testament is left or the testament is declared invalid.

There are three degrees of heirs under the law. The **first degree** comprises: wife (or husband) of the deceased, children (including adopted children) and parents, provided they are unable to earn their own living, as well as other persons unable to earn their living, if they were dependent upon the deceased for no less than a year before his or her death.

If any one of the children has died before the estate is divided, his share is distributed among his children. Similarly, the share of a grandchild who may have died is divided among his children.

Shares of heirs dying before the estate is divided, and leaving no children, are divided among the remaining heirs.

The **second degree** comprises the able-bodied parents of the deceased. The estate passes to them if the deceased

* See also "Legal Rights of the Soviet Family," *Soviet News*, 18.

has left no wife (husband), issue or dependants. Parents come under the second degree only if they are able to earn their own living. If they are not able to do so, owing to age, sickness or disablement, they are classed with the first degree of heirs and share the inheritance with spouse, issue and dependants.

The **third degree** consists of the brothers and sisters of the deceased. The estate passes to them only if there are no surviving heirs of the first and second degree.

The heirs of one and the same degree receive an equal share of the estate. This does not apply to the grandchildren or great-grand-children of the deceased, who are not independent heirs, but representatives of the dead children of the deceased. They receive only that share of the inheritance which would have fallen to their parent and divide it among themselves.

Household furniture and utensils, in case of inheritance by law, are not divided among all the heirs. They pass solely to those heirs who lived in the same household as the deceased; they receive these articles in addition to their share of the inheritance.

If the deceased leaves no surviving heirs and dies in-estate, his estate becomes the property of the state.

Bequest

Every Soviet citizen has the right to make a will providing for the disposal of his property in a different way from that which would occur under inheritance by law.

Wills must be in writing and, as a general rule, certified by a notary. An exception is allowed in the case of wills made by members of the armed forces in wartime, which may be certified by commanding officers or chiefs of military hospitals. Nor is notarial certification needed for instructions given by a savings bank depositor as to the disposal of his deposit, in the event of his death, or to co-operative organizations as to the disposal of share contributions. A written notification is sufficient in such cases.

Personal property may be bequeathed both to physical and to "juristic" (corporate) persons. If a person has legal heirs (wife or husband, children, grandchildren, great-

grandchildren, parents, dependants, brothers or sisters), he may not will his property to other physical persons. He can only give instructions how his property should be distributed among the legal heirs, and in doing so is not obliged to adhere to the order of inheritance or to the size of the shares prescribed in the case of inheritance by law.

He may increase the share of one heir and decrease that of another, or entirely deprive some heirs of their share and bequeath all his property to one or more of the others. He may not, however, injure the interests of minors or non-able-bodied heirs and must bequeath them at least the share to which they would have been entitled under inheritance by law.

If a person has no legal heirs he may bequeath his property to whom he pleases. And, as an exception to the general rule, he may bequeath bank and savings banks deposits to anyone he pleases, even if he has legal heirs.

Personal property may also be bequeathed to "juristic" persons—the state, state institutions and enterprises, collective farms, co-operative and public organizations, and so on. Such bequests may be made irrespective of whether there are legal heirs or not.

The will may indicate a specific purpose or purposes for which the bequest is made. The testator may also impose obligations upon one or more of his heirs with regard to third persons, such as providing them with free accommodation in the inherited house, and the heir can decline to accept the obligation only by renouncing the legacy.

All formalities in connection with the execution of wills are conducted by a notary. Disputed questions are settled by the courts.

An heir may renounce his share of the legacy. If he does so before the death of the testator, the latter may appoint a substitute heir.

Family Property

Personal property may be owned in common by several persons, and is then known as joint property. Joint property may arise as the result of the inheritance by several persons of shares in one and the same indivisible thing, or

by the acquisition of a thing in common, or by the cession of a person of a share of a thing he owns to other persons.

Each owner has the right to a definite share in the joint property, even if that share is ideal, i.e., does not extend to some definite physical part of the thing, but only to a part of its value.

The possession, use of and disposition of joint property is determined by agreement among the owners, or, in the absence of unanimity, by a majority of the owners. The method of distribution of the fruits and income derived from joint property is likewise determined by agreement, as is also the distribution of the cost of maintenance, exploitation and management.

If a party retires from the association, the allotment of compensation for his share is arrived at by agreement, or, if agreement cannot be reached, by the decision of a court.

The property of man and wife is a specific form of joint property. The rules governing the joint property of man and wife extend to all Soviet families except peasant families, i.e., the families of collective and individual farmers.

The joint property of man and wife is such property as they acquired (purchased or produced) since their marriage. The property which belonged to either of them before marriage remains his (or her) property and the other party has no legal right to it.

Property acquired by a couple since marriage is considered their joint property irrespective of whether it was acquired in the name of both or of only one of them. In particular, Soviet legal practice holds that a house acquired after marriage, but entered in the Building Register in the name of only one of two, is nevertheless to be regarded as the joint property of both. An exception to the general rule is the case of savings bank deposits, which, if made in the name of only one of the couple even during marriage, are regarded as belonging to him (or her), and the other party has no claim to them.

There are certain exceptions to the general rules governing the joint property of husband and wife.

Tools, instruments, books and the like, used by one of

the couple for the exercise of his or her professional occupation, belong to that particular spouse, even though they were acquired during wedlock. If, however, both husband and wife follow the same occupation and the objects in question are used by both, they are considered joint property.

Clothes and other articles which are the appurtenances of one particular sex are considered the property of the spouse of that sex. For, example, ladies' footwear belong to the wife, a man's watch to the husband, and so forth. This rule does not apply to articles of luxury (jewellery, valuable furs, etc.), which, if acquired after marriage, are the joint property of both spouses.

Gifts, awards and premiums received by one of the spouses are considered the property of that spouse only.

As long as they continue in wedlock husband and wife have an equal right to their joint property. The Code of Wedlock, the Family and Guardianship states that "the manner of conducting the common household is arranged by mutual agreement of the two spouses," in other words, husband and wife exercise possession, use and disposal of their joint property by common consent.

Joint ownership means that all fruits and income from the property goes to the benefit of the common household, and likewise that the cost of maintenance and operation of the property is borne in common.

For a long time it was a moot question in Soviet law whether the joint property of husband and wife could be distrained for debt or other claims against only one of them. To-day this question has been settled as follows. If the debt arose by the action of only one of the spouses, but was in the interest of the common household, the joint property of both may be distrained, but if the debt was incurred in the interest of only one of the spouses and not for the benefit either of the common household or of the other spouse, distraint may be levied only on the property of the defaulting spouse and on his (or her) share of the joint property, the share of the other spouse being immune.

A similar procedure is adopted in case of confiscation of property by sentence of court for a crime committed by

one of the spouses. If the joint property of both spouses was augmented as a result of the crime, then it is liable to confiscation. If the crime, however, did not result in augmenting the joint property, and did not pursue that purpose, then only that share of the joint property may be confiscated which belongs to the convicted spouse.

The Code of Wedlock, the Family and Guardianship lays down that the share of the joint property which belongs to each of the spouses is determined by mutual agreement between them, and, in case of dispute, by the law courts.

The shares of each of the spouses in the joint property must be equal in value only if distraint is to be levied on the share of one of them, or if that share is due to be confiscated. In all other cases the court is not necessarily obliged to divide the joint property into two equal parts. It must take into account the labour contribution made by each of the spouses towards the maintenance of the common household. Such contribution does not only include wages or other income, but also domestic work, upbringing of the children, and so forth. If the division of property is occasioned by divorce, the court must also think of the interests of the spouse with whom the children are to remain. Children, it is true, have no independent claim to a share of the property of their parents. But the maintenance and upbringing of the children gives the spouse to whom this care will fall the right to demand a larger share of the joint property.

In the Ukrainian and Georgian Soviet Republics the law provides that in all cases of division of the joint property of husband and wife the shares shall be equal.

The Collective Farm Household

A different set of regulations, however, governs the property relations of the peasant family (whether of collective or individual farmer). The basic nucleus is the peasant household (if it belongs to a collective farm it is called a collective farm household). The Land Code defines the household as "a family-labour association of persons jointly engaged in agriculture." It should be noted that, if the household does not belong to a collective farm, the

agricultural enterprise conducted by the members of the household represents their principal source of income. If, however, the household does belong to a collective farm, the joint establishment of the members of the household is of a subsidiary character and serves only to supplement the income they derive from the collective farm. Apart from their joint agricultural enterprise—principal or subsidiary—the members of a household are also linked by the fact that they conduct a joint domestic economy.

The rural household is something wider than the urban family. It may consist not only of the husband and wife, their minor or unmarried adult children, near or even remote relations; the household not infrequently comprises two or more couples—married brothers or sisters, say—together with their progeny. What is more, even persons who are in no way related by kinship to the other members may be adopted into a household.

The able bodied as well as the non-ablebodied, including minor children, are all equally members of the household.

The property relations within the peasant (collective farm) family are as follows:

Dwelling houses and farm buildings, livestock and poultry, agricultural implements and machines, crops sown and orchard planted on land occupied by the household, the crops gathered from this land, proceeds from the sale of produce, whether from the collective farm or family holding worked by members of the household, food, fodder and seed stocks, furniture and utensils used in common, etc., constitute the joint property of the household.

All income earned by individual members of a household on the collective farm or elsewhere remain at the disposal of the person concerned and does not become the property of the household.

Articles of consumption and convenience in personal use by individual members of the household, personal gifts, awards and premiums, savings bank deposits and the like, are the personal property of the particular member of the household.

The management, use and disposal of the joint prop-

erty of the household are decided by the common consent of all adult members, or, in the absence of unanimity, by a majority. A head of the household, who may be a man or a woman, is selected by the members to administer the family holding and to represent the household in relation with other persons and with the authorities. The household head may be deposed by the members of the household and another appointed in his place.

The income derived from the family small-holding is the joint property of all the members. Expenses of operation and maintenance of the joint property are covered out of the proceeds. Distraint for debts incurred in the operation of the family's holding is levied in the first place on the joint property of the household; however, if the latter is insufficient to meet the claim, the personal property of the members is likewise liable to distraint.

This also applies to confiscation by sentence of court for crimes committed with a view to increasing the joint property.

Members of a household may voluntarily terminate their association with it and demand an appropriate share of the joint property. This rule does not apply to a person who leaves one household to join another—for instance, owing to marriage. Such a person, however, becomes a full-fledged member of the new household and acquires all rights as such.

The share of the joint property to be assigned to persons who leave a household is determined by agreement between them and the remaining members; if agreement cannot be reached, the courts may be asked to settle the dispute. In apportioning the share of the joint property to be assigned to the member or members quitting the household, the court must be guided by the customs and practices traditionally observed in such cases in the given locality.

Membership of a household and the share in the joint property of a household cannot be sold, bequeathed or inherited. In the event of the death of a member, his share remains the joint property of the household, thus increasing the share of the other members. His personal property

passes to his heirs in the usual way. If the household consists of only one person, on his death the household property passes to his heirs in the same way as his personal property does.

* * *

The system of property relations established by the law and Constitution of the U.S.S.R., is based on the principle of harmonizing the interests of society as a whole with the interests of the individual citizen.

The fact that all the major industries and means of production are socialist property and belong to Soviet society as a body effectively protects the interests of the whole people.

Socialist property promotes the augmentation of the national wealth and of the national income of the Soviet Union and, hence, the improvement of the standard of living of its citizens. It makes it possible for the people to plan their national economy in their own interests. It was socialist ownership of the means of production which enabled the Soviet people to defeat the Nazi invaders and to uphold the liberty and independence of their country.

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