

THE COMMUNIST CONCEPTION OF LAW.*

II.

(e) PROPERTY.

The communist civil law does not recognize any distinction between real and personal property or moveables and immoveables.⁷¹ By property is meant personal property only. The term personal property in the communist law, therefore, includes incorporeal hereditaments and personal property affixed to the soil. The principle that *quicquid plantatur solo, solo cedit* is rejected by the communist legal thought. Apparently, leases of land and buildings are considered personal property, let alone mortgages and pledges thereof.⁷² This result is arrived at as a logical consequence of the abolition of the private property in land.

(f) OWNERSHIP.

The communist legal system does not recognize an absolute right of ownership. Ownership is defined as a right of possessing, using and disposing of property within the limits prescribed by law.⁷³ There are three kinds of ownership from the point of view of the subject of right: State (includes national and municipal), co-operative and private.⁷⁴ State right of ownership may be divided into exclusive and non-exclusive. Land, subsoil, forests, watercourses, railroads of national importance and their rolling stock, and air-machines are property exclusively owned by the State.⁷⁵ The State has non-exclusive right of ownership over such property wherein licenses or concessions may be granted to private interests. This latter property is indicated below.

The right of co-operative ownership differs from that of private ownership in one particular only, namely, that co-operative organizations may own industrial enterprises irrespective of the number of workmen therein employed.⁷⁶

*An earlier instalment of Mr. Komar's instructive monograph will be found in our number for October.

⁷¹ *Ibid.*, art. 21.

⁷² *Ibid.*, arts. 79 and 90; Labor Landuse Act, 1922, arts. 18, 20, 21 and 22.

⁷³ *Ibid.*, art. 58.

⁷⁴ *Ibid.*, art. 52.

⁷⁵ *Ibid.*, art. 53.

⁷⁶ *Ibid.*, art. 57.

The right of private ownership may be considered conveniently under three subheadings: 1, permissive; 2, concessional, and 3, legal.

The permissive right of private ownership extends to arms, military equipment, explosives, alcoholic liquors above certain strength and quick acting poisons, none of which may be owned privately without a license from the state.⁷⁷

The concessional right of private ownership covers public utilities, enterprises employing more than a certain number of workmen, wireless and telegraph, all of which may be owned privately only by virtue of a concession granted by the State.⁷⁸

The legal right of private ownership comprises such property which is not made subject of either State exclusive ownership or private permissive or concessional rights of ownership.

We have considered above limitations on the right of private ownership insofar as they concern the right to dispose of property.⁷⁹ To avoid repetition, we will consider limitations on the right of private ownership, insofar as they deal with the contractual rights with respect to the property, under the subheading of obligations. We will confine now ourselves to the discussion of the State rights of requisition and confiscation.

Requisition of private property in a communist State is allowed only in the manner provided by law, and subject to the payment of compensation to the owner calculated at the average market price current at the time of requisition. Property may be requisitioned only in exceptional cases, and each time by a special order of the Council of Labour and Defence, and not otherwise. Military requisitions are allowed only in the time of mobilization or war.⁸⁰

Confiscation of private property is forbidden, except as a form of penal censure in the cases and manner provided by law. Household articles, tools of trade and six months' supply of food for the criminal and his family are exempt from confiscation. Arms, explosives, military equipment, air-machines, wireless and telegraph equipment and annulled paper securities when in unlawful custody, export and import contraband and articles unlawfully secreted in the mail packages are subject to confiscation.⁸¹ Property of concessional enterprises may not be requisitioned or confiscated except pursuant to the provisions of the concession itself.⁸²

⁷⁷ *Ibid.*, art. 56.

⁷⁸ *Ibid.*, art. 55.

⁷⁹ *Supra.*, p. 501.

⁸⁰ *Civil Code of R.S.F.S.R.*, art. 69.

⁸¹ *Ibid.*, art. 70.

⁸² *Laws of R.S.F.S.R.*, 1921, c. 564, No. 70, art. 6.

(g) OBLIGATIONS.

Obligation is defined by the communist law as a right of one person (creditor) to demand of another person (debtor) the performance of a certain act (in particular the delivery of chattels or the payment of money), or the restraint from doing an act.⁸³ The obligations provided for in the communist law cover such legal relationships as agency, building rights, contracts for work and materials, exchange of property, guarantee and suretyship, hire and lease of property, insurance, liens, loans of money and property, and purchase and sale.⁸⁴ Only retrogressions from the usual norms of law governing these rights will be noted here.

All the agreements made for the purposes contrary to the law, or in order to circumvent the law, or aimed at the manifest damage to the State are void.⁸⁵ The court, upon demand either of the party who under the pressure of extreme want entered into an agreement clearly disadvantageous to himself, or the respective State and public institutions, may declare such an agreement either void *ab initio* or merely unenforceable thereafter.⁸⁶

Although a contract for personal employment under the general communist law is determined by the agreement between the parties to it, any terms of such agreement which are less favourable to labour than those established by the law, and a collective agreement, if any, and the government factory regulations, or which tend to limit any political or civil rights of the labour, are void.⁸⁷

Only persons or collective organizations actually toiling on the land are entitled to occupy a tilling or grazing surface. This unique basis of land tenure is termed in the communist law "labour land-use." And only in exceptional cases may these "labour landusers" lease the land occupied by them, to wit: when labour landuser is visited by a disaster caused by an act of nature (such as loss of crops, fire, cattle sickness, etc.), or by loss of labour power (such as death, mobilization, State or public service, etc.).⁸⁸ The lease may not be longer than for six years,⁸⁹ and the lessee must also be a "labour landuser," *e.g.*, a person capable to till the land leased, together with his own land plot by the use of the combined labour power of his household.⁹⁰ If at the expiration of the six years' lease, the lessor is still unable to work the land leased by the labour power of his house-

⁸³ *Ibid.*, art. 107.

⁸⁴ *Ibid.*, arts. 26-43, 106-275, 367-398.

⁸⁵ *Ibid.*, art. 30.

⁸⁶ *Ibid.*, art. 33.

⁸⁷ *Labor Code of R.S.F.S.R.*, 1922, art. 28.

⁸⁸ *Labor Landuse Act*, 1922, art. 19.

⁸⁹ *Ibid.*, art. 21.

⁹⁰ *Ibid.*, art. 22.

hold, the land leased reverts to the general land reserve fund of the locality concerned.⁹¹

Leases of buildings may not be made for more than twelve years, but may provide for renewals.⁹² However, if a lease of a dwelling covers an area larger than that allowed by administrative regulations to lessee's family, the lessee may be compelled either to vacate a part of the leased area or take boarders into his household.⁹³ In the former case, as in any other case when the possibility of utilizing the hired or leased property to the full contemplated extent is frustrated by the intervention of circumstances beyond the lessee's control, the rent payable by the lessee must be proportionately decreased.⁹⁴

When the lessees belong to any of the following classes, to wit: governmental institutions and enterprises, employees or workmen, pupils of the governmental schools, persons supported by the members of the active army, invalids of war or labour, then the leases are renewed automatically from year to year and may be terminated only at the will of the lessee, rents charged may not exceed rates established by administrative decrees, nor may such rents be demanded in advance, or otherwise than in monthly payments, but on the contrary, may be paid as late as the 15th day of the month following the month for which such monthly rent becomes due.⁹⁵

Building rights may be secured only on the city land, extending up to twenty years for frame buildings, and up to forty-nine for the brick.⁹⁶ Ground rent may not be raised more than once in every five years, and then only to the extent provided for in the agreement for the building right.⁹⁷ Building operations must be commenced within one year after an agreement for a building right is signed.⁹⁸ Building rights may be sold or subjected to a lien.⁹⁹ We may add that under the communist law, the rights of the lienee, when lienor's other property is insufficient, are subrogated to the state's claims for taxes and imposts and claims for wages due to workmen and employees.¹⁰⁰

Gifts are limited in each particular instance to property not exceeding in value \$5,000,¹⁰¹ but the number of gifts even to one and the same person is unrestricted.

A third party not a privy to a contract, but deriving benefits:

⁹¹ *Ibid.*, art. 21.

⁹² *Civil Code of R.S.F.S.R.*, 1922, art. 145.

⁹³ *Ibid.*, art. 173.

⁹⁴ *Ibid.*, art. 167.

⁹⁵ *Ibid.*, arts. 156 and 166.

⁹⁶ *Ibid.*, art. 71.

⁹⁷ *Ibid.*, art. 73, note 2.

⁹⁸ *Ibid.*, art. 73, note 1.

⁹⁹ *Ibid.*, art. 79.

¹⁰⁰ *Ibid.*, art. 101.

¹⁰¹ *Ibid.*, art. 138.

thereunder, has the same rights as a party in privity therewith. If such third party notifies the debtor of its acceptance of the benefits thereunder, the agreement may not be varied without the third party's consent. But if the third party refuses to accept the benefits provided for it in an agreement, the party stipulating for such third party's benefits may claim for himself these benefits except where such a claim be contrary to the intention of the parties as manifested in the agreement.¹⁰²

Simple interest on loans, unless agreed otherwise, is fixed at 6 per centum annually. Compound interest, except for bank loans, is forbidden.¹⁰³ Usury does not void a transaction, but debtor may terminate a usurious loan by payment of the principal sum either at the end of three months' notice or by payment in addition thereto of the stipulated interest then due, plus said interest for one month in advance.¹⁰⁴

Illegal part of an obligation does not void its lawful parts, provided that the obligation can stand as a complete contract with the illegal part eliminated.¹⁰⁵

(h) TORTS.

Any person doing damage to the person or property of another is answerable in damages to that other, provided that damages were not caused by either malice or gross negligence of the person wronged, nor the wrongdoer was either authorized by law to commit the tort or the damage caused resulted from an act beyond his control.¹⁰⁶ The liability for damages in the case of torts committed by persons and corporations engaged in hazardous occupations such as railroads, street car companies, factories and mills, building and construction, dealers in inflammable materials and keepers of wild animals, is not barred by the proof of malice in the person wronged or lawfulness of the act done by the wrongdoer.¹⁰⁷ The court, however, may in its discretion, taking into account the financial standing of the wrongdoer and the wronged, order the wrongdoer to compensate the wronged for the damage caused, even in such cases where there is no legal liability.¹⁰⁸

Lunatics, feeble-minded and minors under 14 years of age are not responsible for the torts committed by them, but the responsibility for their acts rests with their custodians.¹⁰⁹

¹⁰² *Ibid.*, art. 140.

¹⁰³ *Ibid.*, art. 213.

¹⁰⁴ *Ibid.*, art. 216.

¹⁰⁵ *Ibid.*, art. 37.

¹⁰⁶ *Ibid.*, art. 403.

¹⁰⁷ *Ibid.*, art. 404.

¹⁰⁸ *Ibid.*, art. 406.

¹⁰⁹ *Ibid.*, art. 405.

The right of action for damages caused by death (including funeral expenses), resulting from a tortious act, passes to indigent persons supported by the deceased in his lifetime.¹¹⁰ For torts committed jointly, the liability is joint, but not severable.¹¹¹

The measure of damages in tort is restitution of the *status quo ante delictum motum*, and in case the latter is impossible—payment in damages. In fixing the amount of either restitution or damages caused by a tort, the court must always take into account the financial standing of the wrongdoer and the person wronged.¹¹²

In case of unjust enrichment caused by commission of either an unlawful act or an act aimed at the damage to the State, the person enriched must pay to the State the amount of such enrichment.¹¹³

(i) CRIME.

Crime is defined as any action or inaction socially dangerous and inimical to the fundamental institutions of the soviet State and legal order as established by the labour-farmer authorities during the time transitional to communism.¹¹⁴ Such action or inaction to constitute crime must be committed either with malice aforethought or negligently.¹¹⁵ Besides usual crimes against property and person, there are species of crimes in a communist state directed against political activities, economic policies and religion. We will now review some of these crimes in detail.

Political crimes are termed by communist penal law—counter-revolutionary. A counter-revolutionary crime is an action directed to the overthrow of the power of the labour-farmer councils won by the proletarian revolution and the labour-farmer government existing by virtue of the communist constitution, or an action directed to the aid of that part of the international bourgeois classes, which refuses to recognize the legality of the communist system of property now replacing capitalism, and strives to undermine it by intervention, blockade, espionage, financing of the press and means similar thereto.¹¹⁶ This crime is committed by mere acceptance of a membership in an organization which either acts with the view of aiding said part of the international bourgeois classes, or opposes for counter-revolutionary purposes normal activities of the communist institutions, or misuses the latter, or, finally, acts by any means manifestly

¹¹⁰ *Ibid.*, art. 409.

¹¹¹ *Ibid.*, art. 408.

¹¹² *Ibid.*, arts. 410 and 411.

¹¹³ *Ibid.*, art. 402.

¹¹⁴ *Penal Code of R.S.F.S.R.* (June 1, 1922), art. 6.

¹¹⁵ *Ibid.*, art. 11.

¹¹⁶ *Ibid.*, art. 57.

designed to damage the dictatorship of the labour class and the proletarian revolution.¹¹⁷ This crime is retroactive, as it includes activities of the responsible officials of the pre-communist regimes directed against the labour class and the revolutionary movement.¹¹⁸ Manufacture or distribution of the counter-revolutionary literature, as well as agitation or propaganda in aid of the said part of the international bourgeois classes, are also crimes.¹¹⁹ Under this head are also grouped several types of conspiracies, rioting, sabotage, espionage, treason, false rumours and mass passive resistance.

Statutory crimes in a communist State are divided into those causing interference with the functions of the government and those comprising violations of official duties.

Crime directed against the functions of the government is any act tending to the infraction of the regular functioning of the subordinate offices of the government or of the national economic organizations, accompanied by violence or insubordination to the laws enacted by the communist authorities, thwarting the activities of said offices, or by other acts, resulting in the impairment of the power and authority of the government.¹²⁰ This crime covers certain types of rioting, banditry, insubordination to the lawful orders of authorities, violations of industrial property law, antiquities law, election law, tax laws, excise laws, passport laws, customs duties law, labour and military duties' law, domestic relations' law, forest and game laws and mining law, imparting of false information to the State offices, forgery of stamps, currency or State securities, public insult to State officials while on duty, or to the State flag, coat of arms or revolutionary monuments, usurpation of public offices, destruction of written evidence, unlawful dealing in explosives, escape of prisoners, damage to public seals and self-enforcement of legal rights.¹²¹

¹¹⁷ *Ibid.*, arts. 61, 62 and 63.

¹¹⁸ *Ibid.*, art. 67.

¹¹⁹ *Ibid.*, arts. 70 and 72.

¹²⁰ *Ibid.*, art. 74.

¹²¹ *Ibid.*, arts. 75-104.

New York.

BORRIS M. KOMAR.

(To be continued).