

The Civil Codes of the Soviet Republics by Ye A. Fleishits and L. Makovsky

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The Civil Codes of The Soviet Republics. By Ye A. Fleishits and A. L. Makovsky. Moscow: Progress Publishers, 1976. Pp. 288.

This past November marked the 60th Anniversary of the Bolshevik Revolution in Russia. The widening disparity between Czarist promise and performance, highlighted by unfavorable comparisons with the accomplishments of Western European nations, led to the reordering of social and economic sensibilities. While the massive societal realignments initiated in the Fall of 1917 had forever shred the royal robes, it should be noted that the underlying threads of the socialist legal order are not wholly unrelated to western legal traditions. The Soviets have a legal system with defined principles that supports the programmatic socialist state. Civil legislation, for example, is aimed at strengthening the socialist economic system while attempting to harmonize the material, cultural and intellectual requirements of its citizens. The structural scheme of rights, duties and liabilities, and much of the substantive law that promotes these ends, are familiar to western law.

In 1963-64 the 15 Union Republics published new civil codes to supersede the antiquated codes and to supplement the Fundamentals of Civil Legislation of the U.S.S.R. that had taken effect on May 1, 1962. The Fundamentals of Civil Legislation, to be distinguished from the Fundamental Law, or Constitution, of the U.S.S.R., dictated specific principles and directions for civil legislation. The subject of the book under review is the civil codes of the Union Republics as they fashion regulations for individual needs consistent with the norms of the Fundamentals. To assure this consistency, each Republic of the Soviet Union restates the Fundamental verbatim in its civil code.

The most extensive sections in the civil codes are concerned with the law of obligation. These include standards for capacity to create civil obligations, norms for the means of concluding contracts (an acceptance system), provision for contracts that benefit a third party to be enforced by that third party, provision for the assignment of rights and the delegation of duties arising from contract, a forum for resolving contractual and precontractual disputes (mediation tribunals), and a standard to determine whether a performance satisfies an obligation that reflects the normal practice and customs of other contracting parties in similar conditions (reasonable compliance). Five different means are provided to secure fulfillment of obligations: penalties (liquidated damages); pledges of property; suretyships (joint

liability); guarantees (secondary liability); and deposits (prepayment of possible damages). The damages assessed, however secured or unsecured, arise from two principles of liability, fault and compensation of injury, and from two standards of measure, restitution and reliance.

The law of obligation as it applies to commercial transactions generally regulates what are termed juridical persons. These persons are defined by the Fundamentals as charter organizational units, exercising at least rights of possession, use and disposal of real property, involved in and independently liable for obligations that arise from transactions undertaken in their own names. Although they take forms that vary to fulfill particular needs with available resources, their permutations can be summarized by three types: state organizations, collective organizations, and hybrids of the two. They carry on their activities in accordance with the national economic plan and on the basis of profit and loss accounting. It should be noted that citizens can contract with each other but only to the extent such contracts satisfy their personal needs. Consideration in excess of such needs are grounds to void the contract as contrary to the interests of the socialist state.

Judicial persons are the usual parties to business contracts. These business contracts exist in three forms: delivery (supply) which is the most important; capital construction; and carriage. The first type is concluded only between juridical persons and involves the conveyance of goods from the ownership or operative management of one person to another. These contracts can be based upon an economic planning instrument, that is, the document that defines obligations of juridical persons in a redistribution of state property, or undertaken at the discretion of the parties. The former basis is more common and is linked to a detailed plan of the supply of materials and equipment for maximum efficiency in the state economy. The second type is also restricted to juridical persons and is bilateral in form. One person provides the site and the required approval documentation and financing, the other person acts as the general construction contractor. Capital construction projects are included in the centralized capitalization plan of the state budget and are also incorporated into the economic plans of the contracting persons. The third type of business contract involves a juridical person either transporting goods from a second juridical person to a third or carrying citizens as passengers from one location to another. These carriage undertakings are by means of what are considered

sources of heightened hazards. The juridical persons operating the railroads and airlines, for example, are responsible for the harm caused by their heightened hazards regardless of their fault (strict liability).

The institution of property, like contracts, has been integrated into the doctrinal requirements of the Soviet economy. Property is owned by collective groups of working people holding in common, by the state, or by individual citizens. State property is the common property of the people. But the bulk of state assets (the infrastructures of banking, industrial production, transport resources, etc.) are assigned to state organizations for "operational management", which comprise rights of possession, use, and disposal.

Individual citizens are not said to take property rights but do possess certain personal rights. Personal rights can encompass ownership of a single dwelling. This right to a single dwelling does not preclude ownership of an additional recreational cottage. And the prohibition against unearned income does not extend to leasing a house or cottage or rooms therein, if the rent charged does not exceed stated specified maximums. Similarly, though ownership of the means of production is reserved to the state, artisans are permitted to own their tools and the materials necessary to pursue their personal labors.

Soviet civil law affords copyright protection to the scientific, literary and artistic works that result from an author's creative activity. As a general rule copyright subsists during the lifetime of the author, then passes and subsists with the heirs for 25 years, after which it becomes state property. There is also a substantive right of discovery that results from the establishment of a major law, property, or phenomenon objectively existing in the material world. An emolument may be awarded and/or the discovery may be named after its discoverer. In addition, one who invents a new technical solution which exhibits a positive effect upon society has the right to remuneration for use of his invention. Provision is also made for inheritance to afford every Soviet citizen nearly unlimited opportunity to dispose of property by testament. The specific directions are complex, but they mark a trend toward expanding rights of inheritance.

The authors, the late Ye. A. Fleishits, a leading Soviet specialist in civil law, the first woman lawyer in Russia after the 1917 revolution, and a Merited Worker of Science, and A. L. Makovsky, a prominent Soviet civil law scholar and an active contributor to the work of codification, display no grand

propagandist intention. Their work is an exposition of how the Fundamentals of Civil Legislation and the Union Republic civil codes have regulated a considerable range of Soviet law. The authors contend that the new civil codes have extended the personal rights of citizens and strengthened their protection with appropriate remedies. These codes, too, are said to more accurately express the moral character of present life in the Soviet society, as they need not compromise with internal private enterprise, as did predecessor codes, to ensure efficient management of economic production. But these value judgments serve only as preface to the substance of the work, the contents and the application of the civil codes. The exposition of the multifarious provisions of the codes best justify the final evaluation of the authors: the codes, most importantly, present a current hierarchy of the basic norms of civil legislation permitting efficacious economic planning and providing an accurate barometer of socialist societal aims.

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