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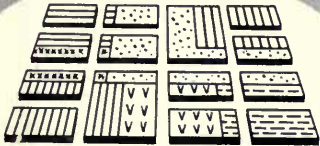
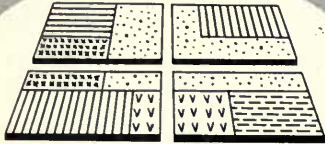
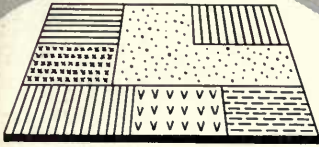


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FARM INHERITANCE LAWS IN OTHER COUNTRIES

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WHAT WE CAN LEARN FROM
THEIR EFFECTS ON FARMS

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Agricultural Experiment Stations of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin, and the U.S. Department of Agriculture, and the Farm Extension Administration, cooperating

FOREWORD

For nearly two decades the agricultural experiment stations and often the U. S. Department of Agriculture and the Farm Foundation have cooperated in studying matters relating to the ownership of farms in the Midwest. During the course of these studies, it became clear that some of the customs and inheritance laws of other countries were influencing those prevailing in the Midwest. The North Central Land Tenure Research Committee therefore assembled information about foreign land-transfer practices, particularly those of Europe, to see what problems these practices had created and how, if at all, such problems had been solved.

Information collected by committee members was given to Professor Charles L. Stewart who, in turn, combined it with the material he had gathered and put the manuscript in its final form.

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FARM INHERITANCE LAWS IN OTHER COUNTRIES

IN ALL STATES OF THE NORTH CENTRAL REGION and, in fact, in all states but Louisiana, owners of property have almost complete freedom in deciding how to pass on their land and to whom. Some prefer to have their farms divided equally among their heirs; others prefer to leave their farms undivided and transfer the farms to single heirs; and still others divide their farms unequally among their heirs.

If an owner dies without leaving a will, the statutory laws of the state dictate how the property must be passed and to whom.

Whether farms are transferred by gift, will, sale, or by laws governing the descent of property, there is much to gain from reviewing the inheritance laws prevailing in other countries. European and Asian farm families have faced the problem of the transfer of property from generation to generation for many more years than we have here in the United States. By recognizing the impact their customs and inheritance laws have had upon their farms, farm production, and farm families, we can better see where our own customs and inheritance laws are good or bad, and where they are leading us.

COUNTRIES IN WHICH HEIRS RECEIVE EQUAL PORTIONS OF FARM REAL ESTATE

The idea that property belongs to all members of a family rather than to any one of them prevails in most of Latin America and in many European and Asian countries, not to mention our own state of Louisiana. This idea, expressed in customs and inheritance laws, has done much to divide farms into smaller and smaller properties.

In this section, the customs and inheritance laws of representative countries — Brazil, France, and China — are examined in order to show how they act to subdivide farm property.

For definition of many of the legal terms used in this publication and for a diagram of the relationship of heirs to the deceased, see pages 30 and 31.

Brazil

Equal sharing among heirs tends to be compulsory in most Latin-American countries, of which Brazil is selected as representative.¹

When an owner of an estate dies without leaving a will, the property is disposed of by law according to the following order (see page 31):

1. To the descendants.²
2. To the ascendants.
3. To the spouse.
4. To the collateral relatives.

5. To the state, the federal district, or the Union when there are no descendants, ascendants, spouse, or collateral relatives.

Legitimate children receive equal portions of the property, but children who are adopted, lawfully acknowledged, or legitimated receive only a portion half of that which they would have received had they been legitimate. Only when there are no legitimate children do children of other status receive a portion equal to that which they would have received had they been legitimate. If a child dies before the intestate, descendants of that child receive his portion.

In Brazil the freedom of the willmaker is limited. A testator who has descendants or ascendants entitled to succession cannot dispose of more than half his property to someone else, for by law half the estate must go to the descendants or, when there are none, to the ascendants.

There are two kinds of heirs to be distinguished then in these inheritance laws: *legitimate heirs* who are always entitled to at least half the estate of the deceased, and *necessary heirs* who are designated by wills and who are entitled to no more than half the estate when there are legitimate heirs. Although necessary heirs can be disinherited in certain instances, legitimate heirs can never be disinherited.

Whether the estate is testate or intestate, the law requires that

¹ For further details, see *The Civil Code of Brazil*, translated by Joseph Wheless (Thomas Law Book Company, St. Louis, Mo., 1920), Articles 1,572 to 1,769.

² The attempt has been made to translate the Latin of unfamiliar legal terms into familiar English equivalents. Legal terms have been retained only when they suggest a concept for which detailed explanation would be too lengthy or repetitious for expository purposes.

maximum equality, with respect to the value, nature, and quality of the property, be observed in dividing it among heirs. The real estate that falls to more than one heir and that cannot be readily divided must be sold at public auction and the price of it divided among the heirs, unless one or more heirs require that the property be adjudicated to them and they compensate the other heirs.

There is little in the code of Brazil to prevent heirs from subdividing property that is left them either by will or by law. Neither do there appear to be any safeguards against fragmentation — the result of giving heirs segments of a farm, often scattered parcels.

Because Brazil is so large and virgin and much of it is underpopulated, the effects of subdivision and fragmentation have been felt less widely than in some Old World countries. In France, where these processes have been going on for centuries, the effects are keenly felt.

France

The basic code

If a French property owner dies and leaves no will, his property is disposed of by statutory laws according to the following order:¹

1. If the intestate leaves children, they share equally in the estate, without regard to sex or age. If a child dies before the intestate, that child's descendants share equally in his portion. Only those natural children who have been lawfully acknowledged are entitled to inherit from their parents. Should the deceased leave both lawfully acknowledged children and legitimate children, the share of the former equals half that of the latter. If there are no legitimate descendants but there are ascendants, brothers or sisters, or legitimate descendants of brothers or sisters, the share of lawfully acknowledged children is three-fourths of what it would be had they been legitimate. When the deceased parent leaves no legitimate descendant, ascendant, brother, or sister, or descendant of brother or sister, lawfully acknowledged children divide the entire estate.

2. If the intestate leaves no descendants, no brother, no sister, and no descendant of brother or sister, his property goes to his ascendants — half to the paternal line and half to the maternal line.

¹ For more information about French inheritance laws, see Articles 718-892 in *The French Civil Code*, translated by Henry Cachard (Lecram Press, Paris, 1930).

An ascendant nearer in degree to the intestate in one line excludes all others of that line. Ascendants of the same line and the same degree of relationship share the property equally. If the intestate leaves parents and brothers or sisters, or descendants of deceased brothers and sisters, half his property goes to his parents and half goes to his brothers and sisters, or to their descendants. If the intestate leaves only one parent, that parent receives one-quarter of the estate and the brothers and sisters or their descendants receive three-quarters.

3. Should the intestate leave neither parents nor descendants, the brothers and sisters or their descendants share the entire property.

4. If the intestate and his brothers and sisters are all children of one marriage, the brothers and sisters share equally; if half brothers and half sisters, they receive a share equal to half that they would have received had they been full brothers and full sisters.

5. Collateral relatives beyond the sixth degree do not inherit, with the exception of the descendants of a brother or sister of the deceased. When the deceased is not able to make a will or is under legal restraint, collateral relatives up to the twelfth degree inherit.

The spouse has the right of usufruct in a portion of the estate as follows:

1. One-quarter when the deceased leaves children born of their marriage.

2. A portion equal to the smallest portion assigned to a legitimate child but not to exceed one-quarter if the deceased has children born of a previous marriage.

3. One-half if the intestate leaves lawfully acknowledged children or descendants of such, or brothers and sisters or descendants of such, or ascendants.

4. The entire estate if the intestate leaves only relatives beyond the sixth degree of relationship.

5. The husband or wife can exercise his or her right only against the property which the deceased has not disposed of by gift or will.

Each heir may claim his share of personal and real property in kind, and is responsible for the debts of the succession — death duties, as well as other liabilities — in proportion to the share each inherits. If a majority of the heirs agree that a sale is necessary to meet these

debts, the personal property may be sold publicly. If the real estate cannot be divided conveniently, it may be sold and the proceeds divided.

These inheritance laws, while enforced only on intestate property, also have the force of custom, so that almost every testator leaves equal portions of his estate to his children.

Gifts of property and transfers by will are restricted in the following way:

1. Any provision requiring the heir to pass on his inheritance to a specified third party is void.

2. Gifts and legacies cannot exceed half the property if the will-maker leaves a legitimate child at his death; one-third if he leaves two children; one-fourth if he leaves three or more children. If there are no children but there are ascendants in both the paternal and maternal line, gifts and legacies cannot exceed one-half, or, if there are ascendants in only one line, three-quarters. Only when there are no descendants or ascendants may gifts and legacies exhaust all the property.

Impact of inheritance laws on farm property in France

Because equal sharing among co-heirs of intestate property is compulsory and equal sharing of testate property is customary, farm property has become more and more subdivided. In one parish of the Loiret, to quote one authority, "6,867 acres of land have been divided . . . into 48,000 parcels, some of which are less than 120 square yards in extent. In Savoy, one farm of 26 acres comprises 275 parcels. . . ."¹

To make matters worse, farmland is divided, not across properties, but along the roads that serve them, which results in a large number of long, narrow strips of land being held by many owners. In extreme instances, these strips may be only six feet wide and several hundred feet long (see next page).

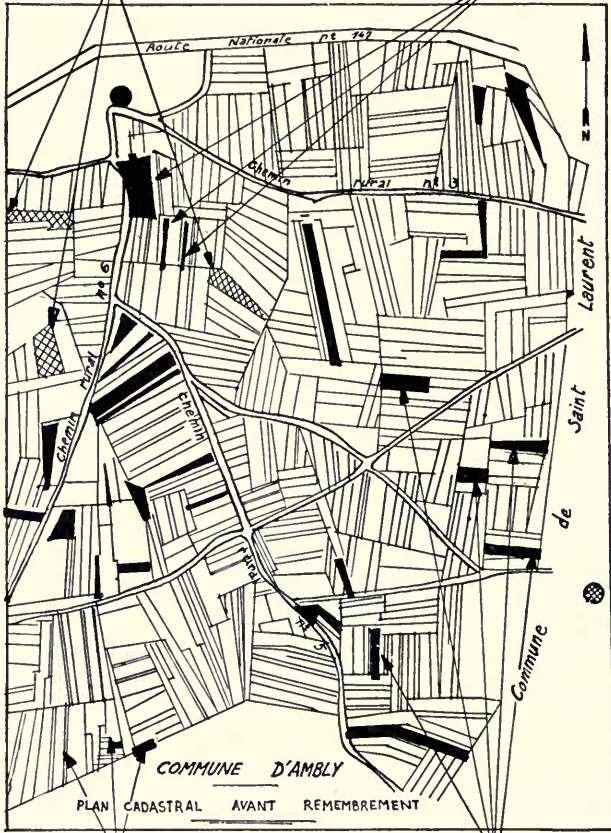
But even fragmentation is not the end of it. According to another authority, "since the first World War, use of horse-drawn cultivators, and the resulting cultivation furrows, has led to serious erosion."²

¹ J. C. Abbott, "The Regrouping of Holdings in France," *Farm Economist*, April, 1949, page 58, footnote 1.

² W. C. Lowdermilk, *Tracing Land Use Across Ancient Boundaries* (Soil Conservation Service, U. S. Department of Agriculture, 1940), page 44.

Inconveniences of Subdivision

<p>Plots of land operated by a farmer whose own farm is in a neighboring community.</p>	<p>Isolated meadows that are too small to make a pasture.</p>
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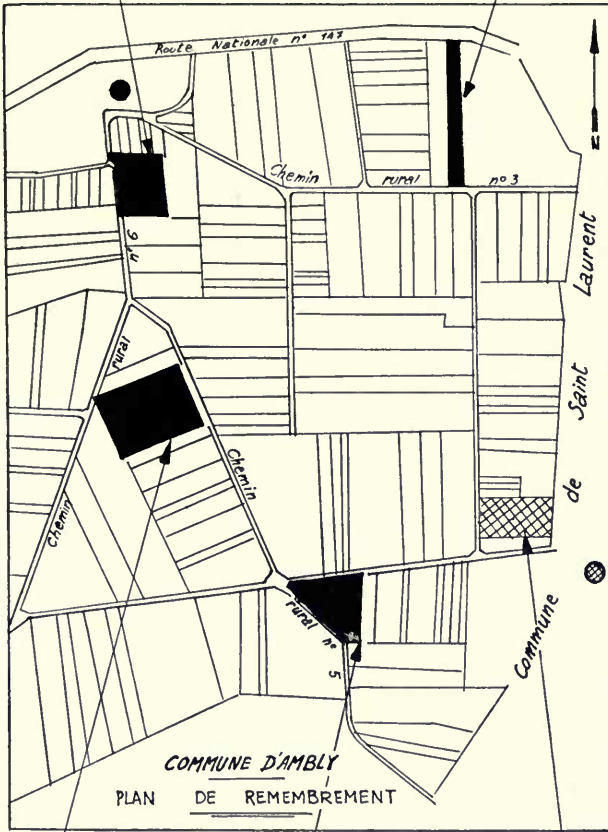
<p>Scattered plots that are too small and remote cause:</p> <ol style="list-style-type: none"> 1. Loss of time in transportation, seeding, and cropping. 2. Tiring and wearing out of teams faster. 3. Loss in fertilizers and crops. 	<p>Isolated parcels of land make it necessary for the farmer to:</p> <ol style="list-style-type: none"> 1. Use the same rotation as his neighbors. 2. Plow and reap at about the same time as his neighbors.
--	--

How far subdivision had gone in one French community. Inheritance was not the sole cause of these very small tracts, but it was mainly responsible for them. (This and the map on the next page are from a publication of the Service du Génie Rural, Section du Remembrement, Paris, 1956; English translation by C. L. Stewart.)

Advantages of Regrouping

Regrouping pastures into simple geometrically shaped tracts permits the use of machines and storage of crops at proper times.

Regrouping isolated parcels into plots that border on roads permits free access and freedom of rotation choice.



Regrouping small plots into larger parcels permits the practical use of large machinery and results in savings in fertilizers and crops. Larger tracts also have a higher market value.

Regrouping remote plots almost too small to be cultivated into larger parcels results in a larger plowed area.

Regrouping plots so that they border on the natural working area of a farmer from a neighboring community who operates them.

How the situation shown on the map on the opposite page was improved through regrouping. The efforts of the government of France to counteract excessive subdivision through consolidation are like those of many other countries.

And in some localities in France, these factors have combined to reduce farm output by about 30 percent.

The total effect of subdivision and fragmentation has been well summed up in the following statement:

"In certain extreme cases, fragmentation has led to what can only be described as a veritable pulverization of the holdings which presents the cultivator with a situation in which cultivation is impossible and often results in the reversion to waste of at least the poorer and more distant plots. One may, therefore, say that the whole agricultural area of France suffers from fragmentation to a greater or lesser degree."¹

As farm labor became scarcer in France and more use was made of machinery, the disadvantages of small, scattered holdings became keenly felt, not the least of which was the fact that an owner rarely had enough land to leave each of his heirs an adequate farm. Nevertheless, some heirs still prefer dividing an inherited farm, however small, rather than owning it alone under a heavy mortgage — incurred from having to reimburse the co-heirs for their share of the farm.

Modifications of the basic code in France

Beginning in 1938, two steps were taken to combat this excessive subdivision of farmland — public programs designed to consolidate farms and legal procedures to modify the basic code.² Two main ends were accomplished by the latter. The first was to declare that farm properties below a certain value were indivisible. In 1938, this minimum value, including equipment, implements, and livestock, was 200,000 francs. Subsequently, due to the decline in value of the franc, this figure was raised.

The second end accomplished was to permit requests that farm properties remain undivided, even though they were valued above the specified amount. Those entitled to make these requests are the spouse, who has an equity in the farm and resides on it, or any heir

¹ From National Study No. 2, "Consolidation of Agricultural Holdings in France" in *The Consolidation of Fragmented Agricultural Holdings* (F.A.O. Agricultural Studies No. 11, Sept., 1950, Washington, D. C.), page 58.

² For some modifications of the basic code in recent decades, see Michel Cépède, "Family Farm in France," *Family Farm Policy*, edited by Joseph Ackerman and Marshall Harris (University of Chicago Press, Chicago, 1947), pages 353-381.

(even despite opposition by co-heirs) if the deceased has left children under legal age. A farm may be declared indivisible for 5 years, and the declaration renewed until the death of the spouse or the coming of age of the youngest child.

The cost to the public of France in reconsolidating scattered holdings of farmland has been heavy, but even heavier has been the burden to farmers who were faced with two bleak choices: to continue struggling with their fragmented parcels or to adjust to a consolidated farm, equivalent to those parcels.

The farm problems that France has had to face are far more intensified in Asia, where the processes of subdivision and fragmentation have gone on for thousands of years.

Pre-Communist China¹

When a Chinese married, his bride became part of his parents' family and moved in with them. Not infrequently, friction led to a desire for independence on the part of the married son. When this occurred, he was given, through the services of a mediator (usually a maternal uncle), title to his share of the farm. This share was determined by dividing the father's property into equal shares, depending upon how many sons he had. The oldest son received his due of an extra share and the father retained a share large enough to support his family and to pay for the wedding expenses of unmarried daughters and sons. An unmarried son did not receive his share, however, but continued to live with his parents. If one of the parents died before he married, the son was obliged to support the surviving parent. When both parents died, the son then received his share as well as his parents' share.

If there was only one son in the family, he would request division from his parents only under the most serious circumstances, inasmuch as he was in line to receive all their property upon their death.

This process of division was seldom complete. The father had considerable influence over his sons, even if they were married and

¹ For more information about customs in pre-communist China, See H. T. Fei, *Peasant Life in China* (Oxford University Press, New York, 1945); H. T. Fei and C. I. Chang, *Earthbound China* (University of Chicago Press, Chicago, 1945); and C. Y. Tang, *An Economic Study of Chinese Agriculture, a Thesis* (no publisher given, 1924).

had split with the family. Filial piety and the fear of displeasing the spirits of the ancestors were strong influences.

Since the standard of living of the Chinese farmers depended almost entirely on the amount of land they owned, much of their activity was aimed at either acquiring more land or keeping that which they owned. The usual way of acquiring land was by inheritance which, in most parts of China, was through the male line. When inheritance was by descent through the female line, it was owing to the fact that the deceased parents had no sons.

Because traditional laws and customs led to equal division of farmland among sons (except for the additional share that went to the eldest son), and because sons, in this dense population, were plentiful, subdivision became excessive.

Nor did the Chinese stop at subdivision. Like the French, they fragmented farms in an effort to give each son an equal share of each quality of land. Thus, when there were many sons, each would have small separate fields. Because of this, there was great waste of labor. Machinery or animal power could not be used efficiently on the scattered, irregularly shaped fields. Capital, too, was used wastefully, since expenses for farm buildings, machinery, and work animals were proportionately higher for small farms than for large ones. Moreover, the many lanes and driveways required by these small, scattered holdings resulted in much needed land being wasted. And friction inevitably developed among adjoining owners over boundaries or water rights.

Because holders of small fields could not respond to changes in agricultural practice, such as the use of machinery, and because production decreased as subdivision and fragmentation became excessive, farmers found their struggle for existence made even more severe.

COUNTRIES IN WHICH EXCEPTIONAL EFFORTS HAVE BEEN MADE TO PRESERVE FARMS FROM SUBDIVISION

Some countries, among which Norway is most noteworthy, have had no major problems of subdivision, for their customs and inheritance laws simply have failed to create these problems. Other countries, like Sweden and Germany under the National Socialist Party, recognized where subdivision was leading them and took exceptional

measures to halt the process and to keep their farms large and undivided.

Norway

Two legal institutions are principally responsible for protecting Norwegian farms from subdivision — the *Aasetesret* and the *Odelsret*.

The *Aasetesret* is the right of the oldest son to take over the family farm after the death of his father. Should the oldest son waive this right, the next oldest son is entitled to assume it. If there are no sons, the oldest daughter inherits the property.

Only if the farm is large enough (what constitutes a minimum size varies from locality to locality) can the testator have it divided among his heirs. Even in this instance, the first heir may claim half the property.

Whether the first heir receives the entire property or a part of it, he must pay the other heirs for their share of the estate at the price set by the testator. If the testator failed to set a price, the heir may pay for the estate at no less than 70 percent and no more than 90 percent of its market value. Regardless of who inherits the farm, the wife holds it in joint tenancy.

The *Odelsret* gives a farmer or any member of his family the right to buy back property he has owned for at least 20 years at an officially determined price. During the depression between the two World Wars, such repurchase could be made within 5 years after the time the property was sold; at present, such repurchase must be made within 3 years after the time of sale.

In countries in which manpower has been plentiful in relation to available farmland, the pressure toward farm enlargement has been less than in newer countries where manpower has been scarce. Norway is one of the older countries that has forestalled the tendencies toward excessive subdivision of farm holdings. Though causing some farm families to migrate to cities and to foreign countries, inheritance policies of countries that have opposed excessive subdivision have apparently eased matters for present-day farmers.

Switzerland

Under the Swiss Civil Code,¹ heirs share intestate property equally. The order of the heirs is:

¹ *The Swiss Civil Code* has been translated by Ivy Williams (Oxford University Press, H. Milford, Oxford, England, 1925).

1. The children of the intestate. If one of the children dies before the deceased, the descendants of that child receive his share. Illegitimate children on the mother's side have the same right to inherit property as if they were legitimate. Illegitimate children on the father's side have the right to inherit property only when their father lawfully acknowledges them. This right is limited, however, to a portion half of that which they would have received had they been the father's legitimate children.

2. If the deceased leaves no descendants, the parents take equal shares of the property. If one of the parents dies before the deceased, the descendants of the parents receive equal shares. If there are descendants of the parents in only one line, the entire estate goes to that line.

3. If there are no descendants, parents, or descendants of parents, equal shares of the property go to the grandparents. If either of the grandparents is dead, the descendants of the dead grandparent are entitled to that grandparent's share.

4. Great grandparents have usufruct in the share of the inheritance which their descendants would have received had they survived the deceased. If neither great grandparent is alive, great uncles and great aunts have the same privilege of usufruct.

5. The spouse, when there are surviving descendants, can choose to take usufruct in half the estate or absolute title to one-quarter of the estate. When there are no descendants, but there are parents or their descendants, the spouse takes one-quarter of the estate and usufruct in the other three-quarters. When there are only grandparents of their descendants, the spouse takes half the property and usufruct in the other half. If none of these survive, the spouse has absolute title to the entire estate.

A willmaker has complete freedom in transferring property only when he has no descendants, parents, brothers, sisters, or spouse. If any of these survive him, each is entitled to his legal share of the estate as follows:

1 Descendants share in three-quarters of the inheritance they would have received had there been no will.

2. If there are no descendants, parents share in half the inheritance they would have received had there been no will.

3. If there are neither descendants nor parents, brothers and sisters share in one-quarter of the inheritance they would have received had there been no will.

4. If there is one or more other legal heirs, the spouse takes the whole statutory portion. If the spouse is the sole statutory heir, the portion is one-half.

In the absence of a will, the statutory heirs may decide among themselves how to divide the inheritance. If the heirs are unable to agree, one of them may request that a probate authority determine how the inheritance should be divided. The probate authority usually directs that no farm shall be cut up into areas smaller than that considered feasible for agriculture in the immediate area.

The value of a farm is based on its earning capacity rather than on its sale value. If an heir who receives land sells it within 10 years at a higher price than that at which it was evaluated, his co-heirs may claim a share of the profit made on the sale. The co-heirs, however, have claim to profits resulting only from fortuitous circumstances — the discovery of minerals, for example — and no claim to profits resulting from agricultural improvements.

Measures to offset excessive subdivision in Switzerland

Since 1912, when the Swiss Civil Code went into effect, the aim has been to prevent excessive subdivision of farmland. If, for example, an estate includes a farm and one of the heirs declares himself ready and capable of managing it, the entire farm, so long as it forms an economic unit, must be allotted to him. An isolated parcel of land that would be impracticable to operate along with the main farm is regarded by the courts as not belonging to the farm. When several capable heirs wish to take over a farm and the farm admits of two or more independent farms, the question is submitted to the courts.

Court decision is based on four factors:

1. The heir who wishes to live on the farm and work it himself has preference over those heirs who desire to sell the farm.
2. A son who has lived longest on the farm has preference over other sons.
3. Sons have preference over daughters.
4. The customs prevailing in the immediate area must be respected.

The Swiss Civil Code, then, tends to maintain farm properties undivided. This tendency is desirable because many Swiss farms are so highly specialized and so dependent on well-bred herds and special equipment and buildings that subdivision would have serious consequences. For this reason there is the so-called "brother's and sister's value" by which an heir can take over the property of his parents at 75 percent of the appraised value. Here, as in a few other countries, the fact is recognized that an heir may become so overobligated to his parents or co-heirs if he buys an entire farm from them that he may be restricted in his efforts to use his capital and labor and may suffer income and property loss.

Germany

On February 20, 1947, the Allied Control Council published Law No. 45, otherwise known as "Repeal of Legislation on Hereditary Farms and Enactment of Other Provisions Regulating Agricultural and Forest Lands." This law restored the laws pertaining to the inheritance of land that had been repealed or suspended on October 1, 1933, by the National Socialist Party.

Transfer of farm property under the National Socialist Party

The federal farm hereditary law, which the National Socialist Party made effective on October 1, 1933, had a threefold purpose: to reinforce the economic and social status of farmers; to keep farm property from being split up; and to prevent excessive agricultural indebtedness.¹ Farms coming under the provisions of this law — and about three-fourths of them did — had to be no smaller than eight hectares, or about 20 acres, and no larger than 125 hectares, or about 300 acres.

Any new hereditary holding, or *Erbhof*, was subject neither to

¹ For more information regarding inheritance laws involving farm property, see Constantin von Dietze, ed., *Die Vererbung des laendlichen Grundbesitzes in der Nachkriegszeit* (Duncker and Humblot, Munich and Leipzig, 1930); J. K. Galbraith, "Hereditary Land in the Third Reich," *Quarterly Journal of Economics*, 53, 2 (May, 1939), 465-476; Leo Drescher, "The New German Inheritance Law for Agriculture," *Journal of Farm Economics*, 16, 1 (Jan., 1934), 149-151; H. W. Spiegel, *Land Tenure Policies at Home and Abroad* (University of North Carolina Press, Chapel Hill, N. C., 1941); and Articles 1922-2385 in *The German Civil Code*, translated by Chung H. Wang (Stevens and Sons, Ltd., London, 1918).

sale, mortgaging, foreclosure, or division. An order of succession was established that could not be modified by the testator. Succession was arranged so that only one heir could inherit the *Erbhof*. Other heirs could inherit property that did not include farm, farm buildings, or farm equipment.

The order of succession was fixed as follows:

1. The sons of the farmer or their sons and grandsons.
2. Father of the farmer.
3. Brothers of the farmer or their sons and grandsons.
4. Daughters of the farmer or their sons and grandsons.
5. Sisters of the farmer or their sons and grandsons.

If the principal heir already owned an *Erbhof*, he was entitled to receive the inheritance only if he gave his own farm to the next heir in line. If the inheritance involved more than one *Erbhof*, each heir was entitled to choose one farm after the principal heir had chosen his.

The law also provided that co-heirs who were not of age had to be kept on the farm and educated until they became of age. Moreover, they were to be completely outfitted when they left, if the financial condition of the principal heir permitted; and if, through no fault of their own, they were unable to support themselves, they were to be supported on the farm.

Transfer of property under the Allied Control Council

Under the Allied Control Council, any area of land that had become an *Erbhof* became subject again to the general laws regarding ordinary real estate. Provisions were made, however, to allow zone commanders, in their respective zones, to "enact legislation amending or repealing any legislation revised or otherwise put into force by the present law."

The order of succession, as prescribed by the revived German Civil Code, is as follows:

1. Descendants of the deceased. Children of a deceased descendant share his portion.
2. Parents of the deceased and their descendants.
3. Grandparents and their descendants.
4. Great grandparents and their descendants.
5. Remoter ascendants of the deceased and their descendants.

If there are several heirs in the same succession, the estate becomes their common property to be divided among them equally. The spouse of an intestate receives one-fourth of the estate if there are descendants, and half the estate if there are no descendants but other heirs. If there are no relatives of the first or second degree, the spouse takes the whole inheritance.

The willmaker can name his heirs, but if a person entitled to succession is excluded, he can demand his compulsory portion. This portion equals half that portion he would have inherited had there been no will. In such cases, the portion is given free of estate liabilities.

The only time a descendant can be deprived of his "compulsory portion" is when he has made an attempt against the life of the testator or persons in the immediate family of the testator, when leading a dishonorable or immoral life contrary to the testator's wishes, or when he has failed to maintain the testator according to the system called *Altenteil*, or old folks' share.

"Altenteil" as restored by the Allied Control Council and as curtailed by the National Socialist Party

*Altenteil*¹ is a system for maintaining a farmer and his wife after they have transferred their farm to an heir of their choosing. It takes the form of a contract between the farmer and his heir, and requires the heir to provide the farmer and his wife with living quarters, food, allowances, and certain other privileges, including a garden plot, in exchange for the transfer of the farm to the heir before the testator's death. Occasionally cash payments are made to the farmer and his wife to enable them to live in town.

The *Altenteil* contract also requires the heir to pay for the property. This payment is divided among the other heirs. The price the heir pays is based on the past price of the farm rather than on its present market value; the extent of the liabilities involved; and the

¹This system is detailed by H. W. Spiegel in "The Altenteil: German Farmers' Old Age Security," *Rural Sociology* 4 (June, 1939), pages 203-218. Some localities in the North Central Region have arrangements that resemble *Altenteil*. See "Bonds of Maintenance" in *Keeping the Farm in the Family*, by Kenneth H. Parsons and Eliot Waples (Wis. Agr. Exp. Sta. Res. Bul. 157, Sept., 1945), pages 6-8, and "Eastern Wisconsin Avoids Tenancy," in *What's New in Farm Science*, compiled by Noble Clark and Niemen Hoveland (Wis. Agr. Exp. Sta. Bul. 461, Dec., 1953), pages 27-29.

desire of the farmer and his wife not to overburden the heir who has to support them.

Quite often, to obtain the price for the farm and to support the farmer and his wife, the heir has to mortgage the property. This proves to be a heavy burden to a small farm. For this reason the National Socialist Party severely curtailed the rights of farmers and their wives retiring under *Altenteil*. They were allowed room and board, but no cash allowance unless the farm could bear it. Neither were they allowed to keep any portion of the land. And in transferring their property, neither they nor the co-heirs were allowed payment. Also, if a farmer became too old to farm efficiently, he could be forced to retire and cede his property to an heir.

At no time was *Altenteil* popular among retiring farmers. In fact, a German folk saying has it that a golden chair awaits one in heaven who retires by *Altenteil* without repenting it, and that no one has ever sat in that chair.

BRIEF COMMENTS ON OTHER COUNTRIES

The customs and inheritance laws of the countries appearing here are treated very sketchily and for the sole purpose of indicating how they affect farm property.

Alsace-Lorraine

Before Alsace-Lorraine was taken over by the French after World War I, it had inheritance laws similar to those of Switzerland (see page 15 of this bulletin). Only after considerable difficulty, the Alsace-Lorrainers obtained permission from the French government to retain the Swiss-type laws in regard to the transfer of property.

Argentina

Intestate property passes to heirs according to the following order: descendants of the deceased, or their descendants, whether legitimate or natural; to the ascendants, whether legitimate or natural; to the spouse; and to collateral relatives within the sixth degree. The legitimate children of the deceased, whether of one or more marriages, share equal portions of the property, as do natural children.

If a spouse survives the deceased, she is entitled to a share of the property equal to that of any one of the children. If ascendants and a spouse are left, the spouse participates with ascendants in the division of the property.

If the property threatens to be divided at below its appraised value, each of the heirs has the right to demand the sale of that property by public auction and, at that auction, to buy the property for an amount greater than that at which it was appraised — so long as he is the highest bidder.

Belgium

The amount of property an owner may transfer by gift or will is limited, depending upon the number of his children and whether he has ascendants. If he has one child, he may dispose of half his estate, but the other half is the legal reserve of his child. If he has two children, two-thirds of the estate constitutes their legal reserve. If he has three or more children, three-fourths of the estate constitutes their legal reserve. If he has no children but ascendants in both lines, half the estate must be reserved for them.

If the deceased during his lifetime gave property to an heir, that heir must restore the value of the gift to the estate at the time the estate is settled, unless it was stipulated by the deceased that the gift was not to be restored.

No legitimate child may be omitted in the distribution of property, and the spouse assumes a life interest in a portion of the property.

In 1900 and again in 1924, laws were passed in favor of leaving small farms undivided until all the children had come of age. At that time, and by agreement among the heirs in the family council,¹ one of the heirs can take possession of all the land by paying the other heirs for their shares.

Those Belgian farmers who own little land face a difficult problem in dividing their property among their children — a situation that becomes quite serious when there are many children. This problem is usually solved by the members of the family assuming joint ownership of the farm.

Canada

In most features the provinces of Canada have provisions for descent and distribution not greatly different from those found in midwestern states. The freedom of the willmaker and of the executors to carry out the bequests is least where older French customs have yielded least to British traditions.

¹ The family council is a folk feature that has been incorporated into Belgian law. When a guardian has to be appointed, for example, the duty falls to the family council.

In Quebec if an intestate leaves descendants and a spouse ("con-sort"), the spouse takes a third and the child or children two thirds. If there is no spouse, children take all. If there are no children, the spouse takes all, but only if there are no ascendants or collateral relatives privileged under customs tracing to early French influence; if there are such privileged relatives, the ascendants take a third and the collaterals take a third.

Dower for the surviving spouse has a limited place in most Canadian provinces. In Nova Scotia, if there are descendants, the spouse receives dower. In Manitoba the spouse may elect to take a third of the net estate as her dower, if in addition to the value of the homestead which the spouse has, that person has not been left at least a third of the estate, or if provision for \$100,000 in property or \$6,000 in yearly income has not been made.

In Ontario and Prince Edward Island, there are fixed charges in favor of the widow. In Ontario this may be as much as \$5,000 and is in addition to her distributive share. The fixed charge in Prince Edward Island is \$8,000.

Denmark

The Danish Land Settlement Act of 1934 provides that an owner of a farm may transfer his holding to any of his children whom he deems able to farm it. If he has no children, the holder is free to dispose of his property only when there are no government loans on it. The successor, however, must show that he is competent to farm the holding. No land under 20 hectares can be divided.

England

In England the testator has complete freedom in transferring property, except that he must provide for dependents under the Family Provision Act passed in 1938. This law gives dependents the right to apply for maintenance from the estate of the deceased. The court adjudges whether such maintenance should be granted and, if so, to what extent. If maintenance is allowed, any provision in the will opposed to maintenance is overridden.

If the property is intestate, the spouse receives an absolute right to all personal chattels; money to the extent of £1,000 as a first charge upon the estate; and a life interest in half the real estate if there are children. If there are no children, the spouse receives a life interest in the entire estate. Children share equally in all real property to which the spouse is not entitled.

India

In Hindu families, land was usually held under some form of joint ownership by families. According to one branch of Hindu law, the father and sons held the land in common until the father's death, at which time the land passed to the sons by right of survival. According to another branch of Hindu law, the property, at the father's death, passed to those heirs deemed best fitted to carry out proper religious rites for the deceased.

In Mohammedan families, the father usually held the property alone, and only at his death did the land pass to the sons. At that time they divided the land equally, even to taking a like portion of each type of land. Because of India's dense population, no worse example of damage done by fragmentation can be cited. In certain rural areas of India, there are plots of land only a few feet long and a few feet wide.

Programs aimed at reconsolidating farms are now in effect in many of these farm-fragmented regions in an effort to increase agricultural production and raise the standard of rural living.

Italy

The Italian Civil Code, drawn up in 1918, accepted the principle of transferring farms in their entirety to a single heir. Along with the farm went the escort goods — equipment, livestock, and buildings. The heir who received the farm had to be deemed willing and able to farm it and able to pay the other heirs for their shares.

If several heirs wanted the farm, the owner chose that heir who was operating the farm or who could operate it alone or with his family. If several heirs were satisfying these conditions, the direct male descendant was chosen. If there were several direct male descendants, all of whom qualified, the heir who had farmed the land before or who had the most children was selected.

If the principal heir could not repay the co-heirs for their share, the farm was awarded to the co-heirs, provided they agreed to operate it in common.

Japan

There has been persistent contradiction between the Civil Code of Japan and the way farm real estate has been passed by inheritance. The Civil Code has long provided for equal sharing of property among heirs, but both before and after land reform farm families have practiced primogeniture.

In five Japanese communities studied in 1954 by the International

Christian University in Tokyo, only 1 to 4 percent of the farmers reported that they expected to divide their property equally; 5 to 11 percent expected the land to go to whichever son was interested in farming; and about 75 percent expected the land to go to the eldest son. On the average, one eldest son in ten families gives up his inheritance rights.

Netherlands

Inheritance laws in this country are based largely on equal sharing and "compulsory portions." In older villages, heirs divide property not by size but by value. Even in areas where land value is high, farms tend to be split up among heirs.

All children are entitled to equal shares of intestate property. Even by a will, the share of any child cannot be less than one-fourth of what he would have received by statutory law. Legislation in 1949 prevented the splitting up of farms by sale, but did not otherwise affect inheritance laws.

In areas along the Friesian coast, however, farms tend to remain undivided. After the death of the father, the farm is transferred to one of his sons, usually the oldest. The other children have to be compensated for their shares in the farm. If the will so specifies, children also have the right to continue to live on the farm — a procedure that is quite customary for the area.

Slavic lands prior to control by Soviet Union

Czechoslovakia. Holdings transferred by will had to pass to single heirs who had the ability to cultivate the land properly.

Estonia. In the richer southern areas, the farm was usually transferred to a single heir; in the eastern part, the farm was divided among all the heirs.

Lithuania. At the death of the farmer, the estate became the undivided property of the heirs. The spouse inherited one-fourth of the estate. The heirs could share the estate by common agreement or apply to the courts for determination of their individual shares. One or more heirs could retain control of the land, so long as the co-heirs were compensated.

Yugoslavia. The Yugoslavs retained the patriarchal family longer than any other Slavic people. As many as 20 to 80 persons, all related by blood, lived together under the leadership of the patriarch and worked the family farm communally. This formed the basis of a self-sustaining economy and made the family economically independent. All property was owned jointly, and no one individual could own land or

buildings exclusively. Inheritance — as we know the term — simply did not exist.

Only in the province of Slovenia was the custom observed of leaving the farm to a single heir — usually one of the sons who compensated the co-heirs.

Union of South Africa

Persons of European descent in the Union of South Africa are subject to the Roman Dutch law system. Marriage may be in “community of property” or not. Where marriage is not in community of property, the spouse of an intestate gets merely a child’s share of the estate or £600, whichever is greater. Where husband and wife have community of property, the spouse takes half of the joint estate. In addition the spouse gets a child’s share of the other half, or else an amount which, when added to the half, makes a total value of £600, whichever is the greater.

Regardless of the number of minor children, the spouse receives a fixed minimum amount of value, but not necessarily in cash. Wills may be set aside, if necessary, to fully protect the spouse’s interest.

Sweden

There has been a tendency in Sweden to avoid dividing a farm when division would make that farm incomplete. What constitutes a complete farm has long been a matter for legal determination.

When there is only enough land to constitute a complete farm, the heirs appear in court to see whether one or more of them want to buy, and are competent to buy, the interests of the others. The oldest son receives no legal concessions. For this reason, parents usually transfer their farm property to the oldest son before they die.

In the lowlands of Sweden the tradition has long existed that the farm should pass from one generation to the next in its entirety. One reason for this is that these regions had been the stronghold of noble estates, the owners of which practiced primogeniture and entail. It is not unlikely that farmers in these regions pass on their farms in their entirety in imitation of the nobles. Another explanation may lie in the fact that copyhold farms of family size used to be quite numerous in these regions. The tenants enjoyed virtual ownership, but were prevented by their landlords from dividing the holdings.

CONCLUSION

Now that we have examined briefly the customs and inheritance laws of other countries, and noted their effects upon farms and farmers, we can proceed to a summary examination of our own prevailing customs and inheritance laws.

In the Midwest and, for that matter, in almost the whole of the United States, an owner has practically unlimited freedom in transferring property. While alive, for example, he can deed the property outright to an heir or heirs; share the land with a co-owner or co-owners; put the property into joint tenancy; or — as in the case of trusts — transfer the property to a person for a certain period on condition that he, in turn, transfer that property to a second designated person at the end of that period.

Farmers in the United States also have unlimited freedom in making gifts to prospective heirs — a prerogative that, exercised at least three years before their death, enables them to furnish their children with money, land, or equipment with no inheritance or estate taxes added to any gift tax paid. Such gifts also enable farmers to reduce their income taxes as well as probate and administrative costs and inheritance taxes on their estates after their death. Both the husband and the wife have gift-tax exemptions amounting to no less than \$30,000 and can therefore make gifts jointly of at least \$60,000 before they incur gift taxes.¹ Any gift of \$3,000 or less by an individual or \$6,000 or less by a married couple to any one person over a period of one year has no effect on the lifetime exemption and is not subject to tax. Farmers in most of the United States also have the freedom, either by gift, will, or sale, to transfer the underground resources of their farms to one person and the farmland itself to another.

The wishes of an owner are still respected after death. As long as a testator leaves a valid will, he can be sure that his property will be treated as he has specified — left undivided, divided, or sold. A willmaker, for example, can provide that an heir, fitted by training and interest for the farm, be given the opportunity to buy the home farm from the co-heirs at a price below its appraised value.

¹ These are federal, not state, laws. For more details concerning these laws, see *Inheritance and Gift Taxes on Illinois Farm Property*, by N. G. P. Krausz (Ill. Ext. Cir. 728), Jan., 1956.

Or, if the willmaker feels that the heir would be too heavily burdened by acquiring the farm in this way and, therefore, unable to utilize the farm to advantage for many years, he can write an "option-to-buy" clause into his will. Such a clause enables the heir to purchase all of the farm piece by piece as he becomes financially equipped to do so, and does not oblige him to buy the farm outright, to his financial detriment.¹

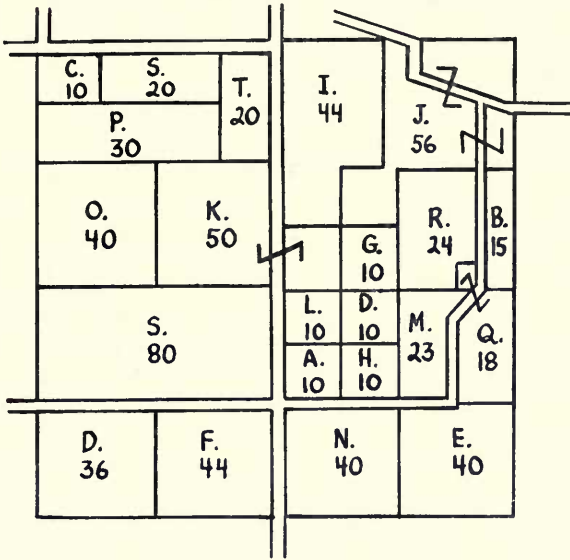
Avoiding division of farmland by such methods and yet managing to satisfy all heirs is of even greater importance when livestock rather than cash-grain farms are involved. Dividing a dairy farm, for example, with its specialized buildings, equipment, and herds can wipe out the achievement of a lifetime in the space it takes to probate a will and administer an estate.

Fortunately for agriculture in the Midwest, owners and heirs of farm property have generally used with good judgment their freedom in transferring farm property. For whether by terms of a will or by the decisions of heirs, the farm tends to be preserved as an undivided unit — either under the management of one of the heirs or that of an unrelated tenant. In midwestern states, as in most other states, the surviving spouse may decide to take dower, whether or not there is a will. Even when farmers fail to specify their wishes in a will and die intestate, leaving the transfer of their property to the laws governing descent, administrators, probate officials, and statutory heirs seek, in the main, to prevent physical division of the farm property.

Thus, division of farms by inheritance appears more often in principle than in fact — on the county record books rather than by fences, so to speak. Nevertheless, there are counterexamples to be found in nearly every farming area of the Midwest. In a single section (640 acres) of a southern Illinois county, for instance, there are nine separate tracts in the west half and thirteen separate tracts in the east half — and this in a county in which farms of at least quarter sections are operated far more profitably (see illustration on next page). Such subdivision is dangerously similar to conditions we have observed in such other countries as France (see page 10).

¹ More details concerning this arrangement can be found in *Farm Transfers Within Families by Revisable-Price Contract, Payments in Crops, and Will With Option to Buy*, by C. L. Stewart (Ill. Ext. Cir. 744), May, 1955. See also North Central Regional Publication 18 (Illinois Circular 680), "Family Farm-Transfer Arrangements" (1951).

All in all, then, owners of property in the United States enjoy a freedom in gift- and will-making, not to mention that of sale, that is not excelled by any other country in the world. In the past they and their heirs, with a few exceptions, have used excellent judgment in preserving the farm undivided. The only problem now is whether present owners and heirs will continue to exercise that kind of judgment and strive to keep their farms intact.

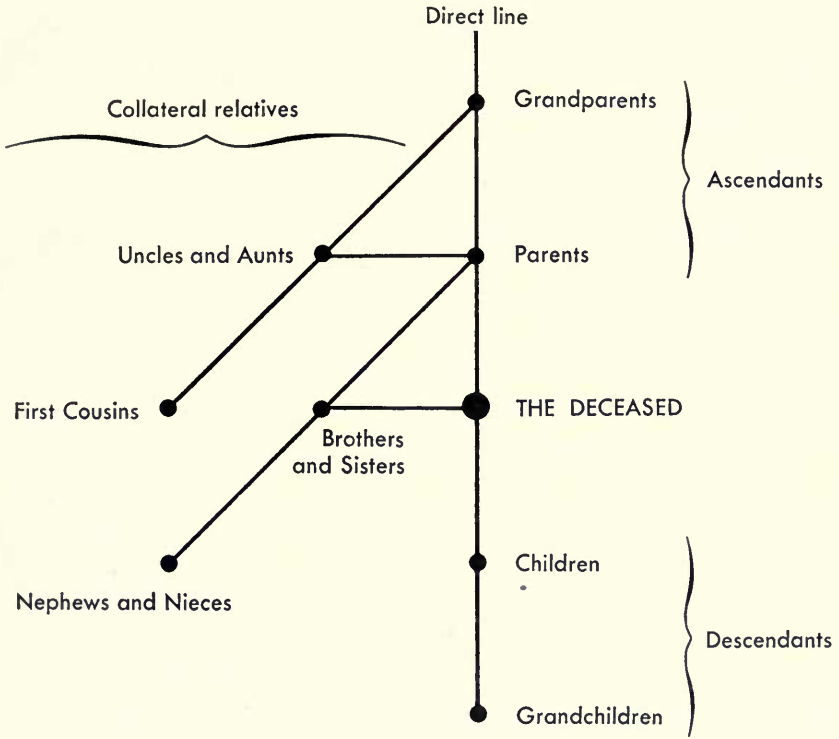


The above illustration shows that division of farms into small tracts takes place in our own Middle West. The above section of 640 acres in a southern Illinois county is divided into 22 separate tracts.

GLOSSARY

- Ascendant.** A person to whom one is related in the ascending line — one's parents, grandparents, and great grandparents.
- Co-heir.** One of several to whom property, real or personal, descends; does not necessarily imply equal sharing of property.
- Collateral relatives.** Those descended from the same common ancestor but not from one another; those in a line oblique or collateral to the direct line, such as cousins, aunts, uncles, brothers, sisters, nephews, and nieces.
- Compulsory portion.** The minimum amount of property that must be transferred to an heir whether by will or by law.
- Copyhold.** A specific type of ownership right in land resting upon particular local customs growing out of feudalism. Historically it was a grant made subject to the will of a manorial baron.
- Descendant.** A person to whom one is related in the descending line — one's children, grandchildren, great grandchildren, etc.
- Descent.** Succession to the ownership of an estate by inheritance or by any act of law as distinguished from "purchase."
- Dower.** The widow or widower's life interest in a certain portion of the real property of the deceased.
- Entail.** To settle, as lands, inalienably on a person and his descendants.
- Inheritance.** Property which one has by descent, as heir to another, or which he may transmit to another, as his heir.
- Intestate.** A person who dies without leaving a will; or property the disposition of which is not governed by a will.
- Lawfully acknowledged child.** Born out of wedlock, but parentage acknowledged in court.
- Legitimate child.** Born in wedlock.
- Legitimated child.** Born out of wedlock, but made legitimate by the subsequent marriage of the parents and the lawful acknowledgment of the child.
- Primogeniture.** An exclusive right of inheritance belonging to the firstborn.
- Probate court.** The court that establishes the validity of "the last will and testament" and sees that the wishes of the testator in regard to property are carried out. When there is no will left by an owner of property, the court sees that the property is transferred according to the laws of descent.
- Property, real and personal.** The chief distinction between real and personal property is that real property is relatively immovable. The land and the improvements permanently attached to it are regarded as real property.
- Spouse.** Wife or husband.
- Succession.** The transfer of property according to the laws governing the descent of property.
- Testament.** The act by which anyone, in conformity with the law, provides for the disposal, in whole or in part, of his property after his death.
- Testate.** A person who dies with a will; or property the disposition of which is governed by a will.
- Testator.** One who leaves a will or testament in force at his death.
- Usufruct.** The right to draw profit, utility, and advantage from property without holding title to that property.
- Will.** See *Testament*.

Relationship of heirs to the deceased.



For several years the agricultural experiment stations of the North Central Region have cooperated in studying problems relating to ownership of farms. This report is one of a series of publications about the results of the studies. Other North Central Regional Publications on the subject include:

- Improving Farm Tenure in the Midwest: Problems and Recommended Policies.** Reg. Pub. 2 (Ill. Agr. Exp. Sta. Bul. 502). 1944.
- Farm Land Prices in the Midwest.** Reg. Pub. 11 (Mich. Special Bul. 349). 1948.
- Farm Ownership in the Midwest.** Reg. Pub. 13 (Iowa Res. Bul. 361). 1949.
- Can You Own Your Own Farm? A Discussion of Farm Ownership Conditions in the Midwest.** Reg. Pub. 14 (Ky. Cir. 65). 1949.
- Family Farm-Operating Agreements.** Reg. Pub. 17 (Mich. Special Bul. 368). 1951.
- Family Farm-Transfer Arrangements.** Reg. Pub. 18 (Ill. Agr. Ext. Cir. 680). 1951.
- Improving Land Credit Arrangements in the Midwest.** Reg. Pub. 19 (Purdue Agr. Sta. Bul. 551). 1950.

For information about any of the above publications, get in touch with the agricultural experiment station in any one of the states in the region. Copies of some are still available.



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