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ПРАВО ЛИЧНОЙ СОБСТВЕННОСТИ В СССР

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CHAPTER ONE

LAW OF PERSONAL PROPERTY. ITS ROLE AND IMPORTANCE

The right to own personal property* is one of the basic property rights of Soviet citizens and is stated by the Constitution of the USSR, whose Article 10 says: "The right of citizens to own, as their personal property, income and savings derived from work, to own a dwelling house and a supplementary husbandry, articles of household and articles of personal use and convenience, is protected by law, as is also the right of citizens to inherit personal property."**

What is this right to own personal property? What is its role within the system of Soviet law? To answer this question we must find out where personal property stands in the general system of property relations and to determine the part it has to play in the Soviet economy.

In the USSR, the means and implements of production are known to be social property, with state property owned by the whole people as the principal and leading type of property. The state owns the land, its mineral wealth, waters, forests, factories and mines, electric power stations, rail, water and air transport facilities, banks, means of communication, agricultural, commercial, municipal and other enterprises and most of the housing facilities in towns and industrial localities. An important place belongs also to the property of collective farms (kolkhozes) and other co-operative societies and their associations, and includes

* In the Soviet Union, the term "personal property" applies to all kinds of property owned by citizens, whether movable or immovable.—*Tr.*

** *Constitution (Fundamental Law) of the Union of Soviet Socialist Republics,* Moscow, 1965, p. 17.

their enterprises, cultural and service establishments, buildings and structures. The kolkhozes also own tractors, harvesters and other machinery, livestock and draught animals, means of transport, etc. Building co-operatives own the dwelling houses and bungalows they erect. Trade unions and other mass organisations own enterprises, buildings, structures, sanatoriums, holiday homes, palaces of culture, clubs, stadiums, etc. All of this is socialist social property. Such objects as the land and its mineral wealth, waters and forests have a place apart, because they are the exclusive property of the state, and are made available to co-operatives, mass organisations and citizens for use only.

Thus, all the property used in social production and the service industries to satisfy the material and cultural requirements of the population constitutes the social property owned on socialist lines. In the USSR no individual can own a factory, a railway or a bank. The personal requirements of citizens are largely satisfied by society, some of them free of charge, such as medical services, including the most expensive tests and treatment, education in primary and secondary schools, technical colleges and other institutions of learning, with scholarships granted by the state to students of vocational and higher schools.

For some other services citizens are charged only a fraction of the cost. Thus, the basic housing fund in the towns and industrial localities is owned by the state and is managed by local Soviets of Working People's Deputies.

Citizens are allocated flats in the dwelling houses in accordance with decisions by local Soviets, with representatives of trade unions and mass organisations taking part in the allocation. The rent collected from the tenants goes to cover only the maintenance costs, but in many cases falls short of them. As a rule, rent does not exceed 3-5 per cent of the tenant's wages. Those who live in houses belonging to the state cannot be evicted, apart from exceptional cases specifically provided for by law. Facilities in nursery schools and crèches are offered to citizens as well below cost. These establishments provide skilled care, good food, medical supervision and specialist education, but parents are charged only a third or a fifth of the actual cost of these services. The cost of the working people's holidays and

rest is also largely covered by the state from funds set up at enterprises, or by trade unions, which set aside considerable amounts to provide for this purpose. That is why citizens do not pay anything like the full cost of accommodation at sanatoriums, holiday homes, tourist camps, children's summer camps, etc.

This short review shows that a considerable part of citizens' requirements is satisfied by society from social funds, either free of charge or at low cost. At the same time, every citizen can satisfy his material and cultural requirements by acquiring the things he needs under his right to own personal property.

The personal property of citizens is closely connected with the socialist principle of remuneration for labour. The Programme of the C.P.S.U. says that the construction of communism must rest on the principle of material incentives, with payment according to work remaining the principal source of satisfying the working people's material and cultural needs. The switch to distribution on the communist principle will be completed when the principle of distribution according to work outlives itself, that is, when there is material and cultural abundance, and labour becomes a prime necessity for all members of society. We are witnessing the gradual emergence of the new, communist attitude to labour. The experience of teams and whole factories working in a communist spirit shows that the new attitude to labour is becoming a habit with men, and work, an organic human need. But at the present stage, the principal part is being played by material incentives, which means that remuneration for labour depends on its quantity and quality. He who works better gets more pay and can satisfy his requirements more fully.

Citizens satisfy their material and cultural requirements chiefly through personal property. In the USSR, the principal source of personal property is remuneration for labour in the form of wages and salaries, cash payments and distribution of income on collective farms, bonuses and other kinds of incentives held out to working people.* Other

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* Here and elsewhere in this chapter I deal with the sources of personal property as the economic sources which determine the existence of personal property and the possibility of acquiring personal

sources of personal property are old age and disability pensions, scholarships and state grants to mothers of large families and unmarried mothers, which do not entail remuneration for labour but in every case have labour as their ultimate source. Society rewards aged and disabled citizens who have already done their share of the work, and the size of their pensions depends on earlier wages and length of service. In paying scholarships to students, the state helps them to prepare for qualified work in the future. And, of course, in giving assistance to mothers of large families and unmarried mothers, society not only helps them, but also shows its appreciation of their dedicated efforts in bringing up their children. The fact that the chief source of personal property is remuneration for labour or assistance given by society shows that personal property is closely linked with socialist social property.

All this makes it possible to establish the principal specifics of personal property as an economic category in socialist society. 1) Personal property is indissolubly bound with socialist property, and is a derivative of it. The principal source of personal property is remuneration for labour and the assistance extended by society, which is also ultimately based on the labour principle; 2) the main purpose of personal property is to satisfy the material and cultural requirements of its owner.

These main characteristics of personal property as an economic category determine the importance of the law of personal property as a juridical category, which is designed to consolidate and give form to its economic content. The law of personal property can be understood in every aspect only if we start from its principal economic content. That is why the law of personal property gives the owner utmost freedom in disposing of the property belonging to him and also ensures that personal property is used for consumer purposes only. It may not be used to obtain unearned income, exploit the labour of others, organise a private business or for other purposes contradicting the principles of the socialist state and society.

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property by every citizen. I do not deal with the ways of acquiring personal property, as a juridical institution, which are various (acquisition by purchase, receipt as a gift, inheritance, etc.).

In accordance with the general provisions laid down in the Constitution of the USSR and the Constitutions of the Union Republics, the right of personal ownership is regulated in greater detail by the Fundamentals of Civil Legislation and the civil codes of the Union Republics. The USSR is a federal state composed of 15 sovereign constituent republics. The correlation between all-Union legislation and that of the constituent republics shows how their sovereignty is harmonised with that of the Union. In the sphere of civil legislation (as in certain other branches of legislation), this is expressed in the fact that the supreme organ of state power in the USSR adopts the fundamentals of legislation which lay down the most general provisions, whereas the constituent republics adopt, on the basis of the fundamentals, the codes which regulate the relations in question in greater detail. Thus, the Fundamentals of Civil Legislation of the USSR and Union Republics (F.C.L.), which were adopted in 1961 and entered into force on May 1, 1962, laid down, among other things, the most general provisions relating to the right of personal property, and these relations are regulated in detail by the civil codes adopted by the constituent republics in 1963 and 1964.

The law says that property designed to satisfy the material and cultural requirements of citizens constitutes their personal property. The Constitution of the USSR, the Constitutions of the constituent republics, the Fundamentals of Civil Legislation and the codes give a specimen list of objects which may be the personal property of individuals. This includes income and savings derived from the citizen's labour, a dwelling house, a subsidiary farm, household effects and furnishings, and articles of personal use and convenience. This list is a specimen one and is subject to extensive interpretation. It shows that anything which may be used for personal consumption, household use or convenience, etc., may be a citizen's personal property. The fulfilment of one of the tasks set in the C.P.S.U. Programme—that of ensuring the highest living standards for the population—is bound up with a considerable extension and diversification of the range of objects constituting the personal property of Soviet citizens. But it is a basic provision that personal property may not be used to

derive unearned income (Article 25 of the Fundamentals of Civil Legislation, Article 105 of the Civil Code of the RSFSR and corresponding articles of the civil codes of other constituent republics)*.

To make sure that personal property is used strictly for consumer purposes, the law lays down certain rules relating to size of property and manner of its use. Thus, cohabiting spouses and their minor children may have only one dwelling house, which is owned by right in personal property by one of them or which is owned as common property. Contract for the sale of a dwelling house may not be made more than once in three years, but the law allows exceptions from these rules in all cases where this is required by the convenience of citizens making use of their property for consumer purposes. Thus, Article 226, Part 2, Civil Code of the Ukrainian Republic, allows the purchase, with the permission of the Executive Committee of the local Soviet, of a second house before the sale of the first, wherever this is required to satisfy the needs of the family. Following the purchase of the second house, the first must be sold within a year. **

All these provisions are designed to prevent speculation in housing, and its use not for personal needs but for lease as a regular practice. The codes of the constituent republics lay down the maximum size of dwelling houses which may belong to citizens by right in personal property so as to ensure their use for consumer purposes only. But they also allow the building of large houses for big families or where the owner (or a member of his family) has the right to additional living space.

The legislation of the constituent republics also stipulates the maximum quantity of livestock that may be in the personal ownership of citizens. It is designed to secure the consumer character of personal property and to prevent its use for obtaining unearned income or to organise private

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* Here and elsewhere reference is to the Civil Code of the RSFSR, with articles of the civil codes of other constituent republics cited only when they differ essentially from those of the Civil Code of the RSFSR.

** Wherever no such direct provision is made by the law, the answer may be drawn from a reading of the principal rules concerning personal property.

enterprises. But it does not in any way hamper the use of personal property by the owner and his family to satisfy their requirements.

Alongside the personal property of citizens, the Constitution of the USSR, the Fundamentals of Civil Legislation and the civil codes of the Union Republics regulate the personal property of the kolkhoz household. Each kolkhoz household, in addition to the basic income earned on the collective farm, has the use of a personal house-and-garden plot and owns as personal property everything necessary to farm it. The specific of the household's personal property is determined by the nature of the kolkhoz as a collective form of economy, the connection between the collective farmers' personal farm and the public farm, and the joint working of their subsidiary farm by members of the household.

Because of the specific nature of agriculture and the conditions of kolkhoz production, the personal property relations of the kolkhoz household are in some cases regulated by the law separately from the personal property relations of citizens. So long as the kolkhoz household exists, its personal property does not pass under the law of succession, and the share of deceased member of the household remains in the ownership of the other members. Only with the death of the last member, when the kolkhoz household as such ceases to exist, may the property of the household pass by way of succession.

The property of the kolkhoz household belongs to its members by right of joint ownership (Article 27, F.C.L.). The kolkhoz household owns the subsidiary farm on its house-and-garden plot, a dwelling house, livestock, poultry, and minor farm implements. In addition, it owns the earnings of its members which they derive from working on the kolkhoz farm, and other property conveyed into its ownership. The household also owns various household effects and articles of personal use bought with common funds.

Each member of the kolkhoz household, in addition to his share of the joint property, may have his own personal property, such as clothes, furniture, crockery, a bicycle, a television set, a radio receiver, etc. However, that property which, in accordance with kolkhoz rules, may belong only

to the kolkhoz household, cannot be in the personal ownership of any of its members. For example, if a member of the kolkhoz household has built an annex to the house at his own cost, the structure is the property of the kolkhoz household. If he buys new furniture, a carpet or a car from his own earnings, they are his personal property. But a car paid for out of the household's common funds will be the property of the household.

Alongside the personal property of the individual member of the kolkhoz household, there is also the common property of spouses who are members of the household (of which more later). Take a household consisting of a father and two sons, one of whom has married and whose wife has become a member of the household. A part of the property (that covered by the kolkhoz rules and that paid for out of common household funds) belongs to the household as a whole. But, as has been said, a part of the property may be in the personal ownership of the members of the household. Finally, the property acquired by the young spouses together will be their marital community property. The relations connected with the personal property of the individual members of the household and also the joint property of the spouses who are members of the household are regulated by the general provisions governing the personal property of citizens.*

Article 9 of the Constitution of the USSR says that in addition to the socialist system of economy, which is the predominant form of economy in the USSR, the law allows peasants and artisans to run small undertakings based on their own labour and without the exploitation of the labour of others. Such property (owned by peasants and artisans who have not joined a co-operative) is not private property, because it cannot be used to exploit wage labour and to obtain unearned income. But neither is it personal property because that is based on the labour of individuals in the socialist social economy, whereas the former is based on labour in individual undertakings.

These types of property differ in purpose. The personal property of citizens is designed for consumption while the

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* For details on the personal property of the kolkhoz household see Chapter Three.

property of peasants and artisans who do not join co-operatives is designed for production, for it allows them to run small undertakings within the framework laid down by the law, and entails the systematic sale of commodities. It is the principal source of livelihood for persons engaged in such enterprises. Today very few peasants and artisans are not members of co-operatives. Their property is based on personal labour and is regulated by the rules applying to the personal property of citizens, inasmuch as no other provisions are laid down by the law.

CHAPTER TWO

PERSONS ENTITLED TO OWN PROPERTY

Citizens of the USSR are entitled to own personal property. This is one of their basic property rights and is connected with their other rights guaranteed by the Constitution. Because personal property is a derivative of socialist property and because its principal source is remuneration for labour and various forms of satisfaction of requirements from social funds, the articles of the Constitution which state the relevant rights of Soviet citizens are of essential significance. One of the most important is the right to work, that is, the right to guaranteed employment and payment for work in accordance with quantity and quality (Article 118). The right to work and the corollary duty to work are the basic and characteristic features of socialist society. There is no unemployment in the USSR and none can arise. Every citizen has the possibility to work in accordance with his capacities, inclinations, interests and training. On the other hand, the Soviet state and society cannot allow individuals to lead a parasitic existence, enjoying all the benefits society offers and giving nothing in return. The forms of remuneration for labour, alongside the measures of social influence, induce citizens to work.

Of great importance is also Article 120 of the Constitution which lays down the right to maintenance in old age and also in case of sickness or disability, and Article 121, which establishes the right to education, and scholarships for students of higher and secondary specialised schools. These articles of the Constitution help to make the right in personal property a reality, that is, they assure each citi-

zen of the possibility of being entitled to this right. This right is also made real by the entire economic system of the socialist state, which enables every able-bodied citizen to work in accordance with his capacities and to receive remuneration for his labour; it provides for the disabled, and helps young people to prepare for skilled occupations.

The possibility of being entitled to the right in personal property is a basic element of the content of civil legal capacity. Article 9 of the F.C.L. lists the right of having property in personal ownership as the first element in its definition of the content of legal capacity. The right in personal property is one of those rights in which the citizen cannot be restricted even when he has committed a grave crime. The confiscation of the whole or of a part of a person's property, as provided for by criminal law, in the event of his committing a grave crime, does not mean that the person is deprived of the possibility of exercising the right in personal property, but only that he is deprived of the right to own a specified piece of property.

Since *all* citizens of the USSR enjoy equal civil legal capacity, *all* may own personal property. In some cases it is sufficient for a citizen to have only legal capacity, and no legal ability, to exercise his right in personal property. Thus, a minor who has been given the present of a bicycle is the owner of that bicycle and in using it exercises his right in property. However, persons who have legal capacity but no legal ability or have only partial legal ability may exercise their right in personal property only within definite limits. Only a citizen who has both legal capacity and legal ability can fully exercise his right in property.

Civil legal capacity (the capacity of having civil rights and duties) belongs equally to all citizens of the USSR, regardless of sex, nationality or race. The citizen's legal capacity arises with his birth and ceases with his death. A citizen's legal ability, that is, his ability to acquire by his acts civil rights and to create for himself civil duties, fully arises at majority, that is, upon his attainment of the age of 18 years (Article 8, F.C.L.). In some constituent republics, the law allows the performance of contract of marriage before the attainment of the age of 18, in which case the person contracting marriage acquires full legal ability at the moment of marriage.

No one may be restricted in legal capacity or legal ability, except in cases and in the manner established by law. Legal transactions seeking to limit legal capacity or legal ability are void. Where a citizen contracts an obligation restricting his legal capacity or legal ability (say, to reside or not to reside in a certain place, to engage or not to engage in a definite type of occupation, to dispose of his property in a certain manner, etc.), such an obligation has no legal force and the underlying transaction is declared null and void. The provisions of the law recognising as invalid transactions seeking to limit the legal capacity or legal ability of citizens—laid down as far back as 1922—are such a part of workaday life that no transactions of this kind occur in practice.

Minors under the age of 15 are regarded as not having legal ability and so are not entitled to perform juridical acts or to dispose of the property belonging to them. The law only gives them the right to perform on their own minor everyday transactions, such as making purchases of foodstuffs and stationery, ordering repairs of footwear, sports gear, etc. This is an exception from the general rule designed to back up the common practice of training minors to go shopping, taking care of their things and doing household chores. The age limit below which a person is deemed to have no legal ability at all is set at 15 because the USSR has a law on 8-year universal education, and this course is usually completed by that age.

Minors between the ages of 15 and 18 are regarded as having partial legal ability: they are entitled to perform transactions with the consents of their parents, foster parents or curators, and also to perform small everyday transactions. What is also most important, they are entitled to dispose of their own earnings or scholarships and to exercise their right of authorship (to a literary work or invention). The fact is that at the age of 15 minors may enrol at technical colleges which allow scholarships. From the age of 16, they can go to work or become members of a kolkhoz. In each case, they are paid remuneration for their labour in the form of wages, cash payments or a share of the kolkhoz income. Minors over the age of 15 can also be authors of literary or artistic works, and can make inventions and

efficiency proposals. A considerable number of technical improvements in industry and building are suggested by young people, including minors, who are entitled to exercise their copyright or rights of patent owner, or author of technical improvement, including the receipt of remuneration, of which they are free to dispose as they see fit.

Minors, possessing partial legal ability, are also liable under the general rule, in case of torts, within the limits of their earnings or their property. Only when their earnings or property are insufficient to make reparation for the injury caused is it compensated for by their parents or guardians. Thus, a person with partial legal ability enjoys definite rights in the disposal of his property, and is held liable for his acts within the specified limits.

In practice, the provision of the law on the right of persons between the age of 15 and 18 to dispose of their earnings, scholarship and other remuneration is not given an extensive interpretation, which means that a minor is entitled to dispose of his earnings in the strict sense of the word. If he spends his earnings on the acquisition of some property he is entitled to dispose of it only with the consents of his parents or curators. Say, a technical school student has used his scholarship to buy a motorcycle. If he subsequently wishes to exchange it for a boat, he must have the consents of his parents or curators to do so.

Minors, regardless of their age, have the right to make deposits in savings banks and other credit institutions and to dispose of them. The deposit can be made in the name of a minor by any person with legal ability. This exception from the general rule is based on the rules of credit institutions (chiefly those of state labour savings bank).

The management of property belonging to a minor by right of personal ownership is exercised by his parents, guardians or curators.

Soviet law makes a distinction between the institutions of guardianship and curatorship. Guardians are appointed for persons without legal ability, that is, under the age of 15. The guardian performs all acts of disposal and the exercise of other rights of the ward. Curators are appointed for persons who have only partial legal ability, that is, those between the ages of 15 and 18, who may dispose of their

property and exercise other rights with the permission of the curator. In other words, the curator's role is mainly one of supervising the acts of his ward, whereas the guardian substitutes completely for the ward in the exercise of the latter's rights. Parents, in virtue of their position in the family, are both guardians and curators for their minor children, and guardians are appointed only in the rare cases where parents failing to perform their parental duties or performing them improperly are, in accordance with the law, deprived of their parental rights. As a rule, no special act is required to vest parents with the powers of guardians or curators, because such parental powers in respect of children are implied.

Guardians and curators are appointed to give protection to the person, rights and interests of those who lack legal ability, and to safeguard their property. The chief task of parents or guardians is to bring up children, to shape their minds and prepare them for socially useful activity. The management of children's property and the performance of transactions in connection with this property is exercised by parents and guardians in the fulfilment of their entire complex of duties in respect of the children or wards. To ensure protection for the property interests of owners without legal ability against possible negligent handling of their property, the law lays down certain limitations on the right of parents or guardians to dispose of the property of persons without legal ability.

Parents or guardians may perform transactions in alienating the property of the ward, pledging his property or leasing it for a long term (over a year) only with the permission of the guardianship and curatorship agencies.

Take the case of a minor who inherited a country house with an orchard from his uncle. The parents of the minor supervise the property, have the use of the house together with the minor owner, carry out repairs, tend the orchard, etc. The parents are entitled to sell the fruits or lease a part of the premises for the summer, and use the receipts to cover expenses arising out of the property or for family's general expenses. But they are not entitled to lease the country house for a long term (over a year), to sell a part of it, to rebuild it, etc. They can perform such acts only with the permission of the guardianship or curatorship

agencies. Thus, when moving to another town, they can sell the country house only with the permission of the guardianship agency, provided that their receipts from the sale are deposited to a savings account in the name of the minor until he attains majority, or are used to purchase a country house in their new place of residence, or to acquire other property, etc. Only by way of exception to the general rule are parents and guardians allowed to enter into legal transactions in alienating property liable to rapid deterioration, or intended by nature for sale, or property unfit for use, provided its value does not exceed 50 rubles.

Without the permission of the guardianship or curatorship agency, parents or guardians may not refuse to accept an inheritance passing to their ward. It is absolutely forbidden to make gifts of property belonging to the ward.

Adults may be deprived of legal ability when they are unable to realise the significance of their acts or to control them in consequence of some mental derangement. A person may be declared legally unable only on the strength of a court decision in the manner specifically provided for this. In the event a person is declared incompetent, guardianship is instituted over him. The citizen who has been declared incompetent because of some mental disorder may not perform any acts in the disposal of his property. If he is completely restored to health or improves considerably he may, by a court decision, be declared competent and the guardianship instituted for his protection revoked.

The court may restrict the legal ability of a citizen who, because of addiction to alcoholic drinks or drugs, deprives his family of livelihood. Curatorship is instituted over such persons. The civil codes of many constituent republics (among them the RSFSR, Latvia, Lithuania, Armenia, Byelorussia and Estonia) allow a citizen whose legal ability has been restricted for the above reasons to perform minor everyday transactions. The civil codes of other Union Republics (the Ukraine and Kazakhstan) allow such persons to enter into all property transactions, including disposal of their earnings, only with the consents of their curators. The court may lift the restrictions on a citizen's legal ability and terminate the curatorship instituted over him if he ceases to be a drunkard or drug addict.

The imposition of restrictions on the civil legal ability of drunkards and drug addicts is designed to combat the ugly remnants of the past, which is quite intolerable in modern conditions of socialist development. It is combined with other forms of social influence in a whole complex of measures designed to wipe out the survivals which cripple the human personality. That is why cases of restriction on legal ability are very rare in practice. The examination of such cases in court, the appointment of a curator and, in general, the application of the said rule takes place with the broad participation of the public so as to make sure that the decision restricting legal ability does more than protect the property right of the family, it helps to bring about the earliest correction of the person concerned.

I have listed all the cases of restriction on legal ability, specifically in the disposal of personal property. Some incompetent persons are unable to exercise their rights in the proper manner in consequence of some physical defect, chronic ailment, old age, etc., and curatorship may be instituted over such persons (Article 70 of the Code of Laws on Marriage, the Family and Guardianship of the RSFSR and corresponding articles of other constituent republics). But the curatorship in such cases is essentially different from that instituted over partial incompetents. Persons over whom curatorship is instituted because of their physical state retain full legal ability, and it is the task of the curator to assist them in the exercise of their rights and the fulfilment of their obligations and to protect them against abuse by third parties.

Some citizens possessing legal capacity and legal ability are, for various reasons, unable to manage the property belonging to them. Such is the case of a person who has inherited a dwelling house which is located not in the place of his permanent domicile, or a person on a long business trip, which keeps him away from his place of permanent residence, where his property is located. In such cases, these persons may manage their property by proxy.

The agent acts on the strength of a power of attorney issued to him by the owner. In all his acts, the agent must give expression to the will of the owner. The power of attorney names the agent and states his powers. It is up to the grantor to specify these powers in greater or lesser detail.

Thus, he may give his agent a general power of attorney to manage his property, that is, he may authorise him to exercise all the powers of the owner with respect to the property: lease the property, convey it for gratuitous use, sell it, etc. The power of attorney may also be issued for the performance of specific transactions, such as sale of the property, or conclusion of a contract for lease. The power of attorney may withhold the agent's right to perform specific transactions, for example, the owner of a country house residing in another town may issue a power of attorney for the performance of all the necessary transactions relating to the house (contract for repairs, lease, etc.), but excluding its sale, conveyance as a gift, long-term lease. Finally, the legal instrument may be granted on specifically stated terms, such as the sale of the house to a specified person for a specified amount with payment within a specified date. The type of power of attorney and the powers of the agent are decided upon by the owner of the property.

However, the owner may not perform all acts in respect of the property through an agent. Some acts are such that they can only be performed in person. Thus, property cannot be bequeathed through an agent: the owner alone can do this.

The management of property and the exercise of the powers of the owner through an agent are designed to give the owner utmost freedom in the disposal of his property, and to facilitate its management when, for various reasons, he is unable to do so personally. However, the basic nature of the right of personal ownership, as a right regulating the use of individuals' property for the satisfaction of their requirements, does not create many opportunities for resorting to the institution of agency. As a rule the owner himself has the possession, use and disposal of the property belonging to him.

CHAPTER THREE

JOINT EXERCISE OF THE RIGHT IN PERSONAL PROPERTY

An object or piece of personal property may belong to two or more persons by right in common property. A distinction is made between common ownership by shares (share ownership) and common ownership without demarcation of shares (joint ownership). The latter type of common property arises from relations between two or more persons which serve as ground for recognition of their property as common property. As a rule these relations are based on the family.

There are two types of joint property in Soviet law: 1) the marital community property of the spouses earned during the continuance of their marriage, and 2) the joint property of the kolkhoz household. In all other cases, common property is owned by shares.

1. Share Ownership

An object may belong to two or more individuals by right in personal property. The right of share ownership is designed for the joint use by two or more persons of property where such joint use is necessary or desirable for the satisfaction of their material or cultural requirements. It is then the task of the law to establish procedures under which the relations of common ownership give the owners equal assurance of their legitimate rights and interests and allow each utmost and equal freedom in the disposal of his property. This aim also determines the grounds which give rise to the right of common ownership and the rights and obligations of the owners in respect of each other and third parties.

The right of common ownership arises from various grounds, the most common of which are: inheritance, joint acquisition by two or more persons of a piece of property, participation of two or more persons in the creation of a piece of property, or alienation by the owner of his share of indivisible property.

Thus, three children living with their father upon his death inherit a dwelling house with outhouses, and own it by right in common property. Two persons may jointly acquire a motorboat, tents and other camping equipment. Two or three friends may jointly assemble or build a yacht or a motorboat. A man who has a country house belonging to him by right in personal property and who finds it too big for his own use may sell half of it to another citizen. In all these cases, relations of share ownership arise. These relations arise in accordance with the will of each party. They do not arise unless the parties have expressed their will to create relations of common ownership.

In practice, the question of whether a given piece of property is in common ownership is easily settled, where the parties have given expression to their will in a sufficiently explicit form and have determined their relations beforehand. Thus, when two citizens buy a house together and specify so in the contract establishing the share of each, the manner of use, etc., there can subsequently be no dispute as to whether or not the house is their common property. But in some cases, citizens, whether because of their ignorance of the law or belief that a simple verbal arrangement is sufficient or for some other reason, fail to give their relations due legal form. Where the concrete circumstances of the case indicate that there are relations of common ownership between the parties, and that these have arisen by their will and do not contradict the law, failure to observe the proper form is no bar to the exercise or protection of the rights of the parties.

Take the case of two girl friends who decide to buy a house together. One of them finds a suitable house, consisting of two flats and buys it in her own name. Each pays half the price, and each occupies a flat (roughly, one-half of the house). They share the maintenance costs, and each carries out the interior decoration and repair of the part of the house she occupies. Ten years later, the one in whose

name the house is registered marries and dies shortly thereafter. The husband of the decedent, on the strength of the certificate of his right to the succession, claims to be the owner of the whole house. The court, having examined the case, establishes that the house was paid for out of common funds, that the repairs to the common section of the house (the roof, the stairs, etc.) were paid for out of common funds, and that both women lived in their respective flats as full-fledged owners, and on the basis of this decides that the house was their common property and that only that part which belonged to the decedent can pass in succession.

But this recognition of the right of common ownership is possible only when the court, having examined all the circumstances of the case, is satisfied that by the time the dispute is submitted for examination it has become impossible to give due form to the rights of both parties, and that the vesting of the title in one party to the common property was not used to cover up a violation of the law.

Relations of common ownership may arise from the joint creation of some object, usually the joint construction of a dwelling house. Such participation must be given due legal form when the building site is made available. The deed issued by the Executive Committee of the local Soviet granting a plot of land for the building site must specify the names of all those taking part in building the house. If in the course of the construction one of the builders invites another person or persons to join in the construction, permission must be obtained from the Executive Committee of the local Soviet, and the participation must be given due legal form. Thus, in this case, recognition of common ownership is based on the consent of the Executive Committee of the local Soviet to amend the deed granting the land plot.

Where third parties are invited to take part in the construction of a house, and their participation has not been given due legal form, they have a claim against the owner only for compensation of their expenses. But if the Executive Committee of the local Soviet does not have any objection to amending the deed granting the land plot, the court, taking account of all the circumstances of the case, may rule that such persons have title to a part of the house.

In such cases, the courts scrutinise the actual relations between the parties, and establish why contributions to the construction of the house were accepted from other persons now claiming recognition of their right of ownership in the building.

The requirement that the relations between persons jointly building a dwelling house should be clothed in due legal form, and the requirement that the consent of the Executive Committee of the local Soviet to an amendment of the deed granting the land plot should be secured, spring from the great importance of individual building in conditions of the housing shortage.

In the USSR, land is the exclusive property of the state. Land plots for individual housing construction are made available to citizens free of charge by decision of local Soviets. Their Executive Committees and enterprises and establishments give citizens much assistance in building homes. That is why there is control over the use of land plots in strict accordance with the decisions of the local Soviets.

Since land plots are made available to citizens as building sites free of charge, any transactions involving their sale to others constitute a gross violation of the law.

In making available to citizens land plots for construction sites free of charge, the state wants them to be put to the most rational use, so as to satisfy the housing requirements of those whose need is greatest. That is why the consent of the agencies which make available the land plots for construction must be secured whenever the terms of the building contract are modified.

When a dwelling house has been built and registered in the name of one or more persons who built it, the subsequent disposal of the house is exercised under the general rules (see Chapter Four, § 3).

There is no rule that special form should be given to relations of common ownership involving other objects. This may flow from the contract of the parties and the terms on which the property is acquired. Where several persons jointly create a piece of property, without there being any other legal ground (labour contract, contractor's agreement, contract for lease, etc.) to the participa-

tion of this or that person, there is every ground to assume that the parties intend to create their property by right of joint ownership and that the share of each is to be determined by the extent of his contribution to the creation of that property.

In examining the question of the share of a joint owner, a distinction should be made between a share in the right of ownership in a piece of property (the so-called ideal share) and the real share, that is, the right to use a specified part of the property, because the actual share of the cost of acquiring or creating the property does not always correspond to the share of the property of which each owner actually has the use. Thus, two citizens may have taken equal part in building a house, but one of them occupies the larger premises because of the size of his family. As one of the joint owners he has the right to one-half of the property, but may actually have the use of more than his share, for instance, two-thirds. The law allows this kind of discrepancy. The ground for it may be an agreement between the owners or other circumstances, such as the technical impossibility of setting separate premises apart for the use of each in strict accordance with the share of each in the right of ownership.

Where a joint owner cannot be allocated a definite share of the property for his use, he may be given compensation in money for his share in the right of ownership, upon which he ceases to be a joint owner.

Take the case of a woman who dies and leaves her house to her three heirs. Two of them have been living with her, and the third elsewhere. The house consists of two separate flats, so that it is inexpedient to set aside a section of the house for the third heir. In that case, the two heirs remaining in the house must jointly pay out the third heir's share.

In all matters connected with common property, the law gives equal protection to the interests of all parties to these relations. Possession, use and disposal of common property is exercised with the consents of all the parties. In the event of differences, any joint owner may take legal action to obtain decisions on concrete questions relating to the manner of possession, use and disposal of the property. Each joint owner, in proportion to his share, must

contribute to the expenses incidental to the property, that is, he must pay the taxes, levies and other dues (if any), his share of the cost of maintenance, repairs, etc.

It is entirely up to the parties to maintain the common property relations. Each joint owner may dispose of his share of it as he sees fit: he may either retain, sell or exchange it, make a gift of it, etc.

But in giving protection to the right of each joint owner, the law ensures the fullest possibility of harmonising the interests of the owner disposing of his share with those of the others. Personal property is designed to satisfy material and cultural requirements. The number of owners and the personality of each is of great importance to the joint owners, which is why, while allowing each owner to dispose of his share, the law also gives protection to the interests of other owners. This is achieved through the rule of pre-emption.

When a joint owner wishes to sell his share to another person or persons, he must serve written notice on the other joint owners of his intention to do so, stating the price and the other terms on which the sale is to be made. The other joint owners have the right of pre-empting the property at the price for which it is to be sold and equally on all the other terms. This rule is designed to allow the other joint owners to keep the property in their ownership. If the other joint owners do not deem it necessary to exercise their right of pre-emption, the seller is entitled to sell his share to any person. The law establishes the period within which this right must be exercised. In respect of a dwelling house, a joint owner is deemed to have relinquished this right, unless he exercises it within one month from the date of notice of intention to sell. For other types of property, the period is 10 days.

Where a joint owner has sold his share in violation of the rule of pre-emption, for instance, without serving written notice on the other joint owners of his intention, where he has not waited for the expiry of the established period, or where he has not sold it to another joint owner who has expressed his intention to buy the share, the other joint owners have the right to take legal action, within three months, to have the rights and obligations of the buyer transferred to them.

The right of pre-emption applies to the sale of a share, in which case the interests of the other joint owners are given protection and the interests of the seller of the share are not affected in any way. He receives from the other joint owners the price and sells his share on the same terms on which he would have sold it to a third party. But there are cases in which a joint owner does not wish to sell but to exchange or make a gift of his share. In that case, he is free to dispose of his share as he sees fit. This is due to the fact that in these conditions, the other joint owners cannot stand in for the person to whom the joint owner wishes to make a gift of his share. Nor are they in a position to make available the property for which the joint owner wishes to exchange his share. In the circumstances, preference is given to the joint owner who intends to dispose of his share.

Each of the joint owners has the right to demand a separation of his share from the common property. The manner of separation is determined by an agreement of the parties. As a rule, separation is in kind, where that is possible without disproportionate prejudice to the economic purpose of the property. Where such separation in kind is impossible, the separated joint owner is paid compensation in money. Where the joint owners fail to reach agreement on the manner of separation, the question is decided by a court in an action brought by any of the owners.

2. Marital Community Property

The true equality of men and women is one of the basic provisions of the Soviet Constitution. It is secured by the economic and political system of Soviet society and is ensured by the fact that women are given the same kind of training for skilled occupations as men. From childhood, boys and girls are brought up in the same sense of the need to engage in socially useful labour, and of the equality of men and women. Soviet people accept as a natural fact that women occupy the same position in social life as men. Complete equality between men and women in the USSR is strictly observed in the remuneration of labour, and in appointments to more skilled and responsible

jobs in various spheres of material production, science and culture. The Soviet family is based on real equality between the spouses. As a rule, both spouses play an equal part in social life, and have earnings, scholarships, pensions and other forms of security. The actual equality of the spouses is fixed in law, specifically, in the definition of the rights of the spouses. The law always speaks of the spouses, never making any distinction between the rights of husband or wife, because their rights are absolutely identical.

The marriage and family codes of all the constituent republics state that the property belonging to each of the spouses before the contract of marriage is the personal property of each. The personal property of the spouse also includes property received under deed of donation, by inheritance or as a reward. This applies equally to both spouses. All the property earned by the spouses during their marriage is their marital community property, and it makes no difference in whose name it is registered, out of whose earnings it has been paid for, etc. In all cases it is their marital community property.

Some court cases arise from one of the spouses acquiring a house, registering it in his own name,* and claiming it as his personal property. However, the Supreme Court has pointed out in a number of rulings that the property acquired by one of the spouses during the continuation of the marriage is marital community property, it being immaterial that the house is registered in the name of only one spouse. This practice has been fixed in a decree issued by the Plenum of the Supreme Court of the USSR on July 31, 1962, concerning Judicial Practices in Cases Involving the Right of Personal Ownership in Buildings. It deals with one of the important objects of the right of personal ownership, namely, structures (dwelling houses, country houses, etc.). But this general principle underlying the rule in question applies to all other types of property as well.

All the powers of the owner in respect of marital community property are exercised by common consent. If one

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* In the USSR, title to a dwelling house must be conveyed through a notary public.

of the spouses enters into a transaction involving such property, it is assumed that he or she is acting on behalf and with the consent of the other. Such transactions may be performed by either of the spouses, and the law does not ordinarily require any special authorisation for such acts. However, the consents of both spouses are mandatory for the performance of major transactions which are of great importance to property relations within the family. This applies above all to the alienation of a dwelling house, e.g., sale, donation or exchange. Because all transactions involving a structure are performed through a notary public, such a transaction, when performed by one of the spouses, requires the written consent of the other.

Disposition of marital community property—sale, purchase, repair, exchange, donation, etc.—may take place only with the consents of both spouses.

The marital community property of the spouses may be attached only for debts contracted to cover family expenses. For personal debts, the spouses are liable with their personal property and share of the community property.

During the continuance of the marriage, the property jointly earned by the spouses remains indivisible. The necessity of partitioning the family property may arise from the termination of the marriage. When one of the spouses dies, his share must be separated from the community property because it passes to his heirs. The property may also be partitioned in the event of divorce. But the necessity of partitioning the family property may also arise during the continuation of the marriage, as when a spouse's share in the community property is attached by court decision to cover his personal debts, to provide compensation for injury inflicted by him, or to restore damage arising from theft, embezzlement or misappropriation of public property.

This gives rise to the question of determining the share of the spouses in the separation of their community property. The marriage and family codes of many Union Republics (RSFSR, Turkmenia, Uzbekistan, Tajikistan, Azerbaijan, and the Ukraine) say that the share of each spouse is determined by the court. The codes of the Georgian and Byelorussian Republics lay down the rule that property earned during a marriage belongs to the spouses

in equal shares, so that the wife's work of house-keeping and caring for the children gives her as much of a title to the property as the husband's work in earning the means of subsistence. This substantiates the wife's right to an equal share of the community property with the husband in those relatively rare cases when the wife has no earnings of her own and is engaged in household work and the upbringing of children. There is no need to prove that where the wife has her own earnings (as is the case in most Soviet families) there is even more ground for the provision concerning the equality of the shares of the spouses.

In the constituent republics where the law does not specifically state the equality of the marital shares in the property acquired jointly during the marriage, it is the practice to start from the principle of equal shares. As I have said, in many of the republics, the size of each spouse's share is, in the event of dispute, determined by the court. In such cases, the court proceeds on the principle that the shares of the spouses are equal. A ruling of the Judicial Collegium for Civil Cases of the Supreme Court of the USSR says that if the court comes to the conclusion that the spouses are entitled to unequal shares of the property, the court's considerations should rest on convincing evidence. Thus, the court assumes the shares to be equal, unless there are special grounds to assume the contrary.

Mrs. O. was lawfully married to a man, but their marriage was an unhappy one. The husband was almost continually absent from home and failed to provide the family with support. The wife brought up the children and worked; with her savings and a loan she built a house. During the subsequent divorce proceedings, the "husband" claimed a part of the house. In view of the circumstances of the case, and the fact that the husband had not been living with the family for a long time, and while the house was under construction, and had failed to provide any support, the court ruled that the house was the property of the wife.

Citizen I. died, leaving minor children from his first marriage. His second wife claimed that the decedent's share was one-half of the property jointly earned during the second marriage. However, the court established that the decedent, a prominent specialist, had paid for all the

property acquired during the second marriage out of his own earnings, whereas his second wife, a young and able-bodied woman, had not worked, had no children to care for, and had not done any house-keeping, which was performed by the decedent's mother. The court ruled that in the circumstances the wife had no claim to one-half of the earned property.

In establishing the concrete circumstances of the case, the court may also probe the sources from which the community property was acquired. Thus, if the court should establish that it was acquired with money belonging to one of the spouses before the marriage, that property, depending on the concrete circumstances of the case, may be recognised as that spouse's personal property. Similarly, property belonging to one of the spouses is recognised as marital community property, where it can be proved that it was preserved because the other spouse used his personal savings for the family's needs.

The granting to the court of the right to determine the shares of the spouses is designed to help it take account of the concrete circumstances of each case. In the process, the court determines not only the shares of the spouses, but also whether or not a particular piece of property is correctly designated as the marital property of the spouses or the personal property of either. To that end, the court examines the sources of the property and the concrete conditions of its use.

Deposits in savings banks and other credit institutions made in the name of either of the spouses during the continuation of their marriage are also a part of their marital community property. The provision concerning the secrecy of deposits also applies to these deposits under the general rule. They may be attached only by a decision of the court or a criminal investigation agency. There is, however, an exception to the general rule governing the secrecy of deposits: where a deposit made in a savings bank or any other credit institution in the name of one of the spouses is part of their marital community property, it may be attached under a court decision on the separation of the deposit. This provision is of great importance for the operation of the general rule that property earned during a marriage is the marital community property of the spouses.

3. Joint Property of Members of the Kolkhoz Household

Chapter One dealt with the reasons which determined the specific character of the kolkhoz household as a subject of the right of personal ownership. The kolkhoz household is a family-and-labour association whose members are connected with production on the kolkhoz farm and also have a subsidiary farm on a plot allotted to them for use. The kolkhoz household is most frequently based on family relations, marital relations and on kinship, but households may include persons without such connections. Joint residence, the working of a common household farm and participation in kolkhoz production are the chief signs of membership.

The joint property of members of the kolkhoz household is essentially different from share property. The shares of members of a kolkhoz household are determined only in the following manner, as enumerated in law: 1) a member leaves the household without setting up another household (separation); 2) the household is divided into two or more households (division); and 3) a member's share of the household property is attached to meet his personal obligations.

With the exception of these cases, the shares of members are not determined, and they own the property jointly. Possession, use and disposal of the kolkhoz household property is exercised with the consents of all its members. Where a dispute arises between the members in the possession, use and disposal of the property, it is settled in court in litigation on a civil action brought by any member of the household who has attained the age of 16. Members of the household aged 15 and 16 file suits themselves with the consents of their parents or guardians, while suits on behalf of persons under 15 are brought by their parents or guardians.

The head of the kolkhoz household has a different status from that of the other members of the household. The kolkhoz household is liable with its property for the transactions entered into by its head, for it is assumed that these transactions are performed in the interests of the household. But should it be established from the circumstances of the case that a transaction has been performed for the

personal interests of the head of the household, the liability falls on his personal property and share of the household property. In regard to other members of the household, they are, as a rule, liable for their obligations with their personal property and their share of the household property. But if it is established from the circumstances of the case that a transaction has been performed in the interests of the household, the liability may be placed on the kolkhoz household.

For example, a member of the kolkhoz household buys, on an instalment basis, a prefabricated house as an annex to the family house. Because the family house with all its structures is the property of the kolkhoz household, the instalments may be paid off from household funds.

Only a member's personal property and his share of the joint property may be attached to pay compensation for damage inflicted by a crime committed by that member. The household property may be attached only if the court should establish that the property was bought or increased with funds obtained in a criminal way.

The size of each member's share is determined on the basis of equality of the shares of all members, including minors and disabled persons. The share of an able-bodied member of the household may be reduced where it is established that he has been a member of the household for a short time or that his contribution in the form of labour or resources to the household economy has been negligible.

These provisions of the law combine protection for minors and disabled members of the kolkhoz household with the principle of labour participation, which is applied only to able-bodied members of the household.

When one or more members of the household leave it, their shares are usually separated in kind, but in such a way as not to deprive the household of the subsidiary structures, livestock and agricultural implements necessary to run its household farm. Where it is impossible to separate in kind the share of the property due to a member, its cost is paid out in money. When a household is divided, its property is shared out among the newly formed households in accordance with the shares of their members and with an eye to the economic needs of each household. Members of the household who have attained the age of 16 years are en-

titled to demand their portion with the consents of their parents or guardians, and the portion of those under 15 may be claimed by their parents or guardians.

The right to demand a division of the kolkhoz household belongs to its adult members who are members of the kolkhoz. This distinction is made because a division entails the establishment of a new kolkhoz household and, consequently, only those members are entitled to demand a division who are in a position to set up a new kolkhoz household.

An able-bodied member of the kolkhoz who has failed to contribute by his labour or resources to the household economy for a period of three successive years loses his right to a share of the household property. The rule does not apply to members who have failed to do so because of military service, education or illness.

CHAPTER FOUR

CONTENT OF THE RIGHT IN PERSONAL PROPERTY

The content of the right in personal property is determined by the aims and tasks of this juridical institution. It was said in Chapter One that the right in personal property is designed to secure full freedom for the citizen in the use of his property to satisfy his material and cultural requirements. The task of legal regulation is to establish and secure all powers and full extent in the use of the property for consumer purposes. At the same time, the right in personal property is aimed at ensuring the observance of the main rules governing personal property in socialist society, namely, that personal property may not be used to exploit the labour of others, to extract unearned income or to organise private economic operations. These rules determine the content of the right in personal property, the powers of the owner and the exercise of these powers.

The chief powers of the owner (relating not only to the right in personal property) are defined by Article 19 of the F.C.L. and corresponding articles of the civil codes of the constituent republics, which say that the owner has the power of possession, use and disposal of property within the limits established by law. These three powers express the content of the right in personal property.

The owner may assign the exercise of these powers to other persons. Thus, he may convey his property into the temporary possession of another person either gratuitously or for a compensation. He may also vest in another person the right to use a specified piece of property. The person to whom such powers are conveyed may obtain rights of his own which sometimes operate against those of the owner

(see below). However, the sum total of the powers established in Article 19 of the F.C.L. may belong only to the owner. Let us look at each of them.

1. Possession

Possession is taken to mean the actual holding—legal *de facto* possession—of a thing. But it should be borne in mind that possession is not a relation between a person and a thing. Right is always a relation between persons. In defining possession as the actual holding of a thing we have in mind the relations between persons in connection with the legal de facto possession by this or that person of this or that thing.

The right of possession means that society assures the person of his legal and de facto holding of a thing, the presence of the thing in his hold. From it flow the duty to provide protection for the right of a person possessing a thing, and the specific forms of protection for possession. Possession is one of the most important powers of the owner. It is closely bound up with his other powers, and is in some cases a prerequisite for the exercise of these powers. Thus, possession of a thing is necessary in most cases for its use. In some cases, possession is necessary for the exercise of the power of disposal.

Possession may be exercised by the owner, in which case it is one of his powers. But the owner may transfer possession to another person or persons. For example, a citizen who owns a country house by right in personal property intends to spend the summer elsewhere. He may lease his country house, thereby assigning the possession of it to the lessee. In entrusting his things to a common carrier (a railway or a shipping line) for delivery to a certain destination, the citizen transfers to him the possession of the things for the period of transportation. During his absence, a citizen may leave his things for safekeeping with other citizens or an organisation engaged in safekeeping (safekeeping establishment, cold storage plant, etc.). In all these cases, the person to whom possession is assigned has a definite right (juridical title) based on a corresponding contract: contract for lease of property, carriage or safekeeping.

Sometimes possession is assigned not by the owner, not under a contract, and even without the owner's will and knowledge, but in his interest. This may happen in a fire which breaks out in the owner's absence and the things that are saved are inventoried and handed for safekeeping to the house management.

In all these cases the owner has a definite juridical ground for possession (title of possession). Soviet law does not provide protection for possession without title, that is, de facto possession, which is not based on any juridical ground. This does not mean, of course, that the holder's title has to be checked whenever the question of protecting possession arises. It is the legal assumption that the holder is either the owner or a title holder. Verification of the ground for possession in every case would merely hamper and obstruct the work of the courts, because in most cases no such verification is necessary. Only where a dispute arises over the legality of possession exercised by the person seeking protection or where the court has doubts as to the title of possession, does it have to verify the existence of such title.

For example, a citizen who goes away on a long business trip leaves his car in his garage. One of his neighbours opens the garage and starts using the car. Another neighbour takes legal steps for the return of the car. If the defendant who is ordered to return the car declares that the plaintiff is not its owner and contests his right to take legal action, the court must verify the ground on which the action has been brought. Where the neighbour proves that the owner entrusted him with the safekeeping of the car, something which does not require a written contract, and can be done by word of mouth and the handing over of the keys to the garage—or that he gave him a power of attorney to run the car, etc., the court satisfies the suit. Where it transpires that the neighbour has no grounds for his action, because his demand is not based on any definite juridical title, the court dismisses the action and simultaneously withdraws the car from the person who has taken unlawful possession, and takes steps to protect it (instructing an officer of the court to seal up the garage, entrusting the safekeeping of the car to some responsible person, etc.).

Where it is not the owner who exercises possession, the court makes a distinction between cases of lawful and unlawful possession. Lawful possession is one which is based on some juridical title, and unlawful possession is one which is not based on such a title. Possession of the lawful holder is protected in full conformity with the ground for his possession, which may sometimes be protected even against the owner. Thus, an owner, going away for a year, leases his house for that period. A few months later, he wants to install his relatives in the house. However, the law gives protection to the lessee's rights, and he has the possession of the house during the term of the contract. Even should the owner himself want to take possession, he is not entitled to do so (provided, of course, that no arrangement was made with the lessee, that is, provided that the terms of the contract for lease were not modified by mutual consent).

The owner is entitled to seek his property from the unlawful possession of another and to demand its return and compensation for the earnings the holder has derived or ought to have derived.

An unlawful holder may be a holder in good faith or a holder in bad faith. A holder in good faith is an unlawful holder who did not know and was not required to know that his possession was unlawful. For instance, a person buys a motorcycle in a second-hand store, and it turns out to be a stolen one. The buyer did not know and was not required to know that he is an unlawful holder of the motorcycle. He is deemed a holder in good faith. A holder in bad faith is one who knows or ought to know that his possession is unlawful. For example, a citizen occupies the house of an absent neighbour. In that case, he knows that he is occupying the house without any legal ground. A holder is also deemed in bad faith when he did not but ought to have known of the unlawfulness of his possession. Say, a person buys a bicycle from a neighbour, knowing that the bicycle belonged to another neighbour. In that case, it is his duty to find out on what ground the thing is being sold to him not by the owner but by another person; unless he does so he is deemed a holder in bad faith. *

* See Chapter Five for recovery of property by the owner from an unlawful holder.

As has been said, Soviet law has no rule under which the rights of the holder are protected regardless of his possession. This is also connected with the absence in Soviet law of what is known as prescription, whereby ownership rights might be established by long exercise of possession. Regardless of the duration of a person's exercise of possession without legal grounds, his possession does not become lawful, and does not transform the holder into the owner. In connection with the drawing up of the civil legislation and the civil codes of the constituent republics, some writers proposed that Soviet law should adopt the institution of prescription, on the plea that when the statute of limitations (three years) runs out, the owner who has lost possession of his property is not entitled to recover it from the holder. Some jurists think this tends to create uncertainty. On the one hand, the owner is deprived of his possession and cannot restore it through the courts. On the other hand, the holder remains an unlawful holder and has no title to the thing. The contested property turns out to be ownerless and may be withdrawn by the state. However, the state has no interest in its withdrawal.

The way out, it was said, was prescription. The proposal was the subject of a lively discussion but was eventually rejected. Prescription does not accord either with the nature of personal property in the USSR or the tasks of the Soviet state in giving protection to that property.

What does prescription imply?

In practice, it is that upon the expiry of a specified period, the unlawful acquisition of property becomes lawful; conduct which is unlawful and in bad faith is declared to be lawful. But the right of personal ownership is of great educational significance. It should teach citizens to exercise care not only in respect of their own property but also of that of others, and to show respect for the property acquired by one's own labour and for that acquired by the labour of others. By giving sanction, upon the expiry of a specified period, to unlawful acts on the part of the holder and allowing him, on lawful grounds, to benefit from these unlawful acts, prescription is not conducive to the fostering in citizens of concern for the personal property of others. Soviet law has no need for prescription because property in the personal ownership of citizens very rarely

enters into commerce. It is acquired to satisfy the requirements of the owner and his family and very rarely finds its way back into commerce.

Under the existing provisions, the unlawful holder of a piece of property does not, upon the expiry of the time defined by the statute of limitations, acquire any rights to the property. The owner retains his rights to the property while it remains in the hands of the unlawful holder, but has no legal course to restore his possession through the court. But when, upon the expiry of the term specified by the statute of limitations, the unlawful holder voluntarily returns the property to the owner, it is a lawful act and restores the owner to his possession.

What is more, upon the expiry of the statute of limitations, the owner can himself restore possession of his property, provided, however, that he does not violate any rule of the criminal law (such as trespassing, using force, etc.).

Thus, citizen A., going away on a long business trip, leaves some of his things in a shed, which is also used by his neighbours. One of them takes possession of A.'s bicycle. Upon his return, the latter refrains from taking legal steps to return his bicycle for more than three years, but then one day, when the unlawful holder leaves the bicycle unattended in the yard, the owner takes it back. This is a lawful act on the part of the owner. The owner has resumed possession, although the term of limitations has run out. This is connected with the nature of the statute of limitations in the USSR. The expiry of the term stated by the statute of limitations does not extinguish the material right; it merely deprives one of the legal remedies.

Recognition of a person as the owner of a piece of property in the unlawful possession of another, even after the expiry of the term of limitations, entails, as we have seen, definite legal consequences, and this makes for more effective protection of the right in personal property.

2. Use

The right of use is one of the basic powers constituting the right in personal property. This is due to the consumer nature of personal property in the Soviet Union. The basic

purpose of personal property is its use by the owner to satisfy his material and cultural requirements.

One of the basic tasks of the Soviet state is to raise the material and cultural standards of citizens and to improve the welfare of the whole population. This task is being fulfilled through the satisfaction of citizens' requirements from social funds and also through an increase of the personal property of citizens, which is used for the immediate satisfaction of their requirements. Accordingly, the state strives not only to ensure the growth of real wages, to reduce the prices and improve the quality of consumer goods, and to increase the purchasing power of the population, but also gives immediate assistance in the creation and acquisition of objects designated for the satisfaction of citizens' requirements. The state gives citizens much assistance in individual and co-operative housing construction. Factories and collective farms help their industrial and office workers and farmers to build homes by providing them with building sites for their homes and help in obtaining building materials and transporting them. The building of roads and the laying of water mains, drainage and electric cables, gas pipes, etc., are done mostly by local Soviets, industrial plants and collective farms. Factories and collective farms help individual builders by providing them with standard blueprints and where possible assign workers to perform special operations. Individual housing construction is a prominent element of the grand housing effort in the towns and villages. Banks grant credits repayable in seven to ten years at two per cent interest.

Loans are also extended for starting subsidiary farms, and the purchase of livestock, implements, etc. Assistance is also given for developing collective orchards and vegetable gardens. Factories and collective farms allow citizens the use at low cost of machines to cultivate orchards and vegetable gardens, vehicles to transport their crops, etc.

The ever expanding sale of goods on credit enables citizens to buy all the things they need. Durable goods are sold to citizens on credit—for up to a year—by retail marketing enterprises at prices prevailing on the day of the sale. The sale is made on the strength of a certificate presented by the prospective buyer, stating the amount of his

earnings, pension or scholarship. In the sale of goods on credit, the right in property in the thing bought arises for the buyer at the moment the thing is conveyed to him. From that moment, the buyer becomes the owner of the thing and is free to dispose of it as he sees fit. The shop, the seller, only has the right to recover the instalment payments due.

All these measures are aimed at enhancing the welfare of citizens and increasing their personal property, which they use to satisfy their requirements, that is, to exercise their powers of use.

The state gives extensive assistance to citizens in acquiring things by right in personal property and gives full protection to their rights, assuring them of real freedom in the use of their personal property to satisfy their requirements. But it also makes certain demands on the owner which are designed to protect the rights and interests of all other citizens and of society as a whole. Article 5 of the F.C.L. and corresponding articles of the civil codes of the constituent republics state that civil rights are protected by law, except as they are exercised in contradiction to their purpose in socialist society in the period of communist construction. In exercising their rights and performing their obligations, citizens and organisations must observe the laws and the rules of socialist community life and abide by the ethical principles of the society building communism. This means that the right in personal property cannot be used contrary to its basic purpose. It cannot be used to the detriment of other citizens, to cause them inconvenience, trouble, etc. This general provision is concretised in other articles of the civil codes.

At the same time, this rule is the touch stone of the lawfulness of an owner's act. Thus, personal property may not be used to create inconveniences and obstructions for other citizens. Hence, the rules laid down for the use of personal cars, motorcycles and other means of transport, and the operation of wireless sets, etc. Thus, in many cities it is forbidden to turn on wireless sets to full volume between specified hours. The owners of dwelling houses must keep the grounds around their houses clean and in good order. In the course of new construction, regulations governing the building up of urban and rural areas, etc., must be ob-

served. All these requirements are designed to combine protection of the property rights and interests of the owner and those of other citizens.

In exercising the use of the property, citizens may obtain earnings allowed by the law. Under Article 140 of the Civil Code of the RSFSR and corresponding articles of the civil codes of other constituent republics, produce, the increase of animals, and the earnings derived from a thing belong to the owner of the thing, unless otherwise provided by law or contract between the owner and other persons. Collective farmers and industrial and office workers in rural localities, townships and the suburban areas of large towns have their own subsidiary farms, which are, as a rule, of a purely consumer nature. However, the working people's growing earnings from work in the social sector of the economy allow them gradually to give up these subsidiary farms, a process which is going on under purely economic incentives.

Thus, while working actively in social enterprises (collective farms, factories, offices) or receiving pensions or scholarships, citizens can also work on their subsidiary farms, using the produce themselves or selling their surpluses on the collective-farm market. But under no circumstances may personal property be used to exploit the labour of others, for this contradicts the basic principle of the Soviet state and society and is prohibited by the Constitution. The owner of a house with a garden plot may not hire other persons to cultivate his plot or tend his livestock, and then sell the produce.

Nor is it permitted to make use of personal property for private economic operations. In socialist society, personal property is used chiefly for consumer purposes, whereas production is run on social lines. That is why the use of personal property to organise private production contravenes the principles on which the Soviet system is based. As I said in Chapter One, Soviet law allows the existence of small private farms, based on personal labour only and excluding the exploitation of the labour of others. The Soviet socialist state strictly regulates the forms of activity which may be performed on such a farm, and the running of the farm, and controls its earnings, which are taxed. All this is absolutely inapplicable to personal property. There is no

control of any kind over the use of personal property for its immediate purpose. The owner is entirely free to use his property to satisfy his requirements. Therein lies the distinction between personal property and the property of persons conducting small private enterprises allowed by the law.

In making use of his personal property to satisfy his requirements, obtaining the produce, the increase of animals, and deriving earnings from a thing, the owner may not use his property regularly to derive unearned income. When property in the ownership of a citizen is so used, it is liable to confiscation through the courts (Article 111 of the Civil Code of the RSFSR, and corresponding articles of the civil codes of other constituent republics). This rule is so strict because the use of property to derive unearned income contradicts its basic purpose. The article of the civil code in question ensures the observance of this most important principle of socialist ethics and law. However, this principle is so ingrained in the minds of Soviet citizens that it has become a part of Soviet life, and the article in question is very rarely applied.

It should also be borne in mind that the law lays down a number of guarantees for the correct application of this article. Property used to derive unearned income may be confiscated only by a decision of court. Action for such confiscation may be brought by the Executive Committees of local Soviets of Working People's Deputies. This draws broad sections of the public into the examination of the question before legal steps are taken. The public may cut short any attempt or incipient tendency to make incorrect use of his property by the owner. Legal proceedings are instituted when measures of public influence prove ineffective. Civil legal proceedings ensure effective and all-round examination of the concrete circumstances of the case. Thus, Article 111 of the Civil Code of the RSFSR provides for the confiscation of property only where it is systematically used by the owner to derive unearned income, a circumstance carefully verified by the court.

Only in those rare cases when measures of public influence fail to produce the desired result, and when the court, having made a careful examination of all the circumstances of the case, is satisfied that the property is

being systematically used to derive unearned income, such property is converted for the benefit of the state.

It should be borne in mind that the provision governing the confiscation of property used to derive unearned income is a strictly limited one. Not all income derived by an owner from his property is unearned income in the context of Article 111 of the Civil Code of the RSFSR.

Thus, citizens who keep their money in savings banks and other credit institutions are paid interest on their deposits. The owners of government bonds have winnings on the bonds they hold. This income is not deemed to be unearned income in the context of Article 111, since the state remunerates citizens for conveying their money into its temporary use, instead of using the money to satisfy their current requirements. Nor is the lease of a dwelling house or a country house, or premises in them by the owner deemed to be unearned income in the context of Article 111, provided he observes the conditions laid down by the law, specifically, the collection of rent within the statutory limits. In that case, the rent collected by citizens is not regarded as unearned income, because it goes to cover the cost of maintenance, repairs, etc. Consequently, Article 111 of the Civil Code of the RSFSR is applied only where the owner, deliberately and systematically, violates the basic principle of Soviet law and ethics.

For instance, Mrs. B., who had an excellent flat in Riga, owned a big house which she leased to ten families at exorbitant rates. She also owned a country house, the greater part of which she leased at speculative rates. In order to derive more income, she leased the premises for short periods, increasing the rent for each new tenant and demanding payment in advance. She did not keep the house in good repair herself and made the tenants pay the cost of all repairs. All these facts were fully proved in court. There was naturally general approval when her dwelling house and country house were confiscated and transferred to the state for allocation to persons in need for dwelling space. In the rare cases when property being systematically used to derive unearned income is confiscated, the law punishes the citizen as the owner but gives protection to his interests as a consumer. Thus, when a local Soviet confiscates a house or a bungalow in which

the owner lives alone or with his family—for having used the property to derive unearned income—they may continue to occupy their old premises.

In one of the suburbs of Moscow, citizen V. had an eight-room house and an out-building in the yard. In the house, he and his wife occupied two rooms, and leased the other six rooms and the out-building to tenants for various terms at speculative rates. Citizen V. and his wife did not work and derived a sizable income from their house, without bothering about maintenance. All measures of social influence proved of no avail. Having examined the case, the court handed down a decision to confiscate the house, leaving citizen V. and his wife to occupy their two rooms, and allocating the rest to other working people. Many former tenants were left to occupy their rooms, but the house was placed in the charge of a house-management office. Instead of the high speculative rents, the tenants were asked to pay the statutory rent, and the house-management office kept the house in good repair.

The court may deprive the owner and the persons residing with him of the right to use their flat in the confiscated house, but then, unless they have other premises suitable for permanent residence, the Executive Committee of the local Soviet to which the confiscated house has been conveyed, provides them with another flat.

The eviction of the owner and his family and the provision of living space for them by the local Soviet usually occurs in cases when the confiscated house is being used as a single whole for a specific purpose, such as a crèche, a nursery school, etc.

While allowing citizens the greatest latitude in the use of their personal property to satisfy their requirements in accordance with their inclinations, tastes and wishes, the state does not allow unreasonable and wasteful use of property involving the destruction of values of social importance. At the present stage, the satisfaction of citizens' housing requirements is vital. That is why the state does not allow anyone, including the owner, to neglect the maintenance of dwelling houses.

Article 141 of the Civil Code of the RSFSR and the corresponding articles of the civil codes of other constituent republics state that a dwelling house may be confiscat-

ed if a citizen mismanages his house and allows it to fall into disrepair. However, confiscation may take place only after a number of demands are met. The owner may not be suddenly confronted with confiscation. When a citizen mismanages his house and allows it to deteriorate, the Executive Committee of the local Soviet sets an appropriate period to allow him to carry out the necessary repairs. The law says "appropriate period", which means that the period should accord with the technical conditions of repair and the owner's possibilities. For instance, where a house has not been repaired for a long time because of the owner's illness or because of long absence or for any other reason, the local Soviet lays down a period for repairs with an eye to the owner's possibilities. In practice, local Soviets frequently give assistance in carrying out repairs and maintenance. The public, young people especially, are a great help in this respect. Thus, when a house has not been repaired because its aged owner finds it hard to do so, he receives assistance from the local Soviet and the public.

Only when a citizen fails, without good reason, to carry out the necessary repairs within the allotted period, may the court, in an action brought by the Executive Committee of the local Soviet, confiscate the mismanaged house. This measure is designed to preserve the housing facilities. The fact that the owner is allowed a period to carry out repairs and is given assistance usually results in the house being brought to the proper state and left with the owner. Houses are usually confiscated on the grounds being examined where the owner no longer resides in the house and is not interested in its upkeep.

The law specially regulates cases where a citizen owns property which is of considerable historical, artistic or other value for society, such as a library, an art collection, or a collection of documents. They may be owned by a person who does not realise their social value and fails to ensure their due safekeeping.

Citizen A. had a fine collection of paintings of a certain school. When he died, it passed to his heir, who had no knowledge of painting and no idea of how to take care of the pictures. Valuable canvases were removed from their frames, rolled up and stored in an unheated room, so that the collection, the fruit of many years' effort, was threat-

ened with almost complete destruction. In such cases, state organisations whose task it is to protect such property have the right to warn the owner to cease his mismanagement of the property. Among such state organisations are those whose task is to supervise the protection of cultural values, like local lore museums, culture departments, protection of monuments departments, state archives, etc. Apart from issuing warnings, they instruct the owner on how to handle the property, because in many instances the faulty storage of cultural values is not due to ill intent on the part of the owner, but to lack of knowledge. These organisations must carry out regular checks to see that cultural values are intact. Where the owner fails to observe the rules of safekeeping, the organisation concerned may take action to have the court withdraw the property, which passes into the ownership of the state, while the citizen is given compensation for value. The amount of the compensation is determined by agreement. In the event of a dispute, it is determined by the court, which invites experts to make a proper assessment of the value of the property.

This practice is designed to preserve for society historical, artistic or other cultural values which are of public interest. But the interests of owners are also given adequate protection. Where the owner is aware of the public or cultural value of his property, he will take every step to ensure its proper safekeeping. Otherwise, he receives due compensation for it.

I have listed the demands made by the state and society upon the owner of personal property to prevent him from exercising his rights to the detriment of the interests of other citizens or those of society. These demands are not very numerous and do not essentially hamper the owner in any way in the reasonable satisfaction of his requirements. In all other respects, it depends on the owner himself how he is to use his property to satisfy his requirements.

3. Disposal

Disposal is taken to mean the owner's discretion in deciding the juridical fate of a thing. It is a power which can be exercised only by the owner. Even where the owner grants to another person what is known as a general

power of attorney, which includes the power of disposal, disposal is ultimately exercised by the owner.

The content of the power of disposal exercised by the owner of personal property is determined by the main content of the right of personal ownership. That is why in most cases the right of disposal consists in the owner's consumption of the property, that is, it coincides with the right of use. However, in some cases, the satisfaction of the owner's requirements necessitates disposal which does not coincide with use, that is, consumption. Things that are objects of personal ownership constitute the materialised portion of the owner's earnings. It is up to the owner to dispose of these objects, retain them in his ownership, convey the right of ownership in them to another person, assign them for temporary use, etc. With that end in view, the owner may enter into all kinds of civil legal relations, conclude contracts and perform transactions.

Let us examine the major types of transactions through which the powers of disposal are exercised.

Lease of property is one of the main forms of disposal which does not coincide with use, and under which the right of ownership is retained. A citizen who does not require the use of his property for a time, may assign it for use by other persons, either gratis or for a fee.

The granting of property for use gratis is widely practised in the Soviet Union, and is the fullest expression of the nature of personal property as an institution of socialist law. A citizen who is not using his property temporarily concedes it for use by one who has need of it and receives no compensation in return. Certain duties fall on the user to ensure the safekeeping of the property. The person to whom the property has been transferred gratuitously is obliged to make use of the property in accordance with the contract and the purpose of the property, carrying out current repairs for his own account (unless otherwise stipulated in the contract) and covering the cost of maintenance (if any). A person at whose disposal property has been placed for gratuitous use has the right to transfer it into the use of a third party only with the consent of the owner and continues to remain responsible to the latter.

Where the person to whom the property has been granted gratuitously breaks this rule and transfers it into the

use of a third party without the consent of the owner, the latter has the right to cancel the contract and demand and obtain his property. Where the contract for gratuitous use of a piece of property is concluded without specification of date, and the title to the property is conveyed to another person, the latter may demand the immediate cancellation of the contract and the withdrawal of the property. Contract for gratuitous use of property is to some extent of a personal nature and lapses with the death of the owner. Such a contract concluded during the life-time of the owner is not binding on his successors.

The rights and duties of the parties to a contract for gratuitous use of property are largely similar to those of parties to a contract for lease of property. A distinction springs from the different content of the relations involved, namely, the fact that in the former case the user has the use of another's property without giving the owner a corresponding equivalent. Contract for gratuitous use is applied chiefly in respect of household and everyday things and means of transport.

Under Soviet law, the granting by a citizen of money for use by another person (contract of loan) is always gratuitous.

Under contract of lease the owner transfers a piece of property to the lessee for temporary use for a specified compensation, the rights of the lessee and the duties of the owner being determined with an eye to the fact that the owner receives compensation in money for the property he has assigned for use. That is why where the owner, having concluded a contract for lease of property, fails to place it at the lessee's disposal, the lessee has the right to claim the said property and to demand compensation for damages caused by delay in performance. In that event, the lessee, for his part, is also entitled, in lieu of demanding performance of contract, to reject the contract and sue for damages caused by non-performance.

The lessee must maintain the leased property in good repair, carry out current repairs at his own expense, cover the cost of maintenance, and make payments for the use of the property in due time. He may demand any corresponding reduction of the rental where, in virtue of circumstances for which the lessee is not responsible, the conditions of use

stipulated in the contract, or the state of the property, have materially worsened.

In contrast to contract for gratuitous use of property, contract for lease remains in force even when the property passes to another owner. Contract for lease of property does not lapse with the death of the owner or of the lessee. Under such contracts, the rights and obligations pass to their successors until the contract expires. When a contract for lease terminates, the lessee must return the property to the owner in the state in which he received it, subject to normal wear and tear or in the state stipulated by the contract. If the lessee allows the leased property to deteriorate, he must pay damages to the owner. He is absolved from the obligation of paying damages only if he proves that the deterioration occurred through no fault of his own.

The lessee has the right to make any improvements in the property only with the lessor's permission, in which case the lessee is entitled to recover the necessary cost (unless otherwise provided for by law or contract). When the improvement has been made by the lessee without the owner's permission, the law leaves it to the owner to decide whether or not to compensate the cost. In the event of refusal to compensate, the lessee may withdraw the improvements made by him where they may be separated without damage to the property. But where they cannot be so separated, they may not be withdrawn.

This brief exposition of the rules governing lease of property shows that the law co-ordinates the interests of the owner, who makes his property available for temporary use, with those of the lessee. I have dealt very briefly with the relations of lease of property because these relations (with the exception of one type, namely, lease of dwelling space, which I shall deal with later) are not of any considerable importance in practice. When a citizen does not make use of his property for some reason, but wishes to maintain it in his ownership and makes it available to other persons for temporary use, he usually does this on a gratuitous basis.

Contract for lease of housing is a distinct type of lease of property which is of great practical importance.

In the USSR, the solution of the housing problem—one of the most acute today— is being tackled by the state and

the whole of society. The Programme of the C.P.S.U. sets the task of solving the housing problem, which is a key to the boosting of the Soviet people's living standards. The Soviet state is doing a great deal to this end. The war against nazi Germany brought vast destruction to the country. Hundreds of towns and industrial settlements were either totally or largely wiped out. Towns like Minsk, Volgograd, Sevastopol, Orel and Voronezh had to be rebuilt from the ground up. Millions of people were left without hearth and home because of the nazi scorched earth policy. This created a truly gigantic housing problem. However, the government's massive housing construction programme is steadily filling in the gaps.

In these conditions, the use of the housing facilities belonging to citizens by right in personal property is a necessity. That is why those who own houses and have space to spare have the right to lease it to those in need of living premises. Such use of personal property is allowed by law and does not clash with the purpose of personal property, unless, as I said above, the aim is systematically to derive unearned income.

The Fundamentals of Civil Legislation and the civil codes of the constituent republics regulate the relations of lease of housing in great detail because of their social importance. The law provides safeguards and guarantees for the rights of tenants in houses belonging to local Soviets, and state, co-operative and other mass organisations. The law gives lessees broad rights in demanding the satisfaction of their housing requirements, provides protection for the right to use dwelling premises, and prohibits eviction (with the exception of the rare instances in which tenants destroy property, make themselves a nuisance to their neighbours, etc.). The law regulates the relations of lease of dwelling space in houses which are the personal property of individuals, and combines protection for the interests of the tenant and those of the owner. That is why contract for lease of dwelling space in houses belonging to citizens by right in personal property substantially differs from contract of lease of dwelling space in houses which are a part of the state and social housing facilities. In the former case, the state shows equal concern for the owner and for the tenant.

Living space in houses belonging to the state and social housing fund is made available to tenants on the strength of decisions by Executive Committees of local Soviets, which are taken with the participation of members of mass organisations, whereas living space in houses belonging to citizens by right in personal property is leased at the owner's discretion. He is free to lease a part of his house which he does not use, or the whole of the house, say, during his temporary absence.

Only separate living premises may be leased under contract in houses belonging to the state and social housing fund, a rule which is designed to provide protection for tenants, but which does not apply to personally owned houses, whose owners are free to lease a room having a common exit with that of the owner, and adjoining room, etc. All this is left entirely to the discretion of the owner of the house and the lessee.

There are also substantial distinctions in respect of the terms of the contract. In houses belonging to the state and social housing fund, contract for lease is concluded for a term of five years, with subsequent renewals (of which more below). The terms of a contract for lease of housing belonging to citizens by right in personal property are determined by an agreement of the parties. Thus, a citizen who goes to the sea-side for the summer may lease his house for one or two months, but a house owner who has spare rooms may lease them for a longer term.

There is also a substantial distinction in the rights of lessees. In houses belonging to the state and social housing fund, the lessee has the right to lodge his spouse, children, parents, and other relatives and dependents who are unable to earn, provided he has the consents of the adult members of the family. No consent of the lessor is required, and it is entirely up to the lessee and members of his family to decide whether to crowd their premises by letting these persons move in. In houses belonging to citizens by right in personal property, the lessee may lodge only his minor children in the premises he occupies. For all other persons, he must obtain the consent of the lessor. The reason is that it makes a great difference to an owner leasing living quarters who lives in his house. That is why the lessee cannot lodge anyone without his consent. However,

parents cannot be deprived of the right to live with their minor children, and there the interests of the lessee must have precedence over those of the lessor. The civil codes of some constituent republics—the RSFSR and Latvia—say that if the lessee occupies an isolated flat he is also free to lodge his spouse and disabled parents.

Because it does not allow the use of a dwelling house (as of other property) to obtain unearned income, the law regulates the amount of rent in houses belonging to citizens by right in personal property. It is higher than rent in houses belonging to the state and social housing fund. As I said in Chapter One, rent in houses belonging to the state housing fund falls short of the cost of maintenance of these facilities, and the state expends considerable amounts to make up the difference. In order to provide protection for the interests of house owners, they are given the right to collect higher rents, but these must not exceed the maximum rate set by the decrees of the Council of Ministers in the republics. In some republics (the Ukraine, for instance), the law is that rents in houses owned by citizens shall not exceed statutory rents by more than 20 per cent.

The Fundamentals of Civil Legislation and the civil codes of the constituent republics give an exhaustive list of the grounds—which are very few—on which citizens may be evicted from the premises they occupy. In houses belonging to the state and social housing fund, non-payment of rent is not a ground for eviction. The 1922 Civil Code of the RSFSR (and the civil codes of other constituent republics) listed this as ground for eviction, but it has become clear over the years that the provision is superfluous. Because rent constitutes such a small part of the family budget of those living in state and social housing fund, there have been no cases of demand for eviction on this ground for many years. In the rare cases where rent was in arrears it was easily covered from the lessee's earnings or pension. That is why the Fundamentals of Civil Legislation and the civil codes of the constituent republics no longer list non-payment of rent as ground for eviction from houses belonging to the state and social fund.

But in order to protect the interests of house owners, the law says that tenants may be evicted on this ground from houses belonging to citizens by right of personal

ownership. When a tenant is systematically in arrears with his rent, the owner has the right to demand his eviction. Here the interests of the owner are given preference over those of the tenant.

To ensure fuller satisfaction of the housing requirements of citizens, the lessee may exchange the premises he occupies for premises occupied by other lessees, with a reciprocal transfer of their rights and duties. But such exchange in houses belonging to citizens by right in personal property is allowed only with the consent of the lessor. This is due to the fact that relations of lease in houses belonging to citizens are largely of a personal nature, and this is material to the lessor who lives on the premises he leases. No one may move into the premises without his permission.

The right of the lessee to renew the contract for lease of housing is a most important legal safeguard for the housing rights of citizens. It is a right which belongs to tenants in houses of the state and social fund and in houses belonging to citizens by right in personal property. However, there are essential distinctions between the two and they are designed to harmonise the interests of the owner and of the tenant.

In houses of the state and social fund, the right of the lessee to renew the lease may be contested by the lessor in a court of law in one case only, namely, when the lessee fails systematically to fulfil his obligations under the contract (destroys the living premises, uses them for a purpose other than that for which the premises are designated, etc.). Refusal to renew the lease never actually takes place, for where the acts of the lessee may serve as ground for demanding his eviction, such eviction takes place, regardless of the expiry of the contract (such cases of eviction are very rare in practice). Where the tenant does not perform such acts, the expiry of the contract is no ground for terminating the contract and demanding eviction.

Lessees in personal houses also have the right of renewing their leases, but there again this right has been amended to give protection to the interests of the owner. That is why the law makes a distinction between these two cases. Where the tenant occupies premises under a contract concluded for a term of not more than a year, with the obliga-

tion to vacate the premises upon the expiry of the said term, he has no right of renewal of lease. This provision gives protection to the owner's interests and does not infringe on those of the tenant, and it is up to the latter whether or not to enter into a contract on these terms. Take a citizen and his family who lives in a big house. As the children grow up, they leave one by one, and a flat becomes vacant in the house. The owner's son, an undergraduate in another town, is due to return home the following year and obtain permanent employment. The father may lease the flat for a year, stipulating the tenant's obligation to vacate the premises within a year. If the lessee finds that a year's lease suits him, he concludes the contract; otherwise, he refrains from entering into such a contract.

When a citizen leases premises for a longer term, the lessee (as in houses belonging to the state and social fund) is entitled to renew the lease upon the expiry of that term. But if it is established that the premises are required for the personal use of the owner and members of his family, the lessee will be refused renewal, for then the law gives protection to the owner's interests as a consumer.

The provision that the tenant has an option to renew the lease in a house owned by another is designed to prevent speculation in dwelling space. That is why the law does not allow the eviction of a tenant with a view to leasing the premises to another on better terms. In this case the law gives protection to the interests of the lessee. But when it comes to satisfying the housing requirements of the owner or members of his family, preference is given to them. Thus, Mrs. A., whose husband was killed during the war, was left with two small children. In order to retain the house, she leased a flat in it to citizen B. She and her children moved into a small flat. A few years later, her children grew up and she found herself in easier circumstances. She demanded the eviction of citizen B., on the plea that she needed the premises for herself and her children. The court ruled in her favour.

When analysing the lease of dwelling space in houses belonging to citizens by right of personal ownership, it should be borne in mind that such disposal of dwelling houses is being gradually reduced, for living space is usually leased in old houses. New houses, which are being

built in increasing numbers, are usually erected with an eye to satisfying the needs of a family and no premises are leased in them.

The sale of property is another type of disposal. The owner may terminate the personal property relations by selling the property belonging to him. It is entirely up to him to do so. The terms of sale, the price, etc., depend on the agreement between the seller and the buyer. The citizen sells a thing he does not need. This is usually done through state commission stores, state second-hand stores, etc. The citizen also has the right to sell his thing to another.

There are additional conditions for the sale of dwelling houses. I said in Chapter One that a citizen or co-habiting spouses and their minor children may own only one dwelling house. But they may find themselves the owners of another dwelling house on lawful grounds. For instance, a man, his wife and children, live in a house acquired during the marriage which is the joint property of the spouses. The wife's parents, who lived in their own house, die, and the wife inherits another house. In that case, the spouses have the right to retain one of the houses of their choice in their ownership, but must sell, make a gift of or alienate in some other way the second house within a year.

No owner may perform the sale of a dwelling house more than once in three years, with the exception of the above-mentioned case, namely, the sale of a second house, which has passed into the citizen's ownership on lawful grounds. Thus, in the example given above, the spouses may make a choice of one of the houses, and must sell the other. But if the family decides, within the year, to take up permanent residence elsewhere and to sell their house, they will be performing the sale of a house twice within the space of three years. Since the sale of the house in the first instance was performed on statutory grounds, this does not deprive the owner of the possibility of selling his house in connection with the need that has arisen.

The rule that the sale of a dwelling house may be contracted only once in three years is designed to prevent speculation, but the law allows departures from this rule on noteworthy grounds. The civil codes of most constituent republics (Estonia, the Ukraine, Kazakhstan, Armenia, and Byelorussia among them) lay down that the alienation of

a dwelling house by a citizen more than once in three years may be allowed for valid reasons, with the permission of the Executive Committee of the local Soviet. For instance, citizen A. lives in a house belonging to him by right in personal property. As his family grows, he finds that the house is too small. Accordingly, he sells it and buys another one, into which he and his family move in. A year later, he is offered a job in another town. In that case he is allowed to sell the second house, although this will be his second sale in three years. It is the task of the Executive Committee of the local Soviet to establish the facts, to make sure that the sale is not of a speculative nature.

The civil codes of the constituent republics adopted between 1922 and 1924 prohibited the alienation of a dwelling house more than once in three years. This rule has been firmly established in practice and (together with other means of legal and social influence) has helped to secure the consumer nature of the right of ownership in a dwelling house and has prevented speculation.

A person has the right to dispose of his property by means of exchange. Contract for exchange involves the exchange of one piece of property for another. Thus, a citizen resident in the city of Alma Ata moves to take up a permanent job in Tashkent. A citizen, resident in Tashkent, decides to move to a more mountainous locality for reasons of health. Each of them is the owner of a dwelling house. They have the right to perform an act of exchange, and, as in the case of contract for sale, the price and other terms depend on agreement between them. It is up to the parties to the contract to decide whether the property is of full value, or whether one of the parties is to give the other compensation in money or in some other form. The same rules apply to contract for exchange as to contract for sale. Each of the parties to contract for exchange is deemed to be a seller of the property he transfers by way of exchange, and a buyer of the property he receives.

The owner may dispose of his property by conveying it gratuitously under a contract of donation. Under such contract, it is the owner's will to make the gratuitous transfer that is ground for the conveyance of title. Say, parents wish to give material assistance to their children or vice versa, a possible aim being the better use of their property. Take the

case of a man, who has no musical talent, and who inherits a grand piano. One of his friends has a musical child. The owner may make a gift of the piano to the child. There are frequent reports in the Soviet press of citizens who give valuable collections of paintings, books or other things to libraries, museums, or scientific institutions to allow as many people as possible to enjoy them.

Under Soviet law, contract of donation is deemed concluded at the moment the property is transferred, until when title continues to be vested in the original owner. A promise, even committed to writing, is not a contract. Thus, contract of donation becomes effective only on the transfer of the thing stipulated. Since donation is a gratuitous transaction, no one can be bound to perform it, a proposition which is confirmed in practice.

Thus, Mrs. A., wishing to divorce her husband, who had abandoned the family and had gone to live with his mother, had promised a relative of hers the gift of her furniture. However, the spouses patched up, the husband returned and the family obviously had need of the furniture. It is clear that in the circumstances the performance of the promise to make a gift of the furniture cannot be demanded.

It is another matter when, on the strength of the promise of a gift, the person concerned has incurred expenses. Thus, Mrs. V., a resident of Moscow, owned a small country house at the sea-side, where she used to spend the summer. She was advised by her doctors that for health reasons she was not to go to the sea-side. Mrs. V. promised to make a gift of the country house to a relative, whose domicile was in the area where the country house was located. She sent him official notice to that effect. The man in question carried out some repairs to the country house. The following year, Mrs. V.'s health improved considerably, and she decided not to transfer the house into her relative's ownership. In the event it was recognised that she had an obligation to compensate him for the cost of the repairs, the ground being not her failure to honour her promise, but the owner's obligation to compensate the cost of maintenance of the property where such cost has been defrayed by another.

The law makes the reservation that the citizen's gift of property to a state, co-operative or mass organisation may

be conditional on the use of the said property for a specified social purpose. Thus, Mr. and Mrs. B. owned a large and comfortable house in which they lived with a big family. As their children grew up, they left to set up households of their own, and the two owners were left alone. They found the house much too big for the two of them. They made a gift of the house to a nearby sugar refinery, with the proviso that it be used as a crèche for the children of its workers. The management of the refinery, once it has accepted the gift, is not free to put the house to other use. It often happens that the owner of a collection donating it to a museum makes special provisions for its display and safekeeping as an entity, etc. When a contract of donation contains specific provisions and the recipient accepts the gift, he is under an obligation to abide by its terms.

The possibility of specifying in a contract of donation the use of the property for a specific social purpose is allowed by the law only when the property is donated by a citizen to a state, co-operative or mass organisation (Article 256 of the Civil Code of the RSFSR and corresponding articles of the civil codes of other Soviet republics). It follows that contract of donation between citizens must be unconditional. In transferring the right in property the donor has no right to restrict this right for the donee.

The alienation of a dwelling house on condition of maintenance for life is one of the diverse legal forms of disposal of property by the owner. This is relatively rare in urban practice, but is of some importance in the farm lands. The Soviet state takes good care of the old and the disabled. All working people—industrial and office workers and collective farmers—receive pensions upon the attainment of a specified age (60 years for men, and 55 years for women, with lower age limits for hazardous occupations), or in the event of total or partial disablement. Pensioners receive assistance in cultural services and holiday facilities; they are entitled to receive all special types of treatment free, etc. There are homes for the aged and the disabled, where skilled care and various special conveniences are provided. However, in most cases, the aged and disabled prefer to live at home. It often happens that an aged or disabled person has a good house and the necessary household furnishings and effects, but is himself unable to continue

as a householder, and requires special care and assistance. Some old people do not require care or assistance but want company.

The civil codes of the Union Republics contain rules regulating the alienation of a house on condition of maintenance for life. Under such a contract, one party, who has been disabled because of age or health, transfers the house belonging to him to the other party, in return for which the acquiring party undertakes to provide the necessary material supplies in kind (in the form of living quarters, food, care and assistance). The relations this gives rise to are of a specific nature. In the life-time of the aged or disabled person, who has transferred the house, the alienee is not entitled to dispose of the house without the consent of the alienor.

According to most of the civil codes (among them those of the RSFSR, Byelorussia, Estonia, Armenia, Latvia and Lithuania), contract for alienation of a house on condition of maintenance for life lapses in the event of the death of the alienee, and the house reverts to the alienor. The civil codes of the Ukraine, Uzbekistan and several other republics provide for the possibility of the obligations under such a contract passing to the heirs of the deceased alienee. But then the heirs have the right to reject the contract, in which case the house reverts to the alienor. The question may arise as to whether or not such a decision is one-sided, since the right of rejection belongs only to the heirs. The fact is that the disabled or aged alienor is in all cases entitled to demand the annulment of the contract where the alienee fails to perform his obligations or to provide due performance of them. This right belongs to the disabled or aged person during the entire term of the contract. Consequently, if the heirs should fail to perform or to provide proper performance of their obligations in the care, assistance and maintenance of the aged or disabled person, the latter has the right to demand a termination of the contract.

The said contract can be annulled on the demand of the alienee where, because of circumstances beyond his control, he is incapable of providing the alienor with the maintenance agreed upon. The alienee is entitled to demand the rescission of the contract also in the event the alienor has fully recovered (which, of course, does not apply to aged

persons). In the event of a rescission of contract for alienation of a dwelling house on condition of maintenance for life, the house reverts to the alienor.

This type of contract has its specific features because it is largely a personal relationship, involving not only property but also such important aspects of human relations as sympathy, care, etc. Its name shows that only a dwelling house can be its object. This is due to the nature of the relations involved, for the key element there is the cohabitation of the two parties, to enable the alienee to care for the disabled or aged alienor.

Another form of disposal of property is pledging it as collateral security. In the USSR a pledge is regarded as a means of securing the performance of an obligation. In practice, pledge is never used in relations between citizens. Although there is no special statutory bar, the whole tenor of relations between citizens, the practice of decades and the moral standards of socialist society run counter to the idea of pledge in relations between citizens. Relations involving pledge with the participation of citizens occur only in the following two instances.

When a citizen obtains a bank loan to build a dwelling house, the building is pledged to the bank to the extent of the unredeemed loan, but this does not prevent the owner from using the house. The only limitation is that the owner may not perform a transaction to alienate the house without the bank's consent until the loan is paid off. Otherwise the owner exercises full rights in the possession and use of his house. In the event of there being a need to alienate the house, this can be done with the bank's consent. Say, a citizen has built a house and, without having redeemed the whole loan, desires to take up permanent residence in another town. With the bank's consent, he may sell the house in order to pay off the rest of the loan, or with the proviso that, by agreement, the new owner assumes the remaining part of the loan. In the event the loan remains outstanding, the bank has the right to sell the house by public auction, cover the outstanding part of the loan from the proceeds, and refund the rest to the original owner.

However, for many years now there have been no cases of the public auctioning of houses because of failure to pay

off bank loans. Building loans are granted on easy terms; individual builders are given assistance by their establishments and by organisations engaged in the promotion of housing construction, so that there are in practice no cases of public sale of houses in pledge.

The pledging of things in pawnshops is the second instance of pledge relations involving citizens. This is not a common practice either, and some towns and republics have no pawnshops at all. Where they exist, citizens may obtain cash loans by pledging their personal things. The pawnshops are duty bound to provide proper safekeeping for the things and to insure them at their full value.

CHAPTER FIVE

PROTECTION OF PERSONAL PROPERTY

Great importance attaches to the protection of personal property in the USSR. In Chapter One I described the aims and purposes of the legal institution of personal property. In assigning to its citizens that part of the social product which is earmarked for personal consumption, socialist society is concerned in assuring each of its members of the possibility of exercising disposal of his property to satisfy his needs in accordance with his tastes, habits and inclinations. Society has a stake in the strict observance of the established system of distribution, to enable each citizen to exercise disposal of his share of the social product. This is also in the interests of each member of society receiving his share under the principle of remuneration according to work or on some other ground established by socialist society (see Chapter One). This, like many other facts, reflects the harmony of social and personal interests under socialism. Personal property is protected not only in the interests of each owner, but also in the interests of society as a whole.

Personal property is the principal means whereby each makes use of the social product allotted to him to satisfy his material and cultural requirements. That is why the protection of personal property is at the same time protection of the existing system of distribution. It provides the conditions for the free use by each citizen of the social product assigned to each for the satisfaction of his requirements.

The protection of personal property is ensured by the whole system of social relations under socialism. Socialist society makes a special effort to protect and strengthen

the personal property of citizens. It has created objective conditions enabling citizens to take care of their own and others' personal property. However, some people still refuse to do an honest day's work, and prefer to poach on the personal property of others, thereby encroaching on the socialist system of distribution of the social product. This system is also violated by those who are negligent in respect of the personal property of others, a fact, which deprives the owner of the possibility of making due use of his property.

The Soviet state takes active steps to protect and consolidate the personal property of citizens. This aspect of the state's activity, designed to strengthen the socialist system of distribution, is of great educational significance. It promotes the operation of material incentives, which induce men to work better in the socialist economy, and trains all citizens to respect the property and rights of other citizens.

The concern shown by the socialist state in protecting the personal property of citizens, to enable them to satisfy their material and cultural requirements, and the lofty humanism of Soviet law are expressed in the fact that when the personal property of a citizen is attached by a court decision the things which are necessary for the satisfaction of the owners' material and cultural requirements are exempt. There is no attachment of property at all where the claim does not exceed the portion of the monthly wages or other earnings, pension or scholarship, which may be attached (Article 368 of the Code of Civil Procedure of the RSFSR and corresponding articles of the codes of civil procedure of other constituent republics). When a debtor's property is attached to compensate for damage caused by him, for recovery of payments due, etc., the food, clothes, household articles and utensils required by the debtor and his dependents and the necessary quantity of cattle and poultry are exempt. Nor does attachment extend to his dwelling house and subsidiary structures (for persons whose main occupation is farming) where the debtor and his family permanently reside in it. The only exception to the rule is the recovery of a debt under a loan granted by a bank for the construction of a dwelling house, but, as I have already said, such cases are extremely rare in practice.

The family furniture and all the children's things are all exempt from attachment. When a citizen's main occupation is farming, the foodstuffs required for his family until the new crop, fuel, etc., are not subject to attachment either.

Nor does attachment apply to things, including books and aids, required for the continuation of a citizen's occupational pursuits. Thus, the pianist cannot be deprived of his piano. The share contributions to co-operative societies are likewise exempt from attachment.

This short enumeration shows to what extent the law gives protection to the right of personal ownership even where a citizen's property is subject to attachment on lawful grounds.

Personal property is protected not only by legal means but also through social influence. As in other sphere of activity of the Soviet state, public opinion plays a great part in protecting the personal property of citizens and teaching them to take care of it. The systematic educational work being carried on among the population, the activity of the comrades' courts, and the alerting of public opinion in combating offenders against the right in personal property are of great importance. But when public opinion fails to exercise the necessary influence, various legal means of protection come into play (i.e., the application of the rules of criminal, administrative and civil law).

The protection of personal property in criminal law consists in the state's laying down specified penalties for the various infringements of the right in personal property and ensuring their application. The criminal codes of the constituent republics contain a special chapter dealing with offences against personal property. The criminal code inflicts punishment for theft, especially in cases when it is a second offence or has been committed by particularly dangerous recidivists, for robbery, fraud, extortion, and wilful or careless destruction of or damage to the personal property of citizens. The application or threat of punishment to offenders against socialist law and order are designed to influence those who are immune to measures of social influence. They are made to respect the property of Soviet citizens and the system of distribution estab-

lished in socialist society. The criminal penalties for infringement on the personal property of citizens are implemented under the general rules regulating the application of criminal punishment.

Administrative protection of personal property takes the form of measures applied by state organs acting within their competence for the immediate restoration of the infringed right in personal property, such as return of the thing to the owner when it is found, or eviction of persons illegally occupying the premises of others. Thus, if a car is stolen from a garage, is used by the offender and is then abandoned, the militia take all steps to find it and return it to the owner. If a stranger enters the house of a citizen who is away and settles there without legal ground, he may be evicted in an administrative procedure (with the sanction of the procurator's office). In all such cases, the state organs concerned take steps immediately to restore the infringed right and allow the owner the full exercise of his rights.

However, administrative methods apply only where the offender has no ground for reference to his right. His reference to some legal ground gives rise to a dispute, and this must be examined by a court in civil legal proceedings. Of course, the reference should be more than a mere pretext: it should be a substantiated reference to law in force. It is possible that the offender may not actually have the right to which he refers. That is up to the court to establish, with due observance of all the rules of civil legal procedure. Thus, if the citizen who has moved into another's house without permission (the example given above) insists that he has an agreement with the owner and presents a written contract to that effect, the organs of the militia do not have the right to evict him; in that case the owner must go to court. The trial will show whether or not the defendant had the right to move into the house in question. For example, the court may find that the document was signed not by the owner but by a person who had no right of disposal of the house, or that the signature is a forgery, etc. Where a dispute arises, it is settled in a judicial procedure.

Protection of personal property under the rules of civil law consists in the state's ensuring the return of the prop-

erty to the owner or payment of compensation for the damage inflicted on the property.

In many instances civil and criminal methods of protecting personal property coincide: a criminal who has stolen the property of another suffers the criminal penalty provided for by law and is at the same time obliged to return the stolen property. If the stolen property is not intact, he must pay compensation for its value.

Civil legal methods of protecting personal property are of great importance because they are designed for the immediate protection of the owner's interests. In such cases, the owner's infringed property right is restored: either the property illegally taken away from him is returned or the damage inflicted on the property is compensated.

At the same time, civil legal (like other) methods of protecting personal property are of great educational importance. The obligation of the person infringing another's right in personal property either to restore the property he has taken or to compensate him for the value is an economic measure which is frequently a telling blow for the offender. This helps to protect and consolidate the personal property of citizens.

Civil methods of protecting personal property are highly diverse. The greater part of the rules of Soviet civil law may be used to strengthen and protect the right in personal property. Thus, the rules governing the validity of legal transactions (including contracts) are designed to give the fullest protection to citizens' property rights and interests, including the right of personal ownership.

The law recognises as invalid transactions concluded under the influence of fraud, coercion, or threat, or as a result of malicious agreement between the agent of one party and the other party, and also transactions the citizen has been forced to conclude in distress on extremely unfavourable conditions (Article 58 of the Civil Code of the RSFSR and corresponding articles of the civil codes of other constituent republics). Thus, Mrs. D., a young woman, lost her husband and child in a car accident, and was herself badly hurt. The shock, together with her poor state, made her decide to move to another town, and she sold her house to citizen V. The latter turned out to be a money-

grubber who took advantage of the circumstances and performed the transaction on highly unfavourable terms for Mrs. D.: the purchase price was considerably lower than the actual value of the house, and the buyer was allowed a long period of instalment payments. When Mrs. D. recovered, her fellow workers induced her to remain in her home town and keep her old job. Accordingly, she decided not to move. However, the house no longer belonged to her, and the proceeds of its sale were so meagre that she was unable to buy another one. On the initiative of the public, legal proceedings were started to invalidate the transaction, since it was performed in dire straits and on highly unfavourable terms for Mrs. D. In accordance with Article 58 of the Civil Code of the RSFSR, the transaction was declared void, and the house was returned to Mrs. D. Thus, the article of the law regulating the conditions of validity of transactions was used to protect Mrs. D.'s personal property.

Similar application can be made of the other rules in the civil code regulating legal capacity and legal ability, agency, the right of ownership and the law of obligation, and the several types of contract and transaction.

In addition to these general rules, Soviet law contains a number of rules designed for the immediate protection of the right in personal property. These fall into two main groups: 1) rules under the law of property, and 2) rules under the law of obligation. The distinction between them springs from the content of the relations between the parties and the different methods of legal influence applied.

Under the law of property, protection of personal property consists in restoring the infringed right of the owner: a thing illegally taken from the owner is returned, obstructions to the owner's use of his property are removed. These methods have the great advantage that they imply the preservation of the property relations existing before the infringement of the right. The infringed right is restored in kind. This is an advantage, but it somewhat restricts the sphere of application: rules under the law of property may be applied only where the thing which is the object of the right in property, the identical thing that has become the object of the infringement of the right in property, is available. Consequently, they can be applied only in respect

of individually defined things. They cannot be applied where the thing is not available or where its whereabouts are unknown. In such cases, the owner's rights may be protected only by rules under the law of obligation.

The law of obligation rules consist in compensating the owner whose property has been illegally seized or damaged for the value of the property or any deterioration thereof, in which case the owner's right is not restored, but the party aggrieved is compensated for the damage inflicted.

Some Soviet jurists consider that the right in personal property is protected only by rules under the law of property, for only they restore property relations.

However, protection of civil rights may be given not only by restoring the conditions existing prior to the infringement of the right and precluding the acts infringing the right, but also by recovering from the person infringing the right of the damages caused (Article 6, F.C.L., the Civil Code of the RSFSR and the civil codes of other constituent republics). Thus, compensation for the loss caused by destruction or damage to personal property also constitutes protection of the right of property.

There is close connection between the law of property and the law of obligation methods of protecting the right in personal property. In the course of judicial proceedings, in accordance with the concrete circumstances of the case, the court may apply the method of protection most suitable in the given case. Where the defendant has the property in question, but has used it in such a way that it cannot be withdrawn without inflicting substantial loss on the defendant, the court may bind him to pay compensation for the value of the property, instead of returning it to the owner in kind. Take the case of citizen F., who was planning to complete the building of his house and had stockpiled the necessary building materials. In his absence, these materials were stolen and sold to citizen K., who did not know and was not required to know that the materials had been stolen. Citizen K. used these materials (together with those he already had) to complete the building of his own house. Citizen F. demanded the return of his materials in kind. However, because the materials had already been used up and it was hardly expedient to break up the finished building, the court, in order to return the stolen

materials to the owner, ruled that citizen K. was to compensate him for their value.

It sometimes transpires in the course of judicial proceedings that the property which is being sought has been destroyed by the defendant or has left his possession in some other way. In that case, the court may alter the grounds for the action, and hand down a decision awarding not the thing but compensation for the damage inflicted on the owner.

Thus, the law of property and the law of obligation methods of protecting personal property are closely bound with each other, and during the examination of a dispute that method is applied which best meets the protection of the owner's interests and the legitimate interests of the other party.

Let us take a closer look at the law of property methods. The owner's right to demand and obtain his property from the unlawful possession of another is a basic and effective means of protecting personal (and other types of) property (Article 151 of the Civil Code of the RSFSR and corresponding articles of the civil codes of other constituent republics).

In the preceding chapter, I dealt with the fact that unlawful possession may be either in good or bad faith. Where the property is acquired by a holder in bad faith, that is, by a person who knew or was required to know that he was acquiring the property not from its owner, the owner is entitled to demand and obtain this property in any case. He is also entitled to claim the return or compensation of all the earnings that person has derived or ought to have derived during the whole term of his possession. Thus, collective farmer N., going away for a few months, left his cow with collective farmer G. Their neighbours were aware of this. One of them induced G. to sell him the cow. When the owner returned, he demanded that the "buyer" return the cow. The court looked into all the circumstances of the case and bound the "buyer" to return the cow to the owner and to compensate him for the value of the milk and other products which he had obtained during the time the cow was in his hands. The "buyer's" plea that his earnings were much lower was rejected by the court, because the law says that there is to be compen-

sation for the earnings which the holder in bad faith has derived or ought to have derived. If he has failed because of laziness or lack of due care to obtain the quantity of milk and other products he ought to have obtained, that is irrelevant to the amount of compensation he is to pay to the owner. In binding the holder in bad faith to compensate all the earnings he has derived or ought to have derived during the time of his possession, the law gives him the right to claim from the owner compensation for his expenses incidental to the property. In the case cited above, this is compensation for the cost of the cow's maintenance.

Where the property has been acquired for value from a person not entitled to alienate it (of which fact the acquiring party did not know and was not required to know), the holder in good faith receives the title to the property and the owner loses it. The law lays down exceptions only for those cases where the property was lost by the owner (or by a person into whose possession it had been conveyed by the owner), or was stolen from either, or in any other way withdrawn from their possession without their consent. In such cases the person acquiring the property in good faith does not become the owner, but is deemed to be a holder in good faith. The owner retains his title and may recover his property. He is also entitled to recover all the earnings the holder in good faith has derived since the time he learned or ought to have learned of his unlawful possession. When this moment cannot be established, the day on which the holder receives notification of the owner's suit for return of the property is deemed decisive for establishing the date from which the holder in good faith is bound to return the earnings to the owner.

Consequently, the law attaches essential importance to the owner's will and consent. Where the property has left his possession without his consent, he retains his title to the property and may demand and obtain it from anyone, including a holder in good faith. Where the property leaves the owner's possession with his consent, the owner loses his title, while the holder in good faith who has acquired the property for value becomes the owner.

What is the ground for this distinction? The law finds two citizens whose rights are equally protected: the owner of the property and the holder in good faith. There must

be a fair sharing of the material consequences between these two persons. Where the property leaves the owner's possession with his consent, the law gives preference to the holder in good faith. In fact, the behaviour of the holder in good faith is then quite faultless. On the other hand, the owner, by conveying possession of his own accord, has himself failed to protect his own property. Here is a typical example.

Citizen D., about to leave home for a long time, gives the key to his flat and permission to use it to a person whom he knows very little. This person turns out to be irresponsible and dishonest: in need of money, he takes a valuable fur coat from a closet and hands it in at a commission shop, where it is subsequently purchased by a Mrs. S. When the owner returns and finds out at the commission shop to whom the coat has been sold, he starts proceedings for its recovery. However, the court is quite justified in recognising Mrs. S. as the owner of the coat and in giving judgement against citizen D. That is a fair decision.

When Mrs. S. was purchasing the fur coat in the commission shop she did not know and was not required to know that the fur coat had been placed on commission by a person other than the owner, nor did the commission shop know or was required to know this. Citizen D. is responsible for the choice of person to whom he entrusts his property. If that choice is unfortunate, he himself bears the consequences. It should be borne in mind that citizen D. has also a means of protecting his interests. He is entitled to bring action against the person to whom he entrusted his property for the recovery of the value of the sold coat. In that case the rights of the owner are protected by the law of obligation, under which he files a claim against the person infringing his rights.

It is quite a different matter where the property has been stolen or has left the owner's possession without his consent. There the law gives preference to the owner's interests. A holder in good faith does not become the owner of the thing. The thing he holds must be restored to the owner, while the holder in good faith has a claim against the person from whom he acquired the thing. Thus, a car is stolen from citizen I. The thief changes the licence

plates and its colour and places it in a commission shop, where it was acquired by citizen V. The latter is a holder in good faith, but is not the owner. Since the car left the owner's possession without his consent, he retains title to the car. When he discovers his car, he has a right to demand and obtain it from the holder. In this instance, the owner's behaviour does not provide any ground for reproach; the property came into the possession of the holder in good faith as a result of the criminal act of another.

There again the interests of the holder in good faith are protected. He may bring action against the commission shop for the recovery of the amount he paid it. The commission shop is entitled to bring action against the person who sold the car. The adverse consequences are borne by the person or organisation that, in acquiring the property, knew or ought to have known of its criminal origin. It may be established that the commission shop, in accepting the car for sale on commission, failed to observe the regulations and check the seller's powers. The commission shop must return to the person who acquired the car in good faith the money he paid for the car, but it has a claim against the person who brought in the car for sale on commission. But if it should turn out that this person is unable to compensate the full value of the car, the adverse consequences are then borne by the commission shop.

The same situation arises where the thing is lost by the owner. Under the legislation in force, a person who finds a lost thing must immediately notify the person who lost the thing and return it to him. But if he does not know who lost it, he must notify the militia or the Executive Committee of the local Soviet of his find and hand it in. When a thing is found in an establishment, enterprise or a public transport vehicle, the finder must hand it in to an official of the organisation concerned. The appropriation of a find is an unlawful act. If as a result of this act the property is acquired by a person who did not know or was not required to know that he was acquiring the property not from the owner, he is deemed a holder in good faith but not the owner, since the relation is based on an unlawful act, the appropriation of a find.

There is also the general rule that a person who acquires a thing in good faith does not become the owner where

the thing was withdrawn from the possession of the owner against his will by other means. This general formulation is filled with concrete content in accordance with the circumstances of each case. The grounds may include conveyance of a piece of property as a result of fraudulent action by another person, conveyance performed under the influence of deception, etc.

Thus, the law provides equal protection for the rights of the owner and of the holder in good faith. The owner retains title when the thing has been stolen or lost, or has left his possession or that of another person in lawful possession of the property, specifically a person to whom the owner has assigned his property, without their consent. Thus, citizen S., going on vacation, left an expensive camera with a neighbour from whose flat the camera was stolen. It was later discovered, when a person tried to place it on sale in a commission shop. Action for recovery of the camera was brought by the person with whom the camera was left for safekeeping, and when the owner returned, the thing was handed back to him.

We have been discussing the rights of a holder in good faith who has acquired the thing for value. Where the property was acquired gratuitously from a person who had no right to alienate it, the owner is entitled to demand and obtain the property in all cases. Thus, citizen A., going on a long business trip, left his motorcycle for safekeeping with citizen P. The latter gave this motorcycle as a present to a lady-friend, hoping to settle the matter with the owner somehow upon his return. The lady, to whom the motorcycle was given and who did not know and was not required to know that the thing was given to her as a gift by a person who had no right to alienate it, did not become the owner although she had acquired the thing in good faith. The owner is entitled to demand and obtain the motorcycle from her.

This distinction rests on the fact that where acquisition is gratuitous, the return of the property does not affect the property interests of the acquiring party. When the property is returned, there is need to provide protection for the rights of the person in good faith who has spent money on acquiring the property. There is no such need in gratuitous acquisition.

There is special provision in respect of money and bearer securities, which cannot be recovered from any holder in good faith. They can be recovered only from a holder in bad faith. The ground for this exemption from the general rule is the nature of money and bearer securities, as objects of the right in personal property. Since they are also media of circulation, the possibility of withdrawing them from a holder in good faith would hamper circulation. Of course, if the money or the bearer securities are in the hands of a person who has obtained unlawful possession of them (who has misappropriated or stolen them), they are subject to withdrawal and return to the owner. But withdrawal from the possession of a holder in good faith would cause difficulties and hamper civil commerce.

The right in property may be infringed not only by the withdrawal of property from the owner, but also by the owner's being prevented from making due use of his property. For instance, two citizens own a house by right in common property. One of them occupies rooms with a single exit leading to the verandah. The other, who has two exits from his part of the house, bricks up the entrance to the verandah, thereby depriving the other of the possibility of using his premises. To protect the interests of owners in such cases, the law lays down the rule that the owner is entitled to demand the removal of all infringements of his right, even when they are not connected with deprivation of possession (Article 156 of the Civil Code of the RSFSR and corresponding articles of the civil codes of other constituent republics).

In this example, the owner using the part of the house with the single exit to the verandah is entitled to demand the reopening of the door to the verandah.

Action by owners to remove obstacles to the exercise of their rights not connected with infringement of possession (known as negatory) are of great importance. They serve to give protection to the basic purpose of the right in personal property, namely, its use for the direct satisfaction of the owner's requirements. Infringements of the right in personal property not connected with deprivation of possession may be diverse. Accordingly, the content of negatory suits depends on the nature of the offence as a result of which the normal use of property is hampered. Hence,

the decision of the court in each case is designed to remove the concrete obstacles and obstructions to the citizens' use of their personal property. There are two main types of plaints.

Sometimes the owner's plaint consists in the request for an injunction ordering the offender to refrain from performing specified acts which tend to hamper the owner's use of the thing, such as, the placing of a padlock on a garage used by several car owners. It should be noted that such suits are rare in practice, because these minor offences leading to disputes are settled by comrades' courts, or administratively.

In most cases, a negatory suit consists of the plaint to remove the consequences of an offence. Such suits are filed when, as a result of the unlawful acts of another, the owner is prevented from using his thing. Say, a citizen erects a garage on the very edge of his yard, thereby keeping the light out of the windows of his neighbour's house which give upon his yard. In this case the court orders the offender to remove the obstruction by his own efforts and at his own expense.

Thus, in the former case, the court ordered the defendant to refrain from acts hampering the owner in the use of his property, and in the latter, ordered the offender to perform certain acts designed to restore the owner's infringed rights.

But in both cases, the court exercised the important function of assuring citizens of the possibility of making normal use of their property.

Action aimed at removing obstructions to the use of property is known as action on the law of property, but it can be coupled with action for compensation of loss. For example, during the excavation of a pit for the foundation of a big new house, a pile of earth blocked the entrance to a house belonging to citizen Z. by right of personal ownership. In addition, his fence was broken and covered up with earth. In action filed by citizen Z. the court ordered the builders to clear the entrance to his house and restore the fence, or compensate him for the cost of a new one. In this case a claim under the law of property was coupled with one under the law of obligation.

These suits may be filed either by the owner or by per-

sons holding the property on lawful grounds. For instance, the demand to dismantle an annex erected by a neighbour on the edge of his yard and keeping the light out of the windows of a dwelling house may be made not only by the owner of the house but also by his tenant who lives on the premises in question. Action for removal of obstructions to the use of property may be taken by other persons in possession of the property on lawful grounds.

Action for removal of infringements of proprietary rights not connected with deprivation of possession are quite rare, for such disputes are usually settled by administrative agencies in their day-to-day activity. But where these fail to remove the obstructions and violations of proprietary rights, or where the alleged offender refers to his own right, the owner must go to court.

One form of protection of personal property is action for exemption of property from distraint, when the court orders the seizure of a debtor's property for subsequent sale to repair an injury done, repay a debt, or satisfy a claim filed on other grounds. Another's things may happen to be among those of the distrainee. In that case the owner of these things is entitled to take action for exemption of his property from distraint. The court, having satisfied itself that there is ground for the action, orders the exemption of the property from distraint. If the property has not yet been sold, it is returned to the owner in kind, otherwise he is compensated for its value in money. For example, citizen D., moving into a new flat, arranged to leave his piano for a time with the new tenant of his old flat. It so happened that the latter had failed to pay alimony to his children for a long time, and so had his property distrained to cover the amount due. The piano was also seized. The owner is entitled to take action for exemption of his property from distraint.

Of course, such action may not be taken to evade the law and help a person who fails to fulfil his obligations to conceal the property he owns. In all such cases the court makes a thorough examination of the concrete circumstances of the case. But whenever another person's right of ownership in the property has been established, action for exemption of the property from distraint is immediately executed.

Under the law of obligation the methods of protecting personal property are highly diverse and are designed to give protection not only to the personal property of citizens but to their proprietary rights and interests in general. But because of the complexity of the relations involved, it is impossible to distinguish among the provisions of the law of obligation those relating strictly to personal property. At any rate any rule designed to provide protection for proprietary rights may, in case of need, be used to provide protection for the right in personal property. I shall deal here only with the duty to compensate the damage inflicted on the personal property of citizens in case of a tort.

In accordance with the Fundamentals of Civil Legislation, injury caused to the property of a citizen is subject to indemnification in full by the person causing the injury (tort-feasor) (Article 88, F.C.L., Article 444 of the Civil Code of the RSFSR and corresponding articles of the civil codes of other constituent republics). Only injury caused by an unlawful act is subject to indemnification. But in some cases injury is caused by lawful acts, as during a fire, when a building has to be destroyed in part or in full to protect a larger territory from the flames. In such cases, no obligation to indemnify injury arises. The interests of the owner are satisfied by other means, chiefly, insurance.

The person causing the injury is absolved from indemnification, if he proves that the injury was not caused by his fault. For instance, a citizen throws a cigarette end into a dust-bin which is already full of paper. The cigarette end ignites the paper, and the fire spreads to a nearby fence. Responsibility for the resulting injury cannot be placed on the person who threw the cigarette end into the dust-bin, because his action did not involve either intent or negligence, for the fire arose by pure chance.

There are special provisions relating to injury caused by persons and organisations whose activity is connected with sources of increased hazard, such as railways, tramways, building sites, etc. They are obliged to repair the injury caused by the source of increased hazard, unless they prove that the injury was the result of *force majeure* or intent on the part of the injured person (Article 454 of the Civil Code of the RSFSR and corresponding articles

of the civil codes of other constituent republics). Thus, the owners of sources of increased hazard are obliged to repair the injury which has arisen accidentally. For example, a spark from a boiler plant starts a fire on the roof of a neighbouring house. In that case the enterprise—the owner of the boiler plant—must repair the injury caused by the fire.

The greater responsibility borne by persons and enterprises whose activity is connected with sources of increased hazard is designed to make them take the maximum precautions in their operations. They are obliged to do everything to minimise, as far as the current level of technology allows, the harmful consequences of such operations for other persons. If nevertheless the injury has been done, they are fully responsible for it and must make reparation. This rule is also aimed at providing the fullest protection for the property rights and interests of citizens.

The owner of a source of increased hazard is released from responsibility when the injury is the result of *force majeure*, which is taken to mean an extraordinary and uncontrollable event in the given circumstances, that is, an event that could not be anticipated or averted by any of the means available under the current level of science and technology. For example, a collective farm has erected a dike on a river and has taken all the necessary safety measures providing against the heaviest precipitations. But a flood washed away a dam upstream, so that the level of the water rose and flooded the houses around. Because a flood is a *force majeure*, the collective farm cannot be held liable for the injury caused by the flooding (in this case the victims of the flood are given assistance by the state).

The injury caused must be repaired in full. The court, in awarding reparation for injury in accordance with the circumstances of the case, orders the person liable for the injury to make reparation for it in kind (to supply a thing of the same kind and quality, to repair the damaged thing, etc.) or fully to indemnify the losses caused (Article 457 of the Civil Code of the RSFSR and corresponding articles of the civil codes of other constituent republics). Indemnification of loss means the obligation to make good the loss or damage to the property and also the earnings the

owner could have derived from the property but for the destruction or damage. Thus, the law presumes the obligation to make the fullest possible compensation of the injury caused.

I have listed only a few of the more common methods of protecting the personal property of citizens, but even this short enumeration shows the diverse and flexible methods used by the socialist state to give protection to the personal property of citizens and the importance attached to this matter. The socialist state does everything to assure its citizens of the free and unhampered possession, use and disposal of their property to satisfy their diverse and growing material and cultural requirements.

CHAPTER SIX

INHERITANCE OF PERSONAL PROPERTY

1. Basic Concepts of the Soviet Law of Succession

The right of inheritance is closely linked with the right in personal property. Article 10 of the Constitution of the USSR, which provides safeguards for the right to own personal property, also lays down the right to inherit personal property.

The content of the law of succession of personal property is the passing, after the death of a citizen, of the objects of consumption accumulated by him through his work in socialist society, to his relatives, dependants and persons and organisations to whom he may bequeath them. A citizen who has acquired his property by honest work in the socialist economy naturally wishes to make sure how and by whom his property will be used after his death. He may want his property to remain in the family and be used by his kith and kin. But he may also want his property to be used by some members of the family only and to prevent it from going to those members of the family who will be unable to exercise disposal of it in a fitting manner, and on whom the inheritance may have an adverse effect.

A well-known scientist, drawing up his will, limited the share of one of his sons to a relatively small portion, stating that the young man was not making an effort at school, and was not preparing himself for a career, so that the receipt of the inheritance could have a negative effect on him.

A citizen may want his property to pass to a state, co-operative or mass organisation to be used for a specified public purpose.

All of this shows the great importance for Soviet citizens of the law of succession. Soviet law allows a citizen

to make a testamentary disposition of his property, in case of death, as he sees fit. At the same time, the state provides safeguards for the interests of the family, especially minors and disabled members. The law of succession makes it possible to harmonise the interests of citizens making a disposition of their personal property with those of the family and persons materially dependent on them.

The inheritance of personal property is regulated by the Fundamentals of Civil Legislation of the USSR and Union Republics and the civil codes of the constituent republics. The Fundamentals lay down the basic general provisions for the whole of the country, and determine the grounds for succession, the heirs-at-law, who are heirs of the first turn, the order of succession and certain other general principles of hereditary and testamentary succession. The details are filled in by the civil codes of the constituent republics.

Most of the basic provisions in the constituent republics are identical, but they differ in the specifics arising from local conditions. Thus, the circle of heirs-at-law in the Uzbek Republic is wider than in most other constituent republics, which is due largely to the closer family ties maintained in that republic. I shall deal with other distinctions as I go along.

All relations of inheritance in the USSR are regulated by Soviet law, but a distinction is made between inheritance "by operation of law" and "under a will". It will be easily seen that the term "by operation of law" is used in a narrow sense: it does not mean any passing of property from a decedent to one or more persons, but the passing of a decedent's property to the person or persons specified by the law itself.

Every Soviet citizen is entitled in his life-time to make a disposition to his property, in case of death, by drawing up a will. The passing of the estate from the decedent to the persons and in the order specified in the will is known as inheritance under a will, or testamentary succession. Where the citizen does not make a disposition of his property in case of death or does so in an inappropriate manner (in breach of the statutory form or provisions for testamentary succession), the law itself establishes to whom and in what order the property is to pass after his death.

This is called inheritance by operation of law, or intestate succession.

Inheritance by operation of law is the most common type of succession in the USSR. It occurs in the cases where:

a) the decedent has not left any testamentary disposition;

b) the decedent has left a testamentary disposition which does not accord with the statutory form;

c) the terms of the testamentary disposition do not accord with the provisions of the law;

d) the testamentary heir has refused to accept the inheritance.

Thus, where a citizen fails to make a disposition of his property in case of death or where such a disposition, for some reason, may not be executed, the law itself lays down the order of succession.

Some persons make a disposition of only a part of their property. In the event, that part of the property passes under the will, and the rest, by operation of law. Thus, an artist leaves a will under which all his paintings are to go to the local picture gallery. This means that he made a disposition of only a part of his property, so that the inheritance is to take place both under his will and by operation of law: the paintings are to go to the picture gallery, and the rest of his property, to his heirs.

A testamentary beneficiary may turn out to be an heir-at-law as well, in which case he receives, apart from the property bequeathed to him, also a share of the property which descends by operation of law. For example, citizen N. bequeathes his personal house to his daughter, but makes no disposition of the rest of his property. Among his heirs, apart from the daughter, are two minor sons. The house passes to his daughter, the beneficiary named in the will, and the rest of the property, to his heirs-at-law. Because the daughter is also an heir-at-law, she is to receive, in addition to the house, one-third of the rest of the property inherited by operation of law.

Citizens who are alive at the moment of the testator's death may be his heirs. In addition, the law gives protection to persons conceived during the life-time of the testator but born after his death. The posthumous children of the decedent are heirs by operation of law; where inheri-

tance is under a will, other persons conceived during the life-time of the testator and born after his death may also be his heirs.

Thus, citizen A. dies, leaving his mother, a child and a pregnant wife. The heirs-at-law are his mother, his wife and his child and also the posthumous child.

A child unborn but conceived may be a testamentary heir. For instance, citizen B., a single man, on his death-bed, draws up a will naming as his beneficiaries his pregnant sister and the child she expects. If citizen B. dies before the child is born, that child is deemed to be an heir.

The laws of the constituent republics exclude from the succession persons who try to obtain the inheritance by unlawful acts aimed against the testator or any of his heirs, or against the execution of the testator's will. These are known as "unworthy heirs". *

Parents deprived of parental rights may not inherit from their children by operation of law. Nor can parents inherit from children, or adult children from parents, where they have wilfully neglected to perform their duties in providing maintenance for the decedent.

There are virtually no cases in practice of successors being debarred for the above-mentioned reasons. It is an extremely rare occurrence for anyone to try to obtain an inheritance contrary to the law, or wilfully to neglect filial or parental duties. Before anyone can be debarred from succession on these grounds, the circumstances must be most carefully verified and confirmed in judicial proceedings. Such confirmation in judicial proceedings is statutory (Article 531 of the Civil Code of the RSFSR and corresponding articles of the civil codes of other constituent republics).

2. Hereditary Succession

The Fundamentals of Civil Legislation name a circle of heirs-at-law of the first turn, among whom are the child-

* The Civil Code of the Ukrainian Republic (Article 528) formulates this rule in a narrower sense. It debars both from hereditary and testamentary succession persons who have made an attempt on the testator's life or have deprived either the testator or any of his heirs of their life.

ren (including the adopted children), the spouse and the parents (adoptive parents) of the decedent. As has been said, the posthumous child of the decedent is also an heir of the first class. Under the Fundamentals, legislation in the constituent republics may lay down the subsequent turns of the heirs-at-law. The heirs of each turn are entitled to inherit by operation of law only in the absence of heirs of the preceding turns, or where the inheritance is not accepted by them.

Among the heirs-at-law, specified in the Fundamentals of Civil Legislation, are persons unable to earn who were the decedent's dependants for not less than one year before his death. The Fundamentals do not determine the turn of these heirs, and in the presence of other heirs they take equally with heirs whose turn it is to take.

Most of the civil codes of the constituent republics specify heirs of the second turn, namely, the decedent's brothers and sisters, and his matrilineal and patrilineal grandparents. *

Let us examine these classes of heirs.

Among the heirs of the first turn are the decedent's own *children*, but not his stepchildren, unless they were adopted by the decedent, or are unable to earn and were the decedent's dependants for at least a year before his death. In that case, they do not inherit as his children, but as incapacitated dependants (see above). Adopted children are regarded as the decedent's own children, and they have the same inheritance rights in respect of the adoptive father and members of his family as his own children. But the adoption terminates the family ties between the adoptee and his blood relations, so that the adoptee and his issue do not inherit after the death of his parents and other blood relations. Similarly, the parents of the adoptee and other blood relations do not inherit after the death of

* The Civil Code of the Kazakh Republic establishes three turns. The second turn includes the grandparents on both sides, and also the decedent's brothers and sisters who are unable to earn. The third turn includes the decedent's able-bodied brothers and sisters. Thus, in contrast to the civil codes of most other constituent republics, that of the Kazakh Republic establishes the possibility of succession by law of the able-bodied brothers and sisters only in the absence of the decedent's grandparents, and his disabled brothers and sisters, or in the event of their refusal to accept the inheritance.

the adoptee. Consequently, the adoptee and his issue, while inheriting after the death of the adopter as his own children, do not have any inheritance rights to the property of adoptee's parents and other blood relations.

The *surviving spouse* is among the heirs who inherit in the first turn, with the spouses having absolutely equal rights of inheritance. That is why the law does not speak of the husband or wife, but of the spouses. But there is this to be borne in mind: where one spouse survives the other, a separation of the marital community property must be made before the hereditaments are determined (see Chapter Two). The decedent's share must be separated from the family property. It is the personal property of the decedent and his share of the family property that can descend to his heirs. The surviving spouse is an heir to the property on a par with the other heirs of the first turn.

Take the following example. Citizen A. is survived by his wife, his mother and his son. Before his marriage citizen A. had savings, which he kept at a savings bank. During the marriage, the family acquired a country house, furniture, a car and other articles, and also deposited money at the savings bank. The first thing to be done upon the death of citizen A. is to determine the hereditaments. These include, the savings account deposit made before the marriage, and one-half of the property earned during the marriage. This property passes to the wife, the mother and the son. Thus, in addition to her share of the joint property, the wife, as her husband's heir, is entitled to a share of the estate.

In the event of a divorce, the spouses are deemed not to be in marital relations with each other and have therefore no inheritance rights to the estate left by either.

The decedent's *parents* are among the heirs of the first turn. This applies equally to the father and to the mother. The decedent's adopters have the same inheritance rights as if they were his parents.

The civil codes specifically state that the posthumous child of the decedent is included among the heirs of the first turn. This means that in determining the number of heirs and, consequently, the size of the share, the expected child must also be counted. Should the child be subsequently still-born, his share passes to the other heirs. If

twins are born, the portions must be redistributed accordingly.

The decedent's brothers and sisters are heirs of the second turn. The law does not make any distinction between brothers and sisters of the whole blood (born in one marriage and having a common father and mother) and of the half blood (having a common father but different mothers), or between uterine brothers and sisters (born of the same mother but by different fathers). Brothers and sisters inherit equally from each other.

Stepchildren do not inherit from each other because they are not consanguineous. The relations between them arise in the following way. A widower or a divorced man, who has a child from the first marriage, marries a widow or a divorcee who also has a child from the first marriage. These children live in the same family but there are no blood ties between them, they have different mothers and fathers, and cannot, therefore, have any inheritance rights based on consanguinity in respect of each other.

Here is an example of how brothers and sisters inherit. Citizen O., who has two daughters, Nina and Valentina, from the first marriage, marries Mrs. B., who has a son, Ivan, from her first marriage. From their marriage is born a son, Vasily. How do these brothers and sisters inherit? In the event of Nina's death and in the absence of her heirs of the first turn, her estate goes to her sister of the whole blood, Valentina, and her brother of the half blood, Vasily. Ivan (her stepbrother) is not an heir. In the event of Ivan's death, his heir is Vasily (his uterine brother), but not Nina and Valentina (his stepsisters). After the death of Vasily, and in the absence of his heirs of the first turn, his estate passes to Nina and Valentina, his sisters of the half blood, and Ivan, his uterine brother.

Persons who are unable to earn and who were dependants of the decedent for at least one year before his death constitute a special category of heirs-at-law. They are such irrespective of consanguinity and may include, for instance, a minor brother, a nephew, an aged aunt, an old nanny who has been living with the family for years, or a friend. The essential fact is that the person is unable to earn and that he was dependent on the decedent for at least one year. Nor is it material whether the dependant

lived with the decedent or not. Say, the decedent provided maintenance for a year before his death to an incapacitated aunt living in another town to whom he made regular remittances of money, her main source of livelihood. On the strength of this fact, the aunt is an heir-at-law. The important condition is that the dependant is unable to earn and was supported by the decedent for at least one year before his death.

No special turn is established for this category of heirs. In the presence of other heirs, they take with them. For example, citizen S. leaves a wife, a mother and an aged aunt who was his dependant, a brother and a sister. The wife and the mother are heirs of the first turn, and the aged aunt takes with them. The brother and the sister do not take. Consequently, the decedent's incapacitated dependant takes in the first turn. Here is another example. Upon the death of citizen B., there remain his grandmother, sister and a minor nephew who was his dependant. In the absence of heirs of the first turn, those of the second—the grandmother and the sister—take. But the minor nephew, who was the decedent's dependant, takes with them. In this case, the dependant who is unable to earn, inherits with the heirs of the second turn.

This status of incapacitated dependants is designed to secure a definite portion of the estate to persons who were dependent on the decedent, while protecting the interests of the other heirs. Under this arrangement, the dependant who is unable to earn inherits in all cases, but does not take anyone's turn. This category of heirs is now rather rare, because incapacitated old people usually have a pension, while minors are maintained by their parents. But some cases do occur. For instance, Mrs. A., following the death of her sister, left her job to keep house and take care of her sister's small children. She became a dependant of her brother-in-law. She was quite old when her brother-in-law died, and was therefore, a statutory heir, on a par with his other heirs.

In some circumstances, the decedent's grandchildren and great grandchildren are heirs-at-law. They are recognised as heirs-at-law where a parent who would have been an heir is no longer alive by the time of the opening of succession. In that case they inherit equally that portion

which would have been the statutory share of their deceased parent. This is known as inheritance by right of representation. The grandchildren and great grandchildren are regarded as representing the heir who has died and whose property should descend to his children.

Citizen M. had two daughters and two sons. One of his daughters died, leaving two children. One of the sons was killed in the war, leaving a child. After M.'s death the inheritance portions were divided between them as follows: the daughter, the son and the child "representing" the other son received a quarter of the estate each; the two daughters of the deceased daughter received the quarter which was to have come down to them from their mother.

It sometimes happens (though very rarely) that not only the son and daughter but the children of the deceased son or daughter, that is, the grandson or granddaughter, die before their parents. In such cases the decedent's great grandchildren are his heirs by right of representation. All the great grandchildren together inherit that portion which would have been their parents'.

Under the civil codes of most constituent republics, inheritance by right of representation is possible only in respect of direct descendants, that is, grandchildren or great grandchildren. *

Where an heir about to take dies after the opening of succession, without having accepted it within the specified period, the right to accept the portion due to him passes to his heirs. For example, Mr. A. had two daughters and a son, who were to take after the death of their father. However, the son died without accepting the succession. In that case, the right to accept the succession after his death passes to his heirs. Here it was his wife. This is known as inheritance transmission. The wife of citizen A.'s son is not an heir of citizen A. She cannot inherit by right of representation, because it belongs only to direct descendants. Her claim rests on the fact that the right of accepting the inheritance has been transmitted to her. In-

* The Civil Code of the Uzbek Republic (Article 580) provides for inheritance by right of representation for the decedent's nephews and nieces. Where any of the decedent's brothers and sisters dies before the opening of succession, the children inherit equally that portion which would have been the statutory share of their deceased parent.

heritance transmission is applied both in hereditary and in testamentary succession.

A principle of the Soviet law of succession is that the heirs-at-law who are called to take have equal portions. Thus, a citizen dies, leaving a wife, a mother, an aunt who is unable to earn and who was his dependant for a number of years, and two children. In the absence of any testamentary disposition, each of these persons receives one-fifth of the estate. There are no privileges for any of the groups of heirs who take in the same turn. But this principle of the equality of inheritance portions does not mean that each heir receives the same share as the rest in all cases. This is due to the possibility of inheritance by right of representation and through inheritance transmission.

Citizen V. leaves as his heirs-at-law his wife, his mother, his son and his daughter. Before the decedent's death, his second son was killed during the war, leaving a wife and three children. A few days after the decedent dies, his daughter, who has not yet accepted the succession, dies too. The daughter has an incapacitated mother-in-law who was her dependant over the last few years, and a child. What are the inheritance portions of each of these heirs? Altogether, there are five equal inheritance portions: those of the decedent's mother, his wife, his daughter who died after him, his son and the second son killed in the war. However, the portions actually received by the heirs in this case will not be equal. The mother, the wife and the son will each receive one-fifth of the estate. The children of the son killed in the war, who inherit by right of representation, will each receive one-fifteenth of the property (one-third of one-fifth), that is, equal portions of that portion which would have been their father's had he been alive. The child and the mother-in-law of the daughter who died after the decedent without accepting the succession receive one-tenth of the estate each, that is, equal portions of that portion which would have been the deceased daughter's. Thus, Soviet law proceeds on the principle that inheritance portions are equal. The portions of the heirs may turn out to be smaller where they inherit by right of representation or through inheritance transmission.

Where one or several heirs-at-law refuse to accept the

succession, without indicating in whose favour they refuse, their portion is divided equally among the other heirs. Thus, after the death of citizen M., there remain his wife and four children; three children are adults and able-bodied, while the fourth is a minor. All five are heirs-at-law who take in the first turn. Each of them is to receive one-fifth of the estate. However, the adult able-bodied children refuse to accept their portion of the estate. In that case, the remaining heirs, the wife and the minor, receive one-half of the estate each, instead of the one-fifth they would have had if all the heirs were taking.

The portions of the heirs-at-law are increased where the testator leaves a will disinheriting one or more heirs, without specifying to whom their inheritance portions are to go. The portions of the disinherited heirs are then distributed equally among the remaining heirs-at-law.

Soviet law contains special provisions for the inheritance of furniture and household effects. These things pass to the heirs-at-law who lived with the decedent for at least one year before his death, regardless of their turn or their inheritance portion. Thus, citizen S. has two adult children, each of whom has a family of his own and lives elsewhere, and a sister who lives with him. When he dies, the children have the right to equal portions of his estate. The sister, an heir of the second turn, does not take, but she receives the furniture and the household effects, because she was living with her deceased brother. This provision is designed to protect the interests of heirs living with the decedent and to prevent the break-up of established households.

3. Testamentary Succession

Hereditary succession is more common in the USSR, because of the very simple formalities it involves, and also because the rules regulating it are in most cases in complete accord with the ethics, the concept of law and the personal interests of citizens. However, the general rules laid down for inheritance by law do not cover all the possible cases, the complex relationships, interests and requirements involved. The gap is filled by an individual

act expressing the will of the testator, namely, his testamentary disposition, or will.

The law gives equal protection to inheritance by law and inheritance under a will. The will is a disposition of a person's property, in case of death, drawn up in accordance with the statutory form. A will may be drawn up only in accordance with the requirements of the law, otherwise it is deemed invalid in whole or in part (that part which does not meet the requirements of the law). Through a will a citizen may make a disposition of his personal property. The law assures citizens of freedom in disposing of their property, but harmonises it with the interests of minors and incapacitated heirs by establishing a statutory portion for them in the estate. Every citizen is free to bequeath all his property or a part of it to one or more persons who may or may not be his heirs-at-law. He is also free to bequeath his property to the state, or to a state, co-operative or mass organisation. Thus, a citizen may leave a will under which all his property goes to his wife, despite the fact that he also has adult children, able-bodied parents, brothers and sisters. Under a will a citizen may leave all his property to a distant relative, despite the fact that he has heirs who are closer relatives. All that is up to him.

Citizen A. lives with his family in a town where he has a good flat. He owns a house in the countryside in which a distant relative lives. In his life-time, citizen A. was in the habit of spending one or two summer months in his country house. His family preferred to spend their vacations elsewhere. Accordingly, citizen A. may bequeath the house to the person who lives in it. The members of his family earn, are sufficiently well provided for, and have no need of the house.

By his will the testator may disinherit one or several or all his heirs-at-law. This is sometimes necessary for character-building reasons, as where the testator believes that the receipt of the inheritance may have a negative effect on his adult and able-bodied children.

Thus, Soviet law allows citizens great freedom in making a disposition of their property in case of death.

The only exemption from this rule is the statutory portion of minors and heirs who are unable to earn. The stat-

utory portion is established not for all minors and incapacitated heirs, but only for a) the testator's children; b) the spouse; c) the parents; and d) dependants. Regardless of the content of the will, minors and disabled persons among the heirs listed above inherit at least two-thirds of the portion which would have been theirs under intestate succession. This portion is known as *portio legitima.*

Citizen S. has three children, two of them adults and one, a minor daughter. He has no other heirs. He is free to make a disposition of his property as he sees fit, but the minor must have her legitimate portion. In this case it is established as follows. In the event of there being three heirs-at-law, she would have been entitled to one-third of the estate. Two-thirds of this portion (two-ninths of the estate) is hers, regardless of the testamentary disposition. Where the testator has only one heir-at-law with the right to a legitimate portion, the testator may make a disposition of one-third of his estate.

Like a number of other rules of the Soviet law of succession, this one is designed to protect the interests of minors and incapacitated heirs.

However, an heir may die before the succession is opened or accepted. The testator may make provision for such an eventuality by naming an alternate heir in his will. Then, if the heir specified in the will dies before the opening of the succession, the right to accept the succession does not pass to his heirs but to the persons named in the will. Where the testator makes a disposition for only a part of his property, the rest passes to his heirs-at-law under the general rules.

A will may order an heir to perform some obligation in respect of one or more persons. This is known as a legacy. The legatees are entitled to demand such performance. This right, like any other civil right may, in case of need, be safeguarded by legal action.

The legatees may or may not be the testator's heirs-at-law. Professor N., survived by his wife and two adult able-bodied children, bequeathes all his property to his wife, with the proviso that she keep intact his library, which is a part of the estate, and to which one of his sons and a pupil who is no relation at all are to have access. This order is binding. Once she accepts the inheritance, the wife

is under an obligation to allow the named persons to use the library, otherwise they may seek protection for their interests in the court. Should the wife wish to sell the books in small batches, the legatees are entitled to demand the observance of the terms of the will.

The law provides for the most common type of legacy, namely, the imposition on the heirs, to whom a dwelling house passes, of an obligation to allow another the use of the house or a specified part of it for life. For instance, Mrs. A. bequeathes all her property, including a house, to her husband, ordering him to make available two rooms for the permanent residence of a relative of hers. This order is binding on the husband if he accepts the inheritance. Should he wish to sell the house at some future date, the right of occupation for life continues in force even under the new owner.

The testator may also impose on the heir an obligation to perform certain acts designed to meet some public need. Thus, a scientist who has made a collection of considerable value may bequeath it to his heir who works in the same field, ordering him to give anyone specialising in the field access to the collection. An heir who has been bequeathed a collection of paintings may be ordered by the testator to allow all art students to inspect the collection, and so on.

The obligation to fulfil a legacy is unconditional. Where the heir considers the obligation onerous, he may refuse to accept the inheritance. But if he accepts it, he must fulfil all the obligations imposed on him in the will.

Property may be bequeathed to the state, or to a state, co-operative or mass organisation. A will frequently states the purpose for which the property may be used. Thus, in bequeathing a house to the state, the testator may specify that it should be used as a crèche. The bequest of a savings account deposit to the state may be made on the proviso that the money is used to buy presents for children in some boarding school, etc. These orders are likewise binding.

The testament gives expression to the citizen's will as he makes a disposition of his property in case of death. Soviet law starts from the proposition that a will must be executed in strict accordance with the testator's intention,

save where the will is, wholly or in part, in contradiction with the law.

Take a case where the whole of the will is at variance with the law. A citizen leaves all his property to his wife, provided she does not re-marry. This provision is contrary to the law because it is designed to restrict the wife's legal capacity. Accordingly, the provision is ruled invalid, and the wife inherits on a par with other heirs, under the general rules. But such unlawful provisions are extremely rare, and when a will is drawn up, the notary public refuses to certify it, if it contains provisions which are contrary to the law.

It is quite another matter when the will contains minor points which clash with the law: these are ruled invalid, leaving the rest of the will in force. This makes it possible to co-ordinate the testator's will with the requirements of the law.

Say, a citizen has made a testamentary disposition of his property, leaving it to an able-bodied wife and a sister. But when the estate is assessed, it turns out that the portion of a son from the first marriage who is an invalid is smaller than two-thirds of what should have been his portion under intestate succession. In that case, the portions which pass to the wife and the sister are reduced in equal proportion to make up the legitimate portion of the heir who is unable to earn. On all other points the testator's will is executed in full. Consequently, the possibility of declaring a will partially invalid is established for the purpose of bringing the execution of the testator's will into line with the demands of the law.

The validity of a will in terms of content, that is, whether it can be executed in full or in part, is determined in accordance with the circumstances at the opening of succession, that is, after the death of the testator.

Mrs. M., who has a mother and an able-bodied daughter, leaves a will under which all her property is to go to the mother. But by the time of her death, the situation has changed. The daughter is involved in a car crash and becomes an invalid. This means that she is to have a legitimate portion, so that the mother will not receive the whole of the property but only two-thirds of it; one-third is to go to the incapacitated daughter. (Since there were two heirs,

the incapacitated daughter should have received one-half; but her legitimate portion is two-thirds of one-half.)

Take another case. At the time the will is made, the testator has heirs who are minors. He bequeathes all his property to his wife, without providing any portion for these minors. The will cannot be executed fully at the time it is made, because the minors must have their statutory portion. However, by the time succession opens, all the heirs attain majority and earn, which means that the testator's will can be executed in full.

Thus, unless the will contains provisions which are in direct contradiction to the law, its validity is not decided when it is made. It is the usual practice to warn the testator that, with things as they are, some points of his will, if any, cannot be executed.

The testament contains the testator's will, which is expressed in his life-time, but is executed after his death. The law tries to create all the conditions to allow the testator's will to be executed with the greatest possible precision.

What is most important is that there should be complete certainty that the document in question is the actual will of the testator, namely, his last will and testament concerning the disposition of his property. There must also be certainty that the document is a free expression of the testator's will, that is, that it was not drawn up in a state in which he was not responsible for his actions, or under the influence of error, coercion or other conditions rendering any free expression of will impossible. It is also necessary to ascertain that the content of the will does not contradict the law (which is of paramount importance). Therefore, when making a will, the testator must be told of the dispositions which may clash with the law. Finally, the text and the wording of the will are also very important, for they must convey the testator's actual will with the greatest precision and in the utmost possible detail. After all, when he dies, no one will be able to explain, during the execution of his will, what he had actually meant by this or that expression, which could be variously construed. If the will contains contradictory provisions, no one will be able to determine, after the testator's death, which should be given effect and which deemed included in error.

That is why the text of a will which is correct and precise is of great importance for the proper execution of the testator's will.

For all these reasons there are special requirements relating to the form of the will. It must be done in writing and certified by a notary public, the *sine qua non* of its validity. Otherwise, the will is deemed invalid and does not create any juridical consequences. In that case succession is by operation of law.

For special cases the law establishes a form of will which is equivalent to one certified by a notary public. Thus:

1) the will of a serviceman may be certified by the commander of his unit;

2) the will of a citizen on board ship at sea or on an inland waterway flying the flag of the USSR may be certified during the voyage by the master;

3) the will of a citizen undergoing treatment in a hospital, convalescent home, or other medical institution, and also in a house for disabled persons, may be certified by the head or senior doctor or the doctor on duty;

4) the will of a citizen in a geological or prospecting party, or Polar expedition, may be certified by the chief of the party or expedition.

Consequently, the law allows citizens to formalise their will in circumstances when they are unable to apply to a notary public, but only in the instances strictly specified by the law. In all other instances, the will must be certified by a notary public.

This is due to the need to ensure the conditions for the most precise execution of the testator's will and to allow the testator to give expression to his will freely and in accordance with the law. The stipulation that the will should be done in writing and certified by a notary public induces the testator to give serious thought to his acts, before drawing up the will, and to refrain from doing anything on the spur of the moment. But for these strict formal requirements, people would be liable to take ill-considered decisions under the influence of emotional stress, irritation, anger, etc.

The fact that a will must have notarial certification (or the substitute forms of it listed above) makes it possible

to ascertain that the person submitting his will for certification is the actual testator. A will cannot be drawn up or certified by proxy. It is certified in the presence of the testator. When a will is certified, the testator's legal ability is verified, that is, it is ascertained that he is of age and is not restricted in legal ability because of mental illness. The testator signs the will in the presence of the notary (or other person entitled to certify wills in the cases provided for by law). If by reason of some bodily defect or for other reasons, the testator is unable to sign the will in his own hand, this is done, at his request, by someone else, but always in the presence of the notary or other official certifying the will. A statement is made of the reason for which the testator is unable to sign the will in his own hand.

When a will is being certified it is brought into conformity with the requirements of the law. No notarial certification can be made of a will containing a disposition which is contrary to the law. Thus, if a citizen should wish to leave his house to his son, and the land plot to his daughter, his will cannot be certified, because the land belongs to the state and may not be an object of bequest. The right to use the land plot goes with the title to the dwelling house.

Where a notary public refuses to certify a will on the ground that it contains an unlawful disposition, he must issue a certificate stating the reasons for his refusal to do so. The acts of a notary public may be contested in a people's court. Having examined the case on its merits, the people's court may either confirm the correctness of the notary's actions, or rule that they were incorrect and order him to certify the will.

Apart from satisfying himself that the will does not contradict the law, the notary public makes a careful study of the text of the will, and calls on the testator to eliminate all expressions which are equivocal, vague or contradictory, and any logical or grammatical mistakes. Thus, a notary cannot certify a will under which one-half of the property is left to the testator's wife and two-thirds to his mother. Such a bequest could not be executed because of its contradictory nature. Nor can the notary certify a will which contains the following disposition: "I bequeath my house to my son. The upper storey goes to my daugh-

ter." It is not clear whether the whole house or only the ground floor is bequeathed to the son, and on what ground the daughter, a testamentary heir, is to receive the upper storey: as an owner of the house or under a legacy. These vague formulations, which invite contradictory readings, must be eliminated during the certification of the will.

However, certification may not be refused on the ground that the testator has failed to provide for the legitimate portions of his incapacitated or minor heirs. It is the duty of the notary public to warn the testator of this, but he has no right to refuse to certify the will, since by the time the succession opens, the minors may come of age, and the incapacitated (unless they are too old) may be restored to health.

The notary public and his staff are bound to keep secret the notarial acts they perform, so that they are not free to issue certificates concerning either the doing or the certification of a will, or its content. Such certificates may be issued either at the testator's personal request, or of the procurator's office, judicial organs and organs of investigation.

A will signed by the testator and certified by a notary public may be subsequently cancelled by the testator at any time. This is done by drawing up a new will modifying the first. Where the new will alters all the dispositions of the first, its drawing up and notarial certification cancel the earlier one. But a new will may not affect all the dispositions of the first, but only some of them.

Take the case of citizen B. whose will said: "My house I bequeath to my son, Pyotr; my country house and library, to my daughter, Yevgenia; my collection of paintings to my daughter, Yelena." The testator could subsequently alter his will and say in the new testament: "My country house I bequeath to my daughter, Yevgenia, my library to my daughter, Yelena, my collection of paintings to the Local Lore Museum." This bequest changed the inheritance portions of the daughters, Yevgenia and Yelena. It also introduced another heir, the Local Lore Museum. In these sections the will cancelled out the earlier one. But since it said nothing of the house nor of Pyotr's inheritance portion, that part of the earlier will under which the ownership of the house goes to his son, remains in force.

The testator is also free to revoke his earlier will without drawing up a new one. To do this he need only file an application with the notary public revoking his will. Should the testator revoke his earlier will and fail to draw up another one, his property will pass to his heirs by operation of law.

There are special provisions for disposal of some types of property in case of the owner's death. Thus, citizens having deposits at a state savings bank or the State Bank of the USSR may make a disposition on the payment of this money in case of death to any person or to the state. The deposit then no longer constitutes a part of the estate and the rules of the law of succession do not apply to it. Soviet juridical theory and practice do not regard such a disposition as a testament but as a contract in favour of a third party.

Where the depositor has not issued any disposition to the savings or other bank in respect of his deposit, in case of death, the deposit passes to his heirs under the general rules, as a part of his estate.

The execution of the will usually falls on the testamentary heirs, but the testator may assign it to another person who is not an heir. This person is specified in the will, and his consent is inscribed either in the will or in a statement annexed to the will. The executor performs all the acts necessary for the execution of the testator's will with the utmost precision. He receives no remuneration for his acts in executing the will, but he is entitled to receive compensation from the estate for the expenses incidental to its protection and management.

Thus, if the estate includes a house which, after a sudden rainstorm, requires urgent repairs before the will is executed and the property passes to the heirs, the executor is entitled to receive compensation for the cost of the repairs. When the will has been executed, the executor must present a report at the request of the heirs.

4. Passing of Property by Succession

For a decedent's estate to pass to his successor, the latter must agree to take it. His consent is expressed in statutory form and is known as the acceptance of succes-

sion. It must be unconditional: acceptance cannot be partial, conditional or with reservations. In accepting the succession the heir expresses his agreement to receive everything due to him by law or under a will. Acceptance of succession may be made either by actually entering into possession of the estate or by making a statement of acceptance at a public notary's in the place where the succession opens.

The successor is allowed a period of six months from the day of the opening of succession to accept it. If he fails either to enter into possession of the estate or to make a statement of acceptance, he is deemed to be a person who has not accepted the succession. The accepted inheritance is recognised as the successor's property from the moment of the opening of succession.

Say, citizen A. dies on January 5. At that time, his son, the only heir, is away on a long business trip. He arrives on June 10 and actually enters into the possession of the estate. In his absence, a neighbour who was asked to look after the estate pays the rates which fall due on the house (a part of the estate) and carries out the necessary current repairs. He must receive compensation for these expenses from the heir, who is deemed to be the owner from the moment of the opening of succession, that is, January 5.

The statutory six-month period may be extended by the court, where it deems the reasons for any delay to be good. In the event of there being several heirs, and with their consents, acceptance of the succession by one of the heirs after the expiry of the six months may be made without recourse to the court.

Where there are several heirs and they accept the succession at various times, the heir who has entered into the possession of the estate before the others is not entitled to dispose of the property before the expiry of six months from the day of the opening of succession: he is not free to sell, pledge or lease the property, etc. But he is entitled to draw on the estate to pay for the maintenance of persons who were the decedent's dependants, and to cover expenses for the maintenance and management of the estate, amounts due for the care of the decedent during his illness and the funeral expenses.

The law allows a statutory or testamentary heir a period of six months from the day of the opening of succession to refuse to accept the inheritance. The refusal may be unconditional and entails the same consequences as failure to accept the succession. But the law allows the heir to waive the succession in favour of another statutory or testamentary heir. He is also free to waive the succession in favour of the state, or a state, co-operative or mass organisation. In that case the consequences are the same as those which arise from a refusal to accept the succession.

Here is an example. Citizen G. is survived by two sons and two daughters, all of whom are adult and able-bodied. During the six-month period, the elder son fails to accept the succession, while the younger son waives his in favour of the elder daughter. The two daughters receive equal shares of the elder son's portion, over and above the portions due to them. The younger son's portion passes to the elder daughter. The size of the daughters' portions is then as follows: the elder daughter receives one-quarter of the property, as her inheritance portion; one-eighth of the property, as one-half of the elder brother's (who failed to accept the succession); and one-quarter of the younger brother's (who waived his in her favour)—a total of five-eighths of the property. The younger daughter receives three-eighths of the property, namely, one-quarter as her inheritance portion and one-eighth as one-half that of the brother who failed to accept.

Refusal to accept the inheritance is effected by the heir's making a statement at a public notary's where the succession opens. Where such a statement has not been made and the inheritance has not been accepted, the heir is deemed not to have accepted the inheritance.

As I have said, the heir may make a waiver in favour of the state, or of a state, co-operative or mass organisation. In the event, the state or organisation take the place of the heir who refuses to accept.

In the event of non-acceptance or refusal to accept the inheritance, the portion of those who fail or refuse to accept is divided between them in the presence of the other heirs, in accordance with the rules stated above. Where an inheritance has not been accepted by a statutory or testa-

mentary heir and there are other heirs-at-law, his portion goes to the other heirs-at-law. But if the testator has bequeathed all his property, the portion of the heir who fails to accept goes to the other testamentary heirs and is divided among them in equal shares. In the absence of other heirs (apart from those who have not accepted the inheritance), the property passes to the state.

Consequently, property passes to the state by the law of succession on the following grounds:

1) the testator wills his property to the state;

2) the testator has no statutory or testamentary heirs;

3) the testator disinherits all his heirs-at-law and does not appoint any heirs by will;

4) none of the heirs accept the succession.

Where one of the heirs waives his succession in favour of the state, the state receives the portion of the estate which that heir was to receive.

In practice, property bequeathed to the state is usually something in the nature of a dwelling house, a library, a collection, etc. That is mostly the case also when a succession is waived in favour of the state, or a state, co-operative or mass organisation.

Where a citizen who has no heirs-at-law makes a testamentary disposition of only a part of his property, the rest goes to the state. Thus, citizen A. dies without leaving any heirs-at-law and bequeathes his house to a relative. He makes no other disposition concerning his property. The part of the property not covered by the will passes to the state.

An heir who accepts the inheritance is liable for the testator's debts within the limits of the actual value of the estate passing to him. Where the property passes to the state, the state incurs a similar liability on the same grounds.

* * *

This has been a brief outline of the principal rules governing the right in personal property and its inheritance in the USSR. Soviet law protects the right of personal property and its inheritance as one of the main property rights of citizens laid down in the Constitution. The law holds out to the owner and guarantees full powers

in disposing of his property for the satisfaction of all his material and cultural requirements in accordance with his habits and inclinations. All the juridical institutions and forms which have developed at various stages of human culture and phases of socialist society are brought into play to achieve this.

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