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The Phenomenon of Legal Asset Partitioning in Private Law

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INTRODUCTION

The work is devoted to the study of the phenomenon of legal asset partitioning in private law. The basic understanding of this phenomenon can be presented in the form of the concept of giving any property a specific legal regime. A specific legal regime is typically evidenced by the establishment of distinct rules governing the disposition of the property in question and the liability of the property to creditors.

The phenomenon of asset partitioning can be observed through a number of different legal constructs. Some of these constructions have been the subject of extensive study (e.g., legal persons or limited rights in rem) and, as a general rule, do not present any significant practical or theoretical issues that cannot be resolved through a comprehensive examination of the phenomenon of asset partitioning.

Concurrently, in certain instances, asset partitioning materializes as a standalone legal technique. This phenomenon arises when the distinctive attributes of a particular asset – which are legally distinct – cannot be consistently rationalized within the framework of positive law and/or the prevailing civilistic constructs.

There are numerous instances of isolated property serving as an autonomous legal technique in a substantial number of cases, as evidenced by both the Russian legal system and foreign and historical legal systems.

Relevance of the research topic is contingent upon a number of factors. Firstly, there is already a considerable number of theoretical and practical issues that not only lack a clear solution, but in many cases, even a definitive answer. It is not possible to address the following theoretical questions without conducting research into the phenomenon of asset partitioning: (1) Why are mutual investment funds and investment partnerships not recognized as subjects of law, and what is the fundamental difference between them and legal entities? (2) How can the existence of bankruptcy of non-subject property estates (for example, peasant farm enterprise or inherited property) be explained, and why are they, being subjects of bankruptcy, not recognized as subjects of civil law?

A number of practical questions are contingent upon the resolution of the question of the nature of asset partitioning. These include the following: (1) Who is a party to a contract concluded with "isolated property"? (2) To what extent are the heirs liable for the debts of the testator, and who bears the risk of loss of the estate? (3) How can the existence of the figure of a sole proprietor with limited liability be realized?

Secondly, in the absence of the concept of asset partitioning as a distinct legal technique, numerous legislative decisions lack not only a clear doctrinal justification but also consider insufficiently the economic and political-legal aspects of law enforcement, which undoubtedly affects their quality in terms of practical effectiveness.

The significance of this aspect is increasing due to the fact that in contemporary Russian legislation, the process of developing and enhancing institutions related to asset partitioning is ongoing. These may include, among others: (1) the emergence of new forms of collective activities and collective investments (economic partnership and investment partnership); (2) the introduction of the institute of bankruptcy of non-juridical property masses; (3) the gradual withdrawal from circulation of legal entities that are not owners of their property; (4) attempts to introduce various analogs of trust (e.g., inheritance and personal funds); (5) experiments to introduce partnership financing (Islamic banking).

Despite the relatively recent introduction of many of the above-mentioned institutions (up to 10 years ago), the process of their reforming continues. This is occurring without sufficient theoretical basis. For example, in 2021, "investment partnerships with separate property" were created. According to the legislator's idea, this should have increased the attractiveness of this instrument as a form of collective investment.

The extent to which the topic of the research work has been scientifically developed.

At this time, asset partitioning is a relatively new and emerging field of legal research, particularly within the context of the Anglo-Saxon legal system. The foundation for this approach in legal theory was established relatively recently, in the early 2000s, by H. Hansman and R. Kraakman. The original theory was subsequently developed in the works of a number of other scholars: R. Morgan, R. Squire, O. Eldar, A. Verstein, R. Picker, and H. Hughes. The aforementioned authors' works are distinguished by the specificity inherent in the Anglo-Saxon system of law. An attempt to perceive the theory of separate property within the domestic doctrine was made by V.V. Podsosonnaya and E.I. Chervets, but thus far have only succeeded in identifying specific issues related to this topic. Furthermore, E.I. Chervets makes a direct reference to the lack of development in the theory of asset partitioning within the domestic doctrine[1].

The theory of unity of the asset complex (patrimoine), which was established during the course of the study as being related to the theory of separate property, was formulated in the French doctrine by the works of Sh. Aubry and Sh. Rau. Contemporary French legal scholars are engaged in the development of the theory of isolated property (patrimoine d'affectation).

Concurrently, studies of issues pertaining to institutions of civil law, in which asset partitioning is exhibited to varying degrees, are sufficiently documented and can be utilized to construct a comprehensive theory of asset partitioning in private law.

The objective of the research is to examine the civil-law relations that emerge in the context of the formation of separate property masses, with a particular focus on those that are not recognised by positive law as legal entities.

[1] Chervets E.I. Trust as one of the ways of property isolation: use in mandatory relations, analogies with the constructions of domestic law // Bulletin of International Commercial Arbitration. 2016. No.2 (13). P. 215.

The subject of the research is the examination of legal issues that emerge in relation to the partitioning of assets at the initial stage of formation (i.e., the creation of separate property), throughout their lifespan, and at the point of termination.

Aims and objectives of the research. The purpose of this study is to develop a comprehensive doctrine on the phenomenon of defensive asset partitioning as a specific legal phenomenon associated with the assignment of a special legal regime to property, as well as to substantiate the categories of defensive asset partitioning and affirmative asset partitioning as effective tools for analyzing legal phenomena. The purpose of the study predetermines the following tasks to be solved within the framework of the research:

1. to examine doctrinal approaches to the category of asset partitioning in different legal systems, to determine the context in which they were developed, and to establish the theoretical and practical implications of their application;
2. to determine the place of the category of asset partitioning in the system of Russian civil law;
3. to establish the correlation of asset partitioning with the institutions of legal personality and legal entities;
4. to determine the limits of asset partitioning in the case of limited proprietary rights and common property;
5. analyze legal and theoretical problems associated with the emergence of non-subjective asset partitioning in the Russian legal order;
6. identify the shortcomings of the current Russian regulation related to asset partitioning by applying the tools of the theory of asset partitioning;
7. to propose possible ways of improving positive law in relation to the currently existing non- subjective asset partitioning.

The methodological basis of the research was formed by general scientific methods: historical, logical, comparative, as well as private-scientific methods: formal-legal, comparative-legal, method of economic analysis of law.

The theoretical basis of the study was the works of domestic scientists: G.F. Shershenevich, N.S. Suvorov, I.A. Pokrovsky, O.S. Ioffe, V.B. Elyashevich, A.D. Rudokvas, O.R. Zaitsev, E.A. Sukhanov, E.Y. Petrov, R.S. Bevzenko, N.N. Alekseev, D.V. Dozhdev, V.V. Vitryansky, T.P. Shishmareva, A.V. Egorov, E.V. Ponomareva, V.V. Porsosonnaya, E.I. Chervets (and others), as well as **foreign** researchers: H. Hansman, R. Kraakman, R. Morgan, R. Squire, O. Eldar, A. Verstein, R. Picker, H. Hughes, Sh. Aubrey, Sh. Rau, L. Smith, H. Kelsen, H. Radbruch, R. Posner, B. Windscheid, M. Lupoi, P. Lepol and others.

The normative-legal base of the research was formed by the norms of Russian legislation, norms of legislation of foreign countries (primarily, the law of Germany and France), norms of law of countries belonging to the common law system and mixed jurisdictions, as well as norms of law of historical legal orders (Roman law).

The empirical base of the study is primarily represented by the judicial practice of Russian and foreign courts on issues related to asset partitioning and the application of legal norms related to those civil law institutions in which such asset partitioning is manifested. The above empirical base is also supplemented by contractual and business practice, which is formed when using the institutions related to asset partitioning.

Scientific novelty of the research. The present work is the first comprehensive study of the phenomenon of isolated property in the domestic doctrine. As a result of the study of Russian law using the categories of defensive and affirmative asset partitioning, the problems of legal regulation, which were not previously discussed in the domestic doctrine, were identified. On the basis of the formulated approaches to the phenomenon of property isolation, solutions were proposed to both existing and newly identified theoretical and practical problems of domestic jurisprudence. In addition, the reasons for some unsatisfactory legislative solutions were identified.

The scientific novelty of the present study also lies in the fact that the existing developments and achievements of the theory of separate property, which were the work of H. Hansman and R. Kraakman and other researchers within the common law system, were reworked and supplemented in such a way as to create a basis for the construction of the theory of separate property within the continental legal system. Among the aspects in which the theory of asset partitioning was developed, we can highlight: (1) the necessity of understanding legal asset partitioning in a broader sense, not limited to the order of liability to creditors, was substantiated; (2) the list of legal institutions leading to the legal asset partitioning was extended and the specificity of each of such ways was established; (3) conclusions were formulated on the correlation between the phenomenon of asset partitioning and legal personality within the framework of the continental understanding of the latter; (4) it was established that the theory of legal asset partitioning is not limited to the order of liability to creditors.

Theoretical significance of the research lies in the development of scientifically novel provisions and conclusions concerning asset partitioning as an independent phenomenon of private law, as well as the categories of defensive asset partitioning and affirmative asset partitioning as means of legal analysis. The results of the study allow to systematize the scientific knowledge about the manifestations of asset partitioning in private law. The results of the study create a theoretical basis for further research of the phenomenon of isolated property in the continental legal system. The results of the study can be used in scientific and educational activities.

The practical significance of the research lies in the fact that the provisions and conclusions drawn within the framework of this study can be used to improve the Russian legislation in aspects of legal regulation of relations related to trust management, activities of investment partnerships, liability of heirs, as well as property isolation and liability of legal entities and their founders. The results of this study can also be used to adjust judicial practice and correct risk assessment by practicing lawyers.

Degree of reliability and approbation of the results of the dissertation research. The main provisions and conclusions of the study were reflected in articles published in journals that are peer-reviewed scientific journals recommended by the Higher Attestation Commission for the publication of the results of dissertations for the degree of doctor and candidate of sciences:

1. Ibragimov K.Y. Asset Partitioning in Roman law // Russian Journal of Legal Studies. - 2023. - Vol. 10. - №2. - P. 74-88.
2. Ibragimov K.Y. Asset Partitioning and Legal Personality // Leningrad Law Journal. - 2024. - № 1 (75). - P. 28-48.
3. Ibragimov K.Y. The Problem of Legal Entities of Non-Owners in the Light of the Theory of Asset Partitioning// Legal Studies. - 2024. - № 7. - P. 29-41.
4. Ibragimov K.Y. Legal Asset Partitioning in Partnerships // Legal Science. - 2024. - № 7. - P. 356-362.
5. Ibragimov K.Y. The Problem of Belonging Rights and Obligations Arising in the Implementation of Trust Management // Law and Politics. - 2024. - № 8. - P. 57-67.
6. Ibragimov K.Y. Asset Partitioning on the Example of Liability of Heirs // Actual Problems of Russian law. - 2024. - Vol. 19. - № 8. - P. 85-99.

Some provisions contained in this paper were approved at scientific and practical conferences**:**

1. April 15, 2022 at the XLV International Scientific and Practical Conference (Moscow). Subject of the report: "The problem of separate property in the implementation of trust management".
2. April 12, 2023 at the International Youth Scientific Forum "Lomonosov-2023" (Moscow State University, Moscow). Subject of the report: "Legal entities and legal asset partitioning".

The structure of the dissertation is predetermined by the purpose and objectives of the research and consists of an introduction, two chapters consisting of six paragraphs each, conclusion, list of normative acts and judicial practice and bibliographic list.

Main scientific results:

1. It is proved that the modern institute of legal person assumes the use of two methods of legal technique: asset partitioning and its personification. The personification of property in this case has an auxiliary function associated with the simplification of the description of the law[2].

2. The close connection between the categories of legal personality, asset partitioning and patrimony is established. From the established interrelation it is concluded that if the property is endowed with the characteristics of asset partitioning in such a way that it constitutes patrimony, then it is reasonable to recognize it as legal personality[3].

3. It is substantiated that the existence of isolated property masses possessing the characteristics of legal personality, without recognizing their formal legal personality, leads to a large number of theoretical and practical problems, which do not allow to ensure comprehensibility and predictability of normative regulation[4].

4. The possibility and desirability of recognizing independent legal personality at least for the following separate property masses has been proved: property in trust management; property of investment partnership[5].

5. The efficiency and prospects of using the categories of defensive and affirmative asset partitioning for the purposes of analysis of the current normative regulation, as well as development of proposals for its improvement are shown[6].

6. It is proved that the asset partitioning of the same property by means of the limited property right and the creation of a legal entity at the same time does not make sense and unnecessarily complicates the normative regulation[7].

7. The necessity of establishing a weak form of defensive division of property in relation to business partnerships for the purpose of fair distribution of risks between creditors of the partnership

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[2] Ibragimov K.Y. Asset Partitioning and Legal Personality // Leningrad Law Journal. 2024. No. 1 (75). P. 37-39, 41-42. Ibragimov K.Y. Asset Partitioning in Roman law // Russian Journal of Legal Studies. 2023. Vol. 10. No. 2. P. 85-87.

[3] Ibragimov K.Y. Asset Partitioning and Legal Personality // Leningrad Law Journal. 2024. No. 1 (75). P. 37-45; Ibragimov K.Y. Legal Asset Partitioning in Partnerships // Juridicheskaya nauka. 2024. No. 7. P. 358; Ibragimov K.Y. Problem of Belonging Rights and Obligations Arising in the Implementation of Trust Management // Law and Politics. 2024. No. 8. P. 64-65.

[4] Ibragimov K.Y. Problem of Belonging Rights and Obligations Arising in the Implementation of Trust Management // Law and Politics. 2024. No. 8. P. 58-66.

[5] Ibragimov K.Y. Asset Partitioning and Legal Personality // Leningrad Law Journal. 2024. No. 1 (75). P. 37-45; Ibragimov K.Y. Legal Asset Partitioning in Partnerships // Juridicheskaya nauka. 2024. No. 7. P. 359-360; Ibragimov K.Y. Problem of Belonging Rights and Obligations Arising in the Implementation of Trust Management // Law and Politics. 2024. No. 8. P. 58-66.

[6] Ibragimov K.Y. Asset Partitioning and legal personality // Leningrad Law Journal. 2024. No. 1 (75). P. 28-48.; Ibragimov K.Y. The Problem of Legal Entities of Non-Owners in the Light of the Theory of Asset Partitioning // Legal Studies. 2024. No. 7. P. 29-41; Ibragimov K.Y. Legal asset partitioning in partnerships // Juridicheskaya nauka. 2024. No. 7. P. 356-362.; Ibragimov K.Y. Asset partitioning on the example of heirs' liability // Actual problems of the Russian law. 2024. No. 8 (19). P. 85-99.

[7] Ibragimov K.Y. The Problem of Legal Entities of Non-Owners in the Light of the Theory of Asset Partitioning // Legal Studies. 2024. No. 7. P. 33-37.

and personal creditors of the partners has been substantiated. The suboptimal allocation of risks under the current regime was noted[8].

8. Preferential construction of the heirs' liability for the decedent's debts within the framework of the isolated inherited property rather than within the framework of the value of such property is substantiated[9].

The scientific statements proposed for defense:

1. Legal asset partitioning of property is the allocation of a specific legal regime to property, which distinguishes certain, technically separate, property from the total property mass of a person. Asset partitioning, first of all, is manifested, first of all, in a special procedure of liability of this property to creditors and in the division of the latter into several groups. At the same time, the special regime of separate property may also consist of other aspects – a special procedure of using and disposing of property.

2. The exercise of legal analysis through the use of the categories of defensive asset partitioning and affirmative asset partitioning makes it possible to determine the advantages and disadvantages of certain legislative decisions, as well as to determine the appropriateness of conferring the status of a legal entity or other legal personality.

3. The separation of property is an essential legal characteristic of the subject of civil law. Giving any property the property isolation property actually means that the legal system recognizes for such property a special purpose or a special interest to be protected. The property having defensive and affirmative asset partitioning actually acquires the characteristics of a subject of law, which as a rule means the recognition by the legal order of an independent and protectable interest behind such property. A pronounced isolation of property without recognizing it as a subject of law leads to the formation of a "quasi-subject" of law, which creates practical and theoretical difficulties in dealing with such constructions and requires giving them the status of full subjects.

4. The construction of a legal entity includes two independent methods of legal technique - asset partitioning and embodiment of essence. In this case, the essence part is represented by asset partitioning, as it is this form of legal technique allows to achieve economic goals, which are served by a legal entity, and personification has an auxiliary character and serves the purpose of facilitating work with legal asset partitioning (theoretical description of the design of legal relations; certainty about the property mass, which can be claimed by the creditor). Roman law is an example of a legal system in

[8] Ibragimov K.Y. Legal Asset Partitioning in Partnerships // Juridicheskaya nauka. 2024. No. 7. P. 357.
[9] Ibragimov K.Y. Asset partitioning on the example of heirs' liability // Actual problems of the Russian law. 2024. No. 8 (19). P. 95-96.

which all functions of a legal person were performed at the expense of asset partitioning, usually without personification of such property.

5. Modern Russian law has examples of legal asset partitioning through two structures at the same time: a legal entity and a limited proprietary right. This approach is used in relation to legal entities to which property is transferred through the right of operational and economic management. The use of the construction of limited proprietary right seems unnecessary in this case, as legal asset partitioning (of any degree and nature) can be achieved using only the construction of a legal entity. Simultaneous use of two constructions is justified only if they are used sequentially and each isolates its own scope of assets (one asset is isolated within another isolated asset).

6. Limited liability can be achieved either by asset partitioning or not. Each method has advantages and disadvantages because it results in a different allocation of risk between the parties, including the risk of loss of property. Limiting liability through the construct of asset partitioning tends to provide a fairer allocation of risk between the parties involved.

7. The property in joint ownership does indeed have the characteristics of property isolation, since it has a specific order of use and disposal associated with the community of co-owners. However, the regime of common ownership itself does not lead to the appearance of defensive asset partitioning and affirmative asset partitioning, due to which we do not see grounds for recognizing such property as a legal personality. At the same time, in the case of complex objects with their own needs, legal entities can be created (e.g. property owners' partnerships).

8. A simple partnership is fundamentally different from a business partnership in that it lacks any significant property isolation, which does not allow us to speak about the existence of any prerequisites for its legal personality. The Russian legal order does not establish defensive asset partitioning for business partnerships, which puts personal creditors at a disadvantage. From the point of view of the balance of interests, the construction of a weak defensive asset partitioning, under which personal creditors will have priority with respect to personal property, seems more reasonable.

9. Mutual funds and investment partnerships have all the characteristics of subjects of law, except for the formal recognition of their legal capacity. In order to optimize legal regulation, it is necessary to recognize such entities as subjects of law. The legal personality of such entities can be realized either by recognizing them as legal persons or by recognizing them as other subjects of civil law.

10. Russian law contains an inconsistent regulation of relations related to heirs' liability for the decedent's debts, since, as a rule, inherited property is not segregated and heirs are liable within the value of the inherited property, but in bankruptcy the model of liability changes and heirs are liable specifically for segregated inherited property. Liability under the separate estate appears more attractive from the point of view of fair distribution of risks between creditors of the estate and personal creditors

(including those related to the risk of accidental loss of the inherited property). In order to rationalize the relations under consideration, it is proposed to switch completely to the model of liability by separate estate, especially since there are reasons for doing so at the level of the current legislation.

CHAPTER 1. GENERAL PROVISIONS ON ASSET PARTITIONING

§ 1. Asset Partitioning in Legal Science

1.1. General Provisions on Asset Partitioning in Science

In Russian science there have been very few attempts to introduce property isolation as an independent legal institute. The first of them was undertaken in the work of V.V. Podsosonnaya "Legal Separation of Property"[10] . To the undoubted merits of this work should be attributed the fact that it introduced Russian-speaking researchers and practicing lawyers to the theory of H. Hansman and R. Kraakman. The author's achievement of his goal is evidenced by the wide citation of this work whenever the topic of asset partitioning is directly or indirectly touched upon. However, it is difficult to recognize this work as an independent study of the problem of asset partitioning, as it is largely a retelling of the theory of American researchers and its direct application to the institutions of domestic law. Moreover, this work suffers from shortcomings related to the misinterpretation of the original theory and its mechanical application, without taking into account local specificities, to domestic institutions, which, among other things, are selected in a non-exhaustive manner for such an analysis.

A more successful attempt to consider legal asset partitioning of property was made by E.I. Chervets in several works[11] . The advantages of these works include the author's attempt to develop an original theory and to formulate additional functions that can be performed by asset partitioning. It is mentioned here that: "defensive asset partitioning of the asset pool not only performs a defensive asset partitioning function, but is also carried out to achieve specific goals pursued by the owner (e.g. optimisation of asset management, creation of checks and balances in business management during its transfer, etc.)"[12], the function of protection "against itself", for example, against improper conduct of business by heirs[13] is separately distinguished. In general, the above works make a great contribution to the development of the theory of separate asset partitioning as an effective tool of legal analysis, although in some aspects they are also not without shortcomings related to the sometimes-incorrect interpretation and application of the theory of H. Hansman and R. Kraakman, as will be demonstrated later in the paper.

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[10] Podsosonnaya V.V. Legal asset partitioning of property // Objects of civil turnover: collection of articles. Moscow: Statute. 2007. [Electronic resource]. Mode of access - JPS "Consultant Plus".

[11] Domshenko (Chervets) E.I. Personal funds: opportunities and risks of property isolation // Bulletin of Economic Justice of the Russian Federation. 2022. No. 3. P. 115-136.; Domshenko (Chervets) E.I. Obolozhenie property without creating a legal entity. Simple partnership and investment partnership // Vestnik of civil law. 2021. No. 6. P. 30-58.; Chervets E.I. Trust as one of the ways of property isolation: use in mandatory relations, analogies with the constructions of domestic law // Vestnik of International Commercial Arbitration. 2016. No. 2 (13). P. 200-222.; Domshenko (Chervets) E.I. About business preservation and property shielding. Comparison of some tools of asset partitioning // Yuridicheskiy Mir. 2021. No. 9. P. 27-39.

[12] Domshenko (Chervets) E.I. Separation of property without creating a legal entity. P. 31.

[13] Domshenko (Chervets) E.I. Personal funds: opportunities and risks of property isolation P. 116.

In addition, asset partitioning has been studied in domestic doctrine within the framework of independent approaches, not related to the theory of asset partitioning of H. Hansman and R. Kraakman, but only in the context of asset partitioning as one of the signs of a legal entity[14] .

The theory of property complex (patrimoine), developed by French scientists of the XIX century Sh. Aubry and Sh. Rau, is adjacent to the theory of H. Hansman and R. Kraakman on the subject of research, in our opinion, is the theory of property complex (patrimoine).

1.2. Theory of H. Hansman and R. Kraakman

The consideration of asset partitioning as an independent phenomenon was largely the result of the work of American scholars H. Hansman and R. Kraakman. According to their theory, asset partitioning manifests itself in two aspects: 1) defensive asset partitioning - inaccessibility of personal property to creditors of entity; 2) affirmative asset partitioning - inaccessibility of entity property to personal creditors[15]. Other works also use the synonymous constructs "owner shielding" and "entity shielding" to refer to defensive asset partitioning and affirmative asset partitioning, respectively[16] .

Each form of asset partitioning may have varying degrees depending on whether it gives priority to one group of creditors over another, imposes other restrictions, or makes the partitioned property completely inaccessible to another group of creditors.

For defensive asset partitioning, the strong form is the usual limited liability where the personal property of the participants is in principle unavailable to creditors of the entity, the weak form assumes that claims can be satisfied in full, but subject to the priority of claims of personal creditors. There may also be intermediate forms where personal property is available with restrictions (e.g. in proportion to shareholding or up to a certain amount)[17]. In more recent work, the authors distinguished only weak owner shielding and complete owner shielding[18] .

Although defensive asset partitioning is generally associated with limited liability, limited liability does not arise under a weak form of defensive asset partitioning - personal creditors have not exclusive but only priority claims to personal property, accordingly, personal property is potentially

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[14] Stroikina Y. V. Property isolation as a constructive feature of a commercial organization: diss. .... Candidate of Law Orenburg, 2002. 175 p.; Zakharova E.I. Imushchestvennaya isolatednost' commercial organizations as a sign of a legal entity: autoref. diss. candidate of juridical science Krasnodar, 2013, 28 pp.

[15] Hansmann H., Kraakman R. H. The Essential Role of Organizational Law // The Yale Law Journal. 2000. Vol. 110. No. 3. P. 393-398.

[16] See, for example, Hansmann H., Kraakman R. H., Squire R. C. Incomplete Organizations: Legal Entities and Asset Partitioning in Roman Commerce // European Corporate Governance Institute (ECGI) - Law Working Paper. 2014. No. 271/2014. 30 p.

[17] Hansmann H., Kraakman R. H. The Essential Role of Organizational Law. P. 396.

[18] Hansmann H., Kraakman R. H., Squire R. C. Law and the Rise of the Firm // Harvard Law Review. 2006. Vol. 119, No. 5. P. 1340.

available to creditors of the entity as well[19], so the concept of defensive asset partitioning and limited liability should not be equated (although examples of such identification can be found in the literature)[20]

In our opinion, the above-mentioned conclusion of the authors on the correlation between limited liability and defensive asset partitioning should be supplemented by another clarification: just as defensive asset partitioning may not lead to limited liability, limited liability may also exist without defensive asset partitioning. In Russian law, an example of such a situation is the limitation of heirs' liability for the testator's debts, because the different nature of the limitation of liability here is connected with the fact that the liability is limited by the value of the property and not by the property itself.

Affirmative asset partitioning contains two basic elements: priority of claims as well as protection against liquidation[21] . In particular, the authors point out that an element of affirmative asset partitioning such as protection from liquidation allows to preserve Going-Concern Value[22] . It is the presence of a "liquidation defense" that separates a weak form of isolation from a strong one[23] , since in the presence of a liquidation defense, a personal creditor obtains satisfaction by foreclosing on the rights of a participant, taking the place of the latter, it can access the property of the entity, but subject to the established procedure of liquidation of the entity. The authors also distinguish the super-strong or full form of asset partitioning, which means full autonomy and does not allow to foreclose even on the rights of the participant/founder of the entity[24] .

These are the main theoretical constructs developed by H. Hansman and R. Kraakman, but it should be understood that their construction was not an end in itself of the research conducted by these authors. The main direction of their work was to justify the fact that asset partitioning is the basic and main property that "organizational law" fulfills. Especially in terms of affirmative asset partitioning. In other words, this means the following: affirmative asset partitioning cannot be achieved by instruments of contract, agency, tort or property law and only "organizational law" makes it possible. The second area was to conduct an economic analysis of the advantages and disadvantages of different aspects of asset partitioning.

In order to properly understand the theory of H. Hansman and R. Kraakman in terms of justification of the key role of organizational law, it is necessary to clarify two key and interrelated provisions that cause difficulties related to the interpretation of this theory:

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[19] Hansmann H., Kraakman R. H. The Essential Role of Organizational Law. P. 395-396.
[20] Podsosonnaya V.V. op. cit. cit.; Pargendler M. The New Corporate Law of Corporate Groups // European Corporate Governance Institute - Law Working Paper. 2023. No. 702/2023. P. 7.
[21] Hansmann H., Kraakman R. H. The Essential Role of Organizational Law. P. 395.
[22] Hansmann H., Kraakman R.H., & Squire R. Legal Entities, Asset Partitioning, and the Evolution of Organizations. URL: https://pcg.law.harvard.edu/wp-content/uploads/papers/Hansmann_Paper.pdf (accessed 14.03.2023).
[23] Hansmann H., Kraakman R. H. The Essential Role of Organizational Law. P. 395
[24] Hansmann H., Kraakman R. H., Squire R. C. Incomplete Organizations: Legal Entities and Asset Partitioning in Roman Commerce P. 13-14, 26.

The concept of organizational law. Organizational law may be mistakenly perceived as corporate law (or more broadly, as the law of legal persons) as understood by domestic jurisprudence, but this is not the case. The authors themselves define "organizational law" as follows: "laws governing standard legal ***entities*** such as corporations, partnerships, cooperatives, nonprofit organizations, trusts, limited liability companies, and marital property"[25].

Separation of legal entities and legal persons. The term "legal entities" used by the authors may be mistakenly translated and interpreted as "legal person" (a common understanding of this term) and such an error, leading to various degrees of distortion, can be found in a number of domestic works[26]. In fact, the authors make a distinction between the concepts of legal entity (legal entity) and legal person (legal personality) citing as an example general partnership, which, being legal entities, may not be legal persons, i.e. have the property isolation property, but do not have the ability to act on their own behalf[27]. Also, the authors' attribution of trusts and marital property to legal entities should suggest that they are not only legal persons. The distinction between legal persons and legal entities within the common law system can also be found in other authors[28]. In addition, within the Anglo-Saxon system of law there are such organizational and legal forms in which one company (legal personality) may consist of several separate entities (legal entity)[29] . This phenomenon will be described in more detail below. Further in this paper the term entity will be used to denote a legal substrate (without regard to its legal nature), i.e. in a meaning close to the literal one.

Through the category of asset partitioning the mentioned authors prove that legal entities cannot be reduced to standard forms of contracts[30]. In this case, they oppose those researchers (for example, R. Posner) who see the main function of legal entities in the fact that they allow to achieve limited liability and do it actually through the construction of a standard contractual clause in the sense that any entry into a contractual relationship with a legal entity means the voluntary acceptance by the parties of standard conditions on limitation of liability[31]. It should be noted, however, that both R. Posner, H. Hansman and R. Kraakman specifically stipulate that the notion of an entity as a standard contractual condition cannot justify liability to involuntary creditors[32]. Putting this circumstance out of brackets is probably due to the fact that H. Hansman and R. Kraakman are principled opponents of limited liability

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[25] Hansmann H., Kraakman R. H. The Essential Role of Organizational Law. P. 390.
[26] Gorbashev I.V. Critique of the economic theory of legal entities // Entrepreneurial Law. 2021. No. 4. P. 18-29.; Podsosonnaya V.V. op. cit.
[27] Hansmann H., Kraakman R.H., Squire R. Legal Entities, Asset Partitioning, and the Evolution of Organizations. P. 12; Hansmann H., Kraakman R. H., Squire R. C. Law and the Rise of the Firm. P. 1338.
[28] Kurki V. AJ. A Theory of Legal Personhood // Oxford Legal Philosophy. Oxford. 2019. P. 6.
[29] URL: https://www.delawareinc.com/ourservices/series-limited-liability-company/ (accessed 03.03.2024).
[30] Hansmann H., Kraakman R. H. The Essential Role of Organizational Law. P. 390-391.
[31] Posner R. Economic Analysis of Law (in 2 vols.). / Per. from Engl. by A.A. Fofanov; ed. by V.L. Tambovtsev. SPb.: Economic School, 2004. Vol. 2 P. 534-535.
[32] This problem will be discussed further in § 5 of this paper.

to involuntary creditors, which allows them not to take this factor into account in their doctrinal constructions[33].

As the main argument justifying the impossibility of reducing asset partitioning to the standard contractual form, H. Hansman and R. Kraakman point not to the defensive asset partitioning effect, but to the fact that the personal creditors of the owner cannot claim the property of the entity (affirmative asset partitioning). The authors argue that it is affirmative asset partitioning that cannot be effectively achieved by ordinary contractual means[34], and that the existence of entities without limited liability (defensive asset partitioning) is possible, while the existence of entities without affirmative asset partitioning is not[35]. As an additional argument, it is also pointed out that while defensive asset partitioning with voluntary creditors can be achieved through the construction of a standard contractual term, affirmative asset partitioning would require subordination agreements with each personal creditor current or future. However, this position is also subject to criticism, which will be discussed in substance further below.

The conclusions of the mentioned authors that asset partitioning (especially affirmative asset partitioning) is a unique property of organizational law and can in no way be achieved and justified in terms of contractual, real and agency law constructs are criticized.

1.3. Development of the Asset Partitioning Theory

According to the results of the research, we can distinguish at least three directions in which the original theory of asset partitioning proposed by H. Hansman and R. Kraakman is being developed, improved and reinterpreted. Hansman and R. Kraakman:

1. Criticism and reconsideration of the basic idea that the central and exclusive characteristic of organizational law is the asset partitioning, which led to attempts to refine the theory in this direction and to define more precisely the main characteristic of organizational law.
2. Clarification of the concept of asset partitioning, generally remaining within the framework of the ideas of asset partitioning laid down by H. Hansman and R. Kraakman, but extending the phenomenon not only to entities but also to security constructions.
3. Considering asset partitioning in a broader and more universal sense as giving a pool of assets a specific legal regime, not necessarily related to the priority of the claims of some creditors over others.

The first direction is not of great interest within the framework of this research. Despite the value of the tools provided by the theory of asset partitioning by H. Hansman and R. Kraakman (the results of

[33] Hansmann H., Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts // The Yale Law Journal. 1991. Vol. 100. Pp. 1879-1934.
[34] Hansmann H., Kraakman R. H. The Essential Role of Organizational Law. P. 406-423.
[35] Hansmann H., Kraakman R.H., Squire R. Legal Entities, Asset Partitioning, and the Evolution of Organizations. P. 4.

the economic analysis of this phenomenon, its main characteristics and attributes inherent in asset partitioning, and the degrees to which it can manifest itself), the main idea put forward by the authors - the impossibility of forming asset partitioning without a special instruction of the legal order within the framework of organizational law - does not seem to be so valuable, because the present dissertation research does not set the following objectives for this study.

Furthermore, the category of organisational law does not have the same meaning in the context of Russian law and the wider continental legal system as it does in the common law system. In the context of the continental legal system, asset partitioning is regarded as an inherent attribute of legal personality. As a category of private law, it is a well-developed doctrine within the respective legal orders. The doctrine of legal entities as full-fledged bearers of subjective civil rights and obligations in continental legal orders has reached a level of development that makes it straightforward to address the question of the reasons for the emergence of asset partitioning. If a legal entity is a separate subject, it is logical that it should bear independent responsibility.

Nevertheless, this systematic and consistent approach to continental law is not without its limitations. The theoretical justification for asset partitioning is contingent upon the legal personality of an entity being recognised by positive law. In the absence of such recognition, theoretical and practical difficulties emerge. Conversely, such an issue does not materialise in the common law system, given the absence of a coherent doctrine of sectoral legal personality. Consequently, common law practitioners tend to engage with the category of legal entities to a greater extent than legal persons. This is particularly evident in the aforementioned definition of the term 'organizational law'.

In the context of organisational and corporate law, a related line of research suggests that, in addition to asset partitioning, there is also organisational partitioning (or regulatory partitioning). This can be defined as the legal isolation between shareholders and corporations for the purposes of imputing rights and obligations other than those related to the segregation of assets for purposes of monetary liability[36]. This separation implies that, in general, shareholders of a parent company have no rights or obligations with respect to a subsidiary. However, there are exceptions to this rule. For example, indirect claims of participants, the establishment of procedures for the approval of certain transactions at the level of the parent company rather than at the level of the company itself and its bodies, and the establishment of other rights of participants of the parent company to directly participate in the activities of the subsidiary are all deviations from the basic approach.

This direction represents an independent line of inquiry within the field of corporate law, distinct from the issue of property isolation as it pertains to the context under consideration.

[36] Pargendler M. Op. cit. P. 8.

The second direction appears to be more pertinent to this study than the first, as it shifts the focus away from the exclusive consideration of asset partitioning within the context of organizational law. This approach, however, maintains the fundamental understanding of asset partitioning as the involuntary subordination of creditors' claims against disparate pools of assets[37].

This kind of criticism concerns the perception of asset partitioning as an exclusive institution of organizational law. However, it does not discredit the theory of asset partitioning as a legal instrument, which has certain properties, advantages and disadvantages. Indeed, it demonstrates the broader meaning of asset partitioning.

It appears that the conditions necessary for the advancement of this approach were largely predetermined by Hansman and Kraakman themselves. It is evident that the limitation of their theory was an attempt to fundamentally differentiate asset partitioning of entities from situations in which involuntary subordination occurs through the utilization of contract and property law instruments.

By way of illustration, an examination of the works of H. Hansman and R. Kraakman reveals a divergence in their assessments of the necessity of organizational law in justifying affirmative asset partitioning. In one paper, the authors explicitly state that it is not possible to achieve this without a specific indication of the right, operating only with standard instruments of contract law. In order to obtain a weak form of affirmative asset partitioning, it would be necessary to conclude contracts with all (including future) personal creditors at each new contract of the entity, subordinating their claims. In order to obtain a semi-strong form, it would also be necessary to obtain waivers from them to exercise the right of liquidation[38]. Conversely, alternative research indicates that the extant positive law governing security constructions is insufficiently flexible to attain the desired outcome. "The necessity of organizational law for this purpose would be obviated if the law in general were more flexible in permitting the creation and assignment of security rights over specific property"[39].

Indeed, if asset partitioning is understood as the division of property into pools of assets that are owed to different pools of creditors (or some of them have priority claims), it would be characteristic, for example, of a pledge. In such a case, the creditors of the pledged property have priority claims against that property, and thus there is at least weak affirmative asset partitioning.

R. Morgan also specifies that the establishment of priority of some claims over others is possible not only by means of pledge (security interest), but also by means of ordinary contract law – repurchase transactions, redemption leasing[40] . Worthy of attention, in our opinion, is the quote by Lynn LoPucki,

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[37] Squire R. The Case for Symmetry in Creditors' Rights // Yale Law Journal. 2009. Vol. 118. P. 808-809.
[38] Hansmann H., Kraakman R.H., Squire R. Legal Entities, Asset Partitioning, and the Evolution of Organizations. P. 13.
[39] Hansmann, H., Kraakman, R.H. Organizational law as asset partitioning. // European Economic Review. 2000. Vol. 44. P. 813.
[40] Morgan R. Organizational Law as Commitment Device // Vanderbilt Law Review. 2017. P. 1316-1320.

cited by R. Morgan, that " “agreement between A and B that C take nothing"[41]. As a result, R. Morgan concludes that a weak form of asset partitioning is also inherent in secured transactions.

The development of the theory of asset partitioning within the framework of organisational law was carried out by R. Squier (co-author of some works by H. Hansman and R. Kraakman on asset partitioning), who proposed to distinguish two basic types of asset partitioning: symmetric and asymmetric. Symmetrical asset partitioning entails the partitioning of assets into distinct pools, wherein the creditors of each pool enjoy certain privileges. In contrast, asymmetrical asset partitioning involves the conferral of these privileges solely upon a subset of creditors[42].

The cases of asymmetric isolation primarily pertain to the establishment of security obligations. However, R. Squire also cites the American general partnership (American General Partnership) as a pertinent example. In this arrangement, the creditors of the partnership enjoy priority over the partnership property, whereas personal creditors do not have the same advantage with regard to the recovery of their claims. R. Squire also refers to them as American General Partnerships, in which the creditors of the partnership have an advantage with respect to the partnership property. However, at the same time, personal creditors do not have an advantage with respect to the foreclosure of personal property and will be satisfied on equal terms with the creditors of the partnership[43]. Also, the author says that even if the law establishes symmetrical asset partitioning, it can become asymmetrical at the agreement level, for example, by providing a surety from the business owner, or conversely, make the asymmetrical partitioning symmetrical by waiving the preference[44] . In this regard, it seems incorrect to interpret these provisions of R. Squire by H. Hughes, who argues that the distinction between asset partitioning of entities and collateral depends on the symmetry of the partitioning[45] .

The primary focus of Squire's work is an examination of the relative merits and drawbacks of the two forms of asset partitioning, a topic that is not directly pertinent to the present discussion. It is sufficient to note here that our interest lies in the fact that asset partitioning can be applied beyond the boundaries of what is commonly referred to as "organizational law." Indeed, it can also be observed in the context of more traditional institutions of civil law.

Furthermore, it is possible that entities and collateral, if the latter is interpreted in accordance with the principles of common law, may be identical. This is exemplified by the formation of a project company (special-purpose vehicle) for the purpose of securing an obligation[46]. In essence, this indicates

[41] Morgan R. Op. cit. P. 1316.
[42] Squire R. Op. cit. P. 808-809.
[43] Squire R. Op. cit. P. 812.
[44] Squire R. Op. cit. P. 813-814.
[45] Hughes H. Blockchain and the Future of Secured Transactions Law // Stanford Journal of Blockchain Law & Policy. 2020. American University. P. 33.
[46] Picker R. C. Pulling a Rabbi Out of His Hat: The Bankruptcy Magic of Dick Posner // University of Chicago Law Review. University of Chicago Law & Economics. 2007. Vol. 74. P. 4.

the necessity for a novel analytical approach. Having established that asset partitioning is intrinsic to both entities and security constructions, the pivotal question is whether there is a fundamental distinction between the two.

It is important to highlight that there is a notable specificity of the common law in this matter, which precludes the direct transfer of developments existing in its doctrine to the theoretical basis of continental law. The latter employs the construction of a person, with a clear division between phenomena where the criterion is the presence or absence of legal personality. In contrast, the common law utilises the construction of essence. Conversely, the examination of the distinctive attributes of the two forms of asset partitioning, as conducted by jurists of the common law tradition, offers insights that are also relevant for the development of continental legal thought.

In our view, a successful solution was proposed by O. Eldar and A. Verstein. The authors distinguished between entities and security constructions on the basis of the nature of the priority of the claims they afford. Their theory posits that entities bestow floating priority, whereas security constructions confer fixed priority. Floating priority differs from fixed priority in that, within an asset that has floating priority, the priority may vary, whereas with fixed priority, it is constant[47]. The following conclusions regarding the features of asset partitioning are also drawn from these provisions: (1) security constructions give fixed priority[48] , (2) floating priority cannot be achieved contractually, (3) the value of floating priority is based on the value of the going concern, while the value of fixed priority is based solely on the value of the property. Each option has its transactional and informational advantages and disadvantages.

The authors examine this issue, among other things, with reference to a hitherto little-known phenomenon in Russian law, namely the segregated portfolio company or protected cell company. These entities divide their assets into separate pools, enabling the claims of different creditors to be satisfied. Such organisational forms are relatively new and are generally used in offshore jurisdictions[49]. O. Eldar and A. Verstein point out that serial limited liability companies and serial trusts are organized in a similar way in American law[50] . In a sense, a similar situation arises in Russian law when one management company manages several mutual funds.

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[47] Eldar O., Verstein A. The Enduring Distinction Between Business Entities and Security Interests // Southern California Law Review. 2018. Vol. 92. No. 2. P. 216.

[48] It is important to note here that it is the priority in respect of some property that is fixed, not the composition of such property. For example, when pledging goods in turnover, the pledgee will always have priority over the pledged property, even though the composition of such property may change.

[49] See, for example, British Virgin Islands Business Companies Act, 2004.

[50] Eldar O., Verstein A. Op. cit. P. 256.

O. Eldar and A. Verstein also argue that the distinction between entities and security constructions cannot be based on the existence of formal legal personality, also because the latter is not "consistently and rationally" defined at the level of the law[51] .

The third direction. The third direction implies the extension of the category of isolated property to such phenomena that do not imply in pure form the emergence of priorities for different groups of creditors, but imply the emergence of a specific legal status for the property as a whole. Asset partitioning as a change in the legal status of property is widely viewed, for example, by R. Picker[52]. One particularly intriguing illustration of asset partitioning is the utilization of a "rabbi trust." This trust, insofar as it pertains to the creator, affords personal creditors a claim right, yet simultaneously precludes the creator from exercising any disposition rights, including those pertaining to pledging. The author posits that the establishment of such a trust can safeguard the interests of all unsecured creditors and, in fact, more effectively fulfil the function of a negative pledge. This would be the case if the law were to regard the latter as a mere contractual promise and were to prohibit the challenge of a pledge established in contravention of this prohibition[53].

It is possible to attribute the aforementioned situation to cases of asset partitioning, provided that the concept is understood in a more expansive manner than that proposed by H. Hansman and R. Kraakman (given that the defining feature of asset partitioning in their theory is the existence of priority for disparate groups of creditors), or even in a more expansive manner than that proposed by R. Squires (given that the latter allows for asymmetric partitioning, in which only one group has priority), since in the case of the Rabbi trust, no group has priority. Accordingly, if we understand asset partitioning as it was formulated by the aforementioned researchers, the Rabbi trust is not an example of asset partitioning, but rather an example of protection against such partitioning.

As previously stated, R. Picker asserts that asset partitioning should be conceptualized as a legal designation conferring distinctive status upon property. However, he refrains from delineating the precise nature of this status, abstaining from formulating a personal understanding of asset partitioning. Instead, he merely draws upon the theoretical foundations established by preceding researchers, whose conceptualization of asset partitioning is, in fact, more circumscribed.

Given the apparent promise of the latter approach as a means of developing the theory of separate property, it is this approach that will be used to investigate the problem of separate property in this paper. This will enable us to move beyond the framework of organisational law and also beyond the common law system in which the original theory was formulated. This approach will prove a valuable addition to

[51] Eldar O., Verstein A. Op. cit. P. 262.
[52] Picker. R. C. Op. cit. P. 3.
[53] Picker. R. C. Op. cit. P.10-13.

the toolkit of private law if the phenomenon of separate property is investigated in accordance with the distinctive features of the continental system of law.

1.4. Our Understanding of Asset Partitioning

We propose to systematize the understanding of asset partitioning as a phenomenon of private law as follows.

Legal asset partitioning is the assignment of a specific legal regime to property, which distinguishes certain (technically separate) property from the total property mass of a person. Asset partitioning is primarily manifested in a special procedure of liability of this property to creditors and division of the latter into several groups. Concurrently, the particular status of isolated property may also be constituted by other aspects, including a distinctive procedure for the utilization and disposal of property, the formation of quasi-contractual relations between the isolated property masses, the designation of a specific purpose for the property, and so forth. Furthermore, the specific status of isolated property may be manifested in other aspects.

In this sense, asset partitioning is a multidimensional phenomenon, which is a consequence of the use of various legal constructions, which can differ significantly among themselves both in the complexity of their structure and the degree of their study. Of course, such a broad understanding of property isolation leads to the fact that it covers a large number of legal institutions, not all of which need to be the subject of independent study in this direction. At the same time, it allows us to use examples of such simple and/or well-studied cases of asset partitioning to establish regularities and find solutions applicable to more complex constructions.

Since the above understanding of asset partitioning is broader than the one formulated by H. Hansman and R. Kraakman and, more importantly, is aimed at studying the phenomenon of legal partitioning in private law in general, rather than as a property of organizational law, it is also necessary to clarify the role and place of the categories of defensive asset partitioning and affirmative asset partitioning, which were developed by these authors in the context of their theory. In the framework of this study, the categories of affirmative asset partitioning and defensive asset partitioning will be used as a tool of legal analysis of civil law institutions, which allows us to determine the presence of one of the most significant characteristics of the specific legal status of property – the availability of property to certain groups of creditors.

The results of our research indicate that asset partitioning under Russian law arises in the following cases: (1) when a legal entity is constructed; (2) when limited proprietary rights are established, as well as obligatory rights that possess the properties of proprietary rights; (3) when property immunities are established; (4) as an independent legal technique. In order to facilitate comprehension of the study's meaning, it is proposed that all these cases be briefly characterised within the framework of this section.

Asset partitioning by means of a legal entity. The most straightforward and comprehensible approach to asset partitioning is the establishment of a legal entity. This method has been extensively examined in the international literature, initially by H. Hansman and R. Kraakman. Consequently, this paper will not delve into the specifics of legal asset partitioning in legal entities, but will instead examine select aspects in the context of atypical cases, such as a simple partnership agreement[54].

Asset partitioning is also recognized by us as a property of a legal entity, but not in the sense in which it is accepted at the moment in the domestic doctrine. Despite the literal coincidence of the terminology used, property isolation as a feature of a legal entity is endowed in the prevailing doctrine with a different content than property isolation, which is the subject of the present study. Y.V. Stroikina defines property isolation as a feature of a legal entity as follows: "[a sign] characterizing the presence of property on the right of ownership, the right of economic management or the right of operational management and fixation of this property on the balance sheet of a legal entity"[55]. The degree of property isolation within the framework of this approach is determined by the type of right on which the property is fixed. Consequently, the scope of powers in respect of the property is determined by the legal entity to which the right is granted.

The later dissertation of E.I. Zakharova[56] in general develops the ideas of Y.V. Stroikina, associated with the fact that asset partitioning is the vesting of a legal entity with a certain amount of rights in relation to the property assigned to it, but does it taking into account the theory of H. Hansman and R. Kraakman (probably its interpretation, which was proposed by V.V. Podsonna), although the degree of asset partitioning E.I. Zakharova defines also depending on the type of right, as it is done by Y.V. Stroikina, and not as H. Hansman and R. Kraakman.

It is our contention that the limitation of the understanding of property isolation by the fixation of property on a certain right to a legal entity is, although acceptable in the context of consideration of its properties, nevertheless less valuable theoretically and practically for two reasons. Firstly, there is a difference in principle, from the point of view of responsibility to creditors, for example, between a general partnership and a limited liability company is overlooked, despite both entities being owners of their respective properties. However, creditors of the general partnership are still held liable, which is a crucial aspect to consider. Furthermore, there is a logical loophole with other properties, as evidenced by the arguments presented by both Y.V. Stroikina and E.I. Zakharieva. It can be demonstrated that the fixation of property on a certain right for a legal entity is a prerequisite for its participation in turnover in its own name. Conversely, it can be shown that participation in turnover in its own name is a prerequisite for the fixation of property on a certain right for a legal entity.

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[54] For more details, see section 2.1 of Chapter 2 of this paper.
[55] Y. V. Stroikina, Op. cit. P. 30.
[56] See E.I. Zakharova, Op. cit. P. 13.

The current understanding of property isolation as a characteristic of a legal entity does not permit an answer to two questions. Firstly, it does not allow us to determine why some non-legal entity isolated property masses cannot be recognized as legal entities. This is because compliance with this feature is impossible without the established fact of recognition by the legal order of the independent legal personality of the entity. Secondly, it does not permit us to ascertain whether a broader understanding of property isolation would be a more appropriate replacement for this narrow understanding.

Asset partitioning by means of rights in rem. Asset partitioning can also occur by means of rights in rem. Asset partitioning of legal entities also obviously takes place not without the use of proprietary rights, but since a separate independent right of ownership in this case is a direct consequence of legal personality, such a role of proprietary rights is so obvious that it is not of interest for further consideration.

The establishment of a limited right in rem may lead to isolation both in the aspect of liability to creditors and in other aspects related to the use and disposal of such property.

The most obvious isolation occurs with the help of pledge, which has also been studied in detail by foreign researchers (primarily O. Eldar, A. Verstein and R. Squire), so the cases of asset partitioning with the help of other limited proprietary rights, the study of the isolation of property in common ownership, as well as the peculiarities of simultaneous isolation with the help of the construction of a legal entity and limited proprietary right[57] are of greater interest within the framework of this study.

Asset partitioning through property immunities. A special type of isolated property is property to which various kinds of immunities apply. The legal nature and peculiarities of isolation by this method are considered in a separate section[58] .

Legal asset partitioning as an independent legal technique. The least studied and of the greatest practical and theoretical interest are such cases of asset partitioning, in which asset partitioning is an independent technique of legal technique, which is not associated with the use of any of the above techniques. This occurs when positive law establishes a regime for property that cannot be explained with the help of standard civil law constructions. In most cases, the specific regime in question is linked to the fact that the legal order endows property with characteristics typically associated with a subject of law, without formal recognition of legal personality for this latter.

Asset partitioning as an independent legal construct is largely similar to the construct of patrimoine d'affectation (patrimoine d'affectation) existing in French doctrine and legal orders influenced by it. The concept of "patrimoine", developed by the 19th century French scholars Ch. Aubry and Ch. Rau, had a significant impact on the perception of law by French jurists. This theoretical construction consists in the fact that patrimoine is a unity of a set of rights (assets) and obligations

[57] For more details, see. § 3 of Chapter 1 of this work.
[58] For more details see section 6.3 of Chapter 1 of this work.

(liabilities). In this case, in accordance with the original theory of Sh. Aubry and Sh. Rau, such unity is always expressed in the belonging of rights and obligations to one person (legal or physical). In this case, any person always has a patrimony, even if it does not have any rights and obligations at a certain moment, but it always has only one patrimony[59].

Accordingly, in any case of creation of such a unit of rights and obligations, which cannot be identified with the complex of property of a recognised natural or legal person, a separate complex of property (patrimoine d'affectation) is formed, which directly contradicts the original theory of patrimoine d'affectation of Sh. Aubry and Sh. Rau. This problem will also be dealt with in a separate section of the study.

In foreign law, such non-subject separate estates include, for example, non-subject foundations, fiducia, inheritances accepted in favour of the inventory, bankruptcy estates, certain types of partnerships[60]. In the current Russian law they are represented, at least, by property under trust management, property of investment partnerships, certain types of bankruptcy property, property of non-subject peasant farm enterprise, etc. Separate signs of asset partitioning are inherited property (before bankruptcy), joint property of spouses.

The signs of defensive asset partitioning as an independent phenomenon are not limited by the specific nature of liability to creditors (defensive asset partitioning and affirmative asset partitioning), but can manifest other properties, namely, the possibility of the emergence of quasi-contractual relations between defensive asset partitioning, which implies a special order of management and disposal of property, certain signs of legal personality of property, the emergence of relations reminiscent of universal legal succession, etc.

The lack of legal personality of separate property complexes creates a large number of difficulties of both practical and theoretical nature, which will be discussed in detail later in the paper in its relevant sections: the ownership of rights and obligations in trust management, the position of inherited property, bankruptcy of non-subordinate property masses, etc.

Even if we assume that asset partitioning as an independent phenomenon is not a full-fledged institute of civil law, which has its own theoretical justification, but only a by-product of inconsistent decisions of the legislator, this in no way removes from the agenda the need to study it from the point of view of positive law and to resolve those issues related to it. Theoretical interest to this problem, first of all, is connected with the correlation of legal isolation of property with legal personality, as well as with the perception of property isolation in the context of individual institutions of civil law.

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[59] Kasirer N. Translating Part of France's Legal Heritage: Aubry and Rau on the Patrimoine // Revue générale de droit. 2008. Vol. 38(2), P. 453-493.

[60] Lepaulle P. Traité théorique et pratique des trusts is translated into English by Popovici A., Smith L. D. Lepaulle Appropriated // Trusts and Patrimonies. Edinburgh University Press. 2015. P. 25

The theoretical need for the development and study of the phenomenon of separate property, in our opinion, can be demonstrated by the following example: one of the best monographic studies of the problem of trust management in Russian law, conducted by O. R. Zaitsev, analyzed a large number of problems that are related to trust management in general and trust management of mutual funds, in particular. However, in our opinion, the potential of this study was limited by the fact that the author did not risk to go beyond classical civilistic constructions when analysing a phenomenon that clearly does not fit into them[61].

O.R. Zaitsev's work is based on the statement that trust management can be built either on the model of transfer of ownership rights to the trustee or on the model of representation[62]. At the same time, the only reason why the author comes to such a division is the controversial statement that the existence of a construction under which a non-owner can dispose of property is impossible[63]. At the same time, the author also denies the theoretical validity of the existence of the rights of economic management and operational management, as well as the commission agreement, under which the commissioner does not receive the right of ownership of the alienated object, because he strictly adheres to the principle: "no one can transfer more rights than he has himself"[64].

The author's reference to the Roman law maxim that no one can transfer more rights than he has does not seem to be a strong argument, since Roman law knew exceptions to this rule, for example, in the separation of the property of the peculium, a slave, who not only had no right of ownership, but was not even a subject de jure (although he was de facto), could well alienate the property without being the owner[65].

Moreover, such an approach, which can be found also in other authors[66], within the framework of which attempts are made to fit trust management into the usual civil theory constructions, seems counterproductive, as it forces to look through the prism of legislative shortcomings, which do exist, at the conscious and politically and legally justified decisions of the legal order.

It should be noted that O.R. Zaitsev, who disagrees with the regulation that manifests positive law and offers possible ways of resolving doctrinal contradictions, does not want to eliminate them in the most obvious way – by giving such property an independent legal personality. Nor do many other

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[61] See Zaitsev O.R. Contract of trust management of unit investment fund. Moscow: Statute. 2007. 507 p. [Electronic resource]. Mode of access - JPS "Consultant Plus".
[62] Zaitsev O.R. Contract of trust management of unit investment fund.
[63] Zaitsev O.R. Contract of trust management of unit investment fund.
[64] Zaitsev O.R. Contract of trust management of unit investment fund.
[65] For more details see. Ibragimov K. Y. Asset Partitioning in Roman law.
[66] Dozortsev V. A. Trust management of property (Ch. 53) // Civil Code of the Russian Federation. Part Two: text, comments, alphabetical-subject index / ed. by O. M. Kozyr, A. L. Makovsky, S. A. Khokhlov. M., 1996. 532 p.; Pyanikh E. S. Place of the contract of trust management of property in the system of civil-law obligations // Jurist. 2004. No. 12. P. 24-29 ; Sukhanov E. A. On trust management of property as an obligatory-legal way of exercising the right of ownership // Vestnik of Economic Justice of the Russian Federation. 2017. No. 11. P. 44-56.

authors who have studied the peculiarities of regulation of trust management of unit investment funds[67]. This is probably due to the fact that the direct indication of the law that a unit investment fund is not a legal person is perceived as a clear and principled position of the legislator, which, due to its firmness and clarity, makes some researchers simply agree with it without any theoretical understanding: " Thus, the legislator does not recognize a unit investment fund as a subject of civil legal relations. In this case we are still inclined to support the legislator's position"[68] .

The direct and unambiguous introduction of sui generis construction by the legislator, which in fact O.R. Zaitsev justified by pointing out the impossibility of placing it within the framework of other institutions, should lead to the need to study this phenomenon as an independent phenomenon, especially since those properties of property as a separate phenomenon. O.R. Zaitsev and justified, pointing out the impossibility to fit it into the framework of other institutions, should, in our opinion, lead to the need to study this phenomenon as an independent phenomenon, especially since those properties of property isolation, which are inherent in it, are also found in other more familiar institutions of civil law: legal entities, inherited property, common property, bankruptcy estate and others.

With regard to the inheritance, modern works also express the view that, in order to use it more effectively, it is necessary to move from universal legal succession to the "personification of inherited property"[69]. However, it should be noted that in this work, although the authors propose the construction of personification as more appropriate to the relevant relations, they do not analyse the problem of legal personality as such, neither from the point of view of positive law nor from the point of view of doctrine, limiting themselves to pointing out that some foreign legal systems use the construction of legal person for these purposes, and Russian law should do the same[70].

§ 2. Separate Property and Legal Personality[71]

2.1. Problem Description

As we have indicated above, non-subordinate isolated property masses possess certain features characteristic of subjects of law, and most of the features that are characteristic of them and do not fit into the usual civilistic constructions, at first glance, can be logically justified by recognizing such

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[67] Nozhkin S.A. Legal nature of the unit investment fund: a diss. ... Cand. of juridical sciences. - Vladikavkaz, 2012. - 159 p.; Ostashevich I.O. Civil-law regulation of managing companies carrying out trust management of closed unit investment funds: thesis. ... kand. jurid. nauk. - M., 2013. - 209 p.; Zabazhanova O.V. Contract of trust management of the unit investment fund: theory and practice of legal regulation: thesis. ... cand. jurid. nauk. - M., 2014. - 217 p.; Gridchin A.G. Legal regulation of the unit investment fund as a form of collective investment: thesis. ... cand. jurid. nauk. - M., 2011. - 226 p. Oksyuk T.T. Civil-legal regulation of trust management of unit investment funds: thesis. ... cand. jurid. nauk. - M., 2005. - 212 p.

[68] Lukyanchenko D.V. Unit investment funds in civil legal relations: thesis. ... kand. juridical sciences. - M., 2014. - 170 p.

[69] Mikhalev K.A., Petrov E.Yu. Personification of the inheritance mass // Law. 2023. No. 6. P. 25-39.

[70] Mikhalev K.A., Petrov E.Yu. Op. cit. P. 25 - 39.

[71] This paragraph is based on the materials published in the article: Ibragimov K.Y. Asset Partitioning and legal personality // Leningrad Law Journal. 2024. No. 1 (75). P. 28-48.

isolated property as a legal personality. This predetermines the necessity to consider the problem of correlation of asset partitioning and legal personality.

At present, there is no single method of analysis to answer the question of which entities should be recognized as legal persons or what characteristics make an estate a legal person. The relevant methodologies tend to depend on the objectives of a particular study, for example, the criteria for legal personality in research on artificial intelligence may be different from those developed in research on the legal personality of inherited property.

Moreover, the approaches to legal personality itself may be very different, because at the level of practical jurisprudence the positivist approach to legal personality will be decisive, which is based on strict adherence to normative prescriptions and allows to consider as subjects of law only those entities that are explicitly recognised as such at the level of positive law. However, this approach to legal personality in no way allows for the determination of the correctness of legislative decisions, which naturally makes it less valuable for theoretical research.

The opposite approach to legal personality, which is more in line with the goals of scientific legal analysis, is based on concepts related to theories of natural rights and the search for any pre-legal attributes of the phenomenon that create the possibility or necessity of recognising certain entities as subjects of law. Justification of legal personality from these positions creates a basis for positive legislative changes, but does not in itself allow to achieve the benefits of legal personality recognised at the level of law.

This section will show why two common and at first sight obvious approaches to the analysis of the legal personality of separate property (compliance with the attributes of a legal person and the criterion of the existence of an independent will) in fact do not allow resolving the question of whether separate property is or should be an independent subject of law, and will also show that the recognition of legal personality at the level of positive law has two levels: broad and narrow (utilitarian), and it is the property that is the subject of law.

2.2. Unsuitability of the Attributes of a Legal Person

Since it is generally believed that the legal personality of a natural person is based on the recognition by the legal order of natural human rights inherent in him by virtue of and from the moment of birth, and the legal personality of legal entities as derived from natural persons subjects is based on the recognition by the legal order of an independent interest for associations of people (corporate organizations) and separate property masses (unitary organizations), then deciding on the possibility of recognizing legal personality for other separate property estates, there may be a desire to compare them for compliance with the characteristics of a legal personality developed over almost two centuries. In our opinion, this approach is erroneous.

The generally recognized characteristics of a legal person (asset partitioning; independent property responsibility for its obligations; organizational unity; acting in civil legal relations in its own name), at least in the meaning usually given to them by the doctrine, are not suitable for evaluating legislative decisions on legal personality, as they describe not the characteristics of a phenomenon, in the presence of which it can be recognized as a legal person, but describe the properties that the entity acquires after being recognized as a legal person.

Independent property responsibility and acting in one's own name in civil relations, as follows from the literal meaning of these features, are not prerequisites for legal personality, but its direct consequences, and cannot exist without corresponding direct recognition by the legal system. As mentioned above, the domestic doctrine also gives property isolation as a feature of a legal person in such an understanding, in which it is a direct consequence of legal personality, but not a prerequisite for it. However, the remainder of this paper will argue that, when understood in a different way, property isolation is still in some sense a prerequisite for legal personality.

Organizational unity as a characteristic of legal personality seems to be a rather vague category, unable to define the conditions of legal personality. Organizational unity as a characteristic of legal personality is also the subject of several doctoral theses. For example, F.A. Rumyantsev defines organizational unity as "a feature of the organization, determining the system of internal organizational links between its elements and characterizing the legal person as a single entity capable of expressing its will outside"[72].

Similar understanding of organizational unity is offered by other authors: "the presence of a system of management bodies with competence is a manifestation of the sign of organizational unity of a legal entity"[73] , "the internal structure of a legal entity, fixed by its charter (constituent document), first of all in the presence of its management bodies, through which the legal entity acts in civil turnover"[74] . Organizational unity in this understanding is also possessed by non-subject entities: (1) property held in trust management; (2) property of a non-subject peasant farm enterprise, (3) inherited property in bankruptcy.

It can therefore be clearly stated that the characteristics of a legal person are suitable for describing the legal status of existing legal persons, but are completely unsuitable for answering the question of the possibility of recognizing legal personality for this or that phenomenon.

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[72] Rumyantsev F.A. Organizational unity as a feature of a legal entity: abstract of disc. ... Candidate of juridical sciences : - Moscow, 2012. P. 8.
[73] Shitkina I.S. Executive bodies of the economic society: monograph. M. Statut. 2022. P. 15.
[74] Sukhanov E.A. Comments on Articles 48, 50 of the Civil Code of the Russian Federation // Vestnik of Civil Law. 2022. No. 1. P. 138.

2.3. The Unsuitability of the Sign of the Will

The most common approach in the domestic doctrine to solving the issue of legal personality of certain entities is related to the use of the sign of the presence of an independent will as a decisive pre-juridical property predetermining the possibility of recognition by the legal order of such an entity as a subject. Such criterion is used in studies on the legal personality of artificial intelligence[75] , groups of companies, inheritance and family property[76] .

The approach to legal personality proposed by V.V. Gruzdev assumes that the existence of the will is a pre-juridical quality to which the legal system attaches only legal significance: "The recognition of legal personality by the state means the attribution of legal qualities to the will of a person, which is formed by his inalienable natural and social qualities"[77], from which it should follow that subjects cannot be such entities who do not have their own natural will.

D.O. Osmanova makes an important reservation that in order to recognize legal personality it is necessary either for an entity to have a will of its own or to have "the possibility of identifying such a will with those who express it externally"[78]. It is this reservation which, in our opinion, should lead to the conclusion that the existence of an independent will is not a necessary pre-juridical condition for legal personality, since it can be replaced by a legal rule establishing a surrogate for such a will. Thus, for example, the author's conclusion that the legal personality of the inherited property is partial[79] and can only be recognized in the context of bankruptcy proceedings should not be understood as meaning that it is impossible to recognize the inherited property as a subject in general, but only that it is not recognized as such by positive law at present.

The existence of one's own will is not a necessary pre-juridical condition for the recognition of legal personality; it merely defines the set of legislative decisions necessary to confer legal personality on someone. This is the fundamental difference between recognizing, for example, legal personality for a slave or for any inanimate entity that is not a human being. N.N. Alekseev points out that the abolition of the legislative restriction on the legal capacity of a slave fully restores the meaning of all his innate volitional properties, while the abolition of the decision on the ineligibility of the lying heir does not in itself give the latter volitional properties[80]. At the same time, by the decision of the legislator, such lack of volitional properties may be eliminated again by the decision of the legislator. As G.F. Shershenevich

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[75] Channov S.E. Robot (artificial intelligence system) as a subject (quasi-subject) of law // Actual problems of Russian law. 2022. No. 12. P. 94-109.; Uzdimaeva N.I., Kozurov A.S. Subject of law: the main approaches to understanding // Kontentus. 2020. No. 4. P. 138.

[76] Osmanova D.O. Legal personality of certain legal entities // Khozyaistvo i pravo. 2022. No. 12. P. 3-26. [Electronic resource]. Access from the JPS "Consultant Plus"

[77] Gruzdev V.V. On the essence of civil legal personality // Actual problems of Russian law. 2018. No. 2. P. 116.

[78] Osmanova D.O. Op. cit.

[79] Osmanova D.O. Op. cit.

[80] Alekseev N. N. Fundamentals of Philosophy of Law: Classics of History and Philosophy of Law. St. Petersburg: S.-Peterb. un. university. 1999. P. 79.

rightly notes: "an animal cannot be a subject of law, because it is incapable of applying for protection against violation of its interests. If, however, the state organized guardianship over the animal, nothing could be objected to the recognition of the animal as a subject of law"[81]. Therefore, a fairly widespread position according to which the ability of an entity to develop, express and exercise a personalized will is a necessary condition of legal personality[82], is not quite correct, since in relation to minor children and legal persons it is the legal order that creates such an opportunity. It is more correct, in our opinion, to say that such a pre-legal entity, in order to have legal personality, must have only those characteristics which allow the legal order to find a certain way of forming and expressing the will, which will be adequate to the interest which the legislator recognizes and wishes to protect. It is the presence of interest, not will, as the main characteristic of the subject of law that is also pointed out by P. Lepaule[83].

2.4. Limited Suitability of Legal Person Theories

It may also seem that the solution to the question of the possibility of recognizing this or that legal entity as a subject of law can be found in the theories of legal person, but this is not quite so. If we understand by theories of legal person, as it is usually accepted, a set of doctrinal provisions on what constitutes the substratum of a legal person, especially in the context of the discussion on real and fictitious character, such developments in themselves do not allow to provide an answer to the question posed.

In this aspect, we are inclined to support the position of O.S. Ioffe that such discussions have no sense: "All kinds of attempts to deepen the content of a legal person, to discover its hidden essence are devoid of scientific sense, because this phenomenon has no other essence, except for the obvious to the point of tangibility: a legal person is just a center of reflection (confinement) of rights, a legal technique of their objective recognition in place and time. Jurisprudence should not and cannot say anything more"[84]. Modern authors are also critical of the practical and theoretical value of using theories of legal personality in making legislative decisions and their theoretical justification. V.Z. Mamageishvili makes a rather convincing argument, pointing out, among other things, that in modern conditions, frequent appeals to theories of legal personality are of a speculative nature[85].

However, this does not mean that all studies devoted to the legal nature of legal persons have no practical and theoretical significance for the resolution of topical issues of modern law, on the contrary, it seems that it is a very valuable material for research, if it is approached correctly. In our opinion, the

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[81] Shershenevich G. F. General Theory of Law. Issue 1. - Izd. Br. Bashmakov, 1910. P. 579.
[82] Dolinskaya V.V. To the question of the development of the system of participants of civil turnover // Bulletin of the South Ural State University. Series: Law. 2015. P. 77.
[83] Lepaulle P. Op. cit.
[84] Ioffe, O. S. Selected works on civil law: from the history of civilistic thought. Civil legal relationship. Critique of the theory of "economic law". M. Statut. 2020. P. 95
[85] Mamageishvili V. Z. On the importance of theories of legal entity in modern corporate law // Vestnik of Economic Justice of the Russian Federation. 2021. No. 3. P. 36-73.

right approach is the approach that is aimed at identifying the common in the theories of legal entity, because it is with this approach can be found those properties and characteristics of a legal entity that objectively exist in law and are recognized by researchers regardless of what approach in assessing the pre-legal essence of a legal entity adheres to the researcher.

It seems that two such provisions, which are shared by the vast majority of researchers, are: (1) property isolation as a feature of a legal person, or, as O.S. Ioffe and V.B. Elyashevich put it more precisely, "isolated area of legal relations"[86]; (2) perception of a legal person as a technique of legal technique, which serves to systematize relations and conveniently describe the law[87]. Having conducted a detailed study of the theories of legal entity, N.V. Kozlova also emphasizes that asset partitioning is a key feature of a legal entity[88].

2.5. Duality of Legal Personality

As it was described above, in the doctrine when analyzing the signs of the subject of law there is a mixture of signs of social (pre-legal) and directly legal, arising by virtue of the decisions of the legal order. In our opinion, the approaches to legal personality and its criteria can be systematized if we analyze the prerequisites for civil legal personality separately in several planes.

It is obvious that the definitions of the subject of law, which are offered, for example, by G.F. Shershenevich: "subjects of law are those centers, legal points to which subjective rights are attached by the norms of objective law"[89] and N.N. Alekseev: "To be a subject means to be recognized by law as an aim in itself"[90] are correct, although they define this concept in completely different ways, leading to the fact that these sets of subjects of law may not coincide.

The approach that analyses the pre-legal conditions that predetermine the possibility, or even the necessity, of recognizing something as an object of law can be considered a broad or philosophical approach to legal personality. The level that analyses the specific civil-law properties that a phenomenon in the legal sphere possesses can be considered a narrow or utilitarian approach to legal personality.

The grounds for distinguishing the two approaches can be seen in the works of H. Kelsen and H. Radbruch, although the authors themselves did not distinguish them directly. Both authors agree that the category of the subject of law is purely legal and therefore the legal personality of individuals and legal entities has no fundamental differences: "All persons, both physical and legal, are creatures of the legal order. Even physical persons in a strict sense are "legal persons"[91]; "It is not a natural reality, but a legal

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[86] Ioffe O. S. Op. cit. P. 94; Elyashevich V.B. Legal entity, its origin and functions in Roman private law. St. Petersburg: typo-lit. Schroeder, 1910. P. 17.
[87] Elyashevich V.B. Op. cit. P. 17-19; Korkunov N.M. Lectures on the general theory of law. M.: ROSSPEN, 2010. P. 210; Ioffe O. S. Op. cit. P. 95.
[88] Kozlova N.V. The concept and essence of a legal entity. Moscow: Statute, 2003. 318 p.
[89] G. F. Shershenevich, Op. cit. P. 586-587.
[90] Alekseev N.N. Op. cit. P. 84 - 102.
[91] Radbruch H. Philosophy of Law. M.: Mezhdunar. relations, 2004. P. 147.

reality, i.e. a construction created by jurisprudence, an auxiliary concept for describing legally significant factual compositions. In this sense, a so-called physical person is a legal person"[92].

2.5.1. Legal Personality in a Broad Sense

H. Kelsen, considering legal personality mainly in a narrow sense, notes that it can also be considered in another aspect related to the idea of "a subject of law independent in its being from objective law as a bearer of subjective right"[93]. Such a broad approach is connected with the formation of the idea of some pre-juridical essence, which positive law must recognize and protect in order not to lose its legal character. It is within the framework of this approach to legal personality that all studies of a natural-law nature are built, when adherents of this direction try to analyze the presence of a pre-juridical essence.

The only criterion for recognizing something as a subject of law, in our opinion, is the feature actually distinguished by H. Radbruch – the presence of such social features of an entity that allow the legal order to see in some entity an end and not a means[94]. As such a social attribute, many authors emphasize the presence of will – it is used in studies on the legal personality of artificial intelligence[95] , groups of companies, inheritance and family property[96]. Some explicitly point out that the ability of an entity to produce, express and exercise a personalized will is a necessary condition of legal personality[97]. As explained above, we believe this approach is wrong.

It is therefore more correct, in our view, to say that such a pre-juridical entity, in order to confer legal personality, need only possess such properties that enable the legal order to discover the interest to be protected through the use of the subject construction and to find a way of forming and expressing the will that will be adequate to the interest that the legislator recognizes and seeks to protect.

The possibility of recognizing this interest depends largely on the economic basis and socio-philosophical views that characterize the legal order. At present, the overwhelming majority of legal orders proceed from the self-value of each person regardless of the completeness of his or her legal capacity and actual property autonomy, so the recognition of the legal personality of any person seems necessary. The separate legal personality of associations of persons also seems natural.

However, in a historical perspective, examples of the influence of sociocultural factors on the issue of legal personality in a broad sense can be found. Thus, in the law of ancient Roman Law, the

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[92] Kelsen H. The Pure Doctrine of Law. SPb.: LLC Publishing House "Alef-Press", 2015. P. 219.
[93] Kelsen H. Op. cit. P. 215.
[94] Radbruch H. Op. cit. P. 146-150.
[95] See, for example, Channov S.E. Robot (artificial intelligence system) as a subject (quasi-subject) of law // Actual problems of Russian law. 2022. No. 12. P. 94 - 109.; Uzdimaeva N.I., Kozurov A.S. Subject of law: the main approaches to understanding // Kontentus. 2020. No. 4. P. 138.
[96] Osmanova D.O. Legal personality of certain legal entities // Khozyaistvo i pravo. 2022. No. 12. P. 3-26.
[97] Dolinskaya V.V. To the question of the development of the system of participants of civil turnover // Bulletin of the South Ural State University. Series: Law. 2015. P. 77.

existence of an independent interest to be protected was found not at the level of the individual, but at the level of the family or even the clan as a whole, and the father of the family acted as a person acting in the interests of the family (although as the legal order developed, it gradually began to recognize elements of legal personality of individual family members)[98]. Some researchers, in support of the idea that the father of the family was the bearer not of his own individualistic interest, but of the interest of the family as a collective of value to the legal order, point to the possibility of establishing the administration over the property of persons who squandered family values[99].

It is important to note that an identifiable interest does not always oblige the legal system to recognize legal personality for its holder. The requirements of natural law apply only to natural persons, so that in other cases the legislator has sufficient discretion. Thus, the recognition of an independent interest by the legal order may either oblige the legal order to protect such an interest through the use of the concept of legal personality, or simply create a potential possibility for its use.

As rightly noted by H. Radbruch: "to become a person, an individualizing act of law and order is necessary"[100]. However, when we talk about legal personality in the broad sense, we do not think that this should necessarily mean a normative determination of the fact that this or that entity is a subject – it is enough that there is a unity of a set of rights and obligations. As G. Kelsen rightly points out in this connection: "A natural or legal person who "has" legal duties and subjective rights (as their bearer), is these legal duties and subjective rights, i.e. is a complex of duties and rights, the unity of which is figuratively expressed in the concept of a person. A person is only the personification of this unity"[101]. In other words, legal personality can be recognized in two ways: (1) formally, when the legal order expressly establishes the legal personality of an entity; (2) actually, when the legal order creates a unity of a complex of rights and obligations. It is in this way that the statement of V.A. Belov and K.A. Blinkovsky can be correctly perceived: "a subject is not the one who is directly named as such in the law, but the one who possesses the features of a subject"[102]. It seems that the allocation of two variants of recognition of legal personality in the broad sense finds confirmation and clarifies the idea expressed by D.I. Meyer in relation to legal entities: "The recognition itself occurs in two ways: either an institution is granted rights, and from this it follows that it is recognized as a legal person, even if the act of recognition does not mention it, or the institution is declared a legal person, and either its rights are

[98] Ibragimov K.Y. Asset Partitioning in Roman law. P. 77-78.
[99] Pestov M. M. Prerequisites for the emergence and significance of the concept of the person in the Roman jurisprudence of the classical period // Vestnik Civic Law. 2023. Vol. 23, No. 3. P. 265-266.
[100] Radbruch G. Op. cit. P. 147.
[101] Kelsen G. Op. cit. P. 218.
[102] Belov V.A., Blinkovsky K.A. Civil-legal regulation of corporate relations with the participation of civilly incapable (not possessing legal personality) organizations // Corporate Law: topical problems of theory and practice / edited by V.A. Belov. Moscow: Yurait, 2024. P. 219.

determined or not"[103]. Our fundamental clarification here is that not every "granting" or attributing rights to an entity at the level of positive law means the recognition of legal personality, since the mere recognition of rights to a simple partnership within the framework of the current legislation will not give it the characteristics of a subject, since the property of a simple partnership is not actually isolated[104].

It should also be noted that the statement of N.V. Kozlova that property isolation "is a consequence of civil legal personality, but not vice versa" and "the mere possession of isolated property, i.e. its presence on the balance sheet of an enterprise (organization) does not mean that this enterprise (organization) is a legal entity". its presence on the balance sheet of a certain enterprise (organization) does not mean that this enterprise (organization) is a legal entity"[105], does not refute the conclusions drawn, as N.V. Kozlova assumes from a different understanding of property isolation and understands it exclusively as technical isolation, as evidenced by references to the isolated property of branches of a legal entity[106].

In our opinion, most cases of legal asset partitioning are related precisely to the emergence of such features of the subject directly at the level of positive law, which means that the legal order recognizes such entities as subjects in the broad sense, but not in the narrow sense. This circumstance predetermines the paradoxical legal position of these entities *de lege lata*.

In some cases, this situation may be related to the ideological and cultural peculiarities of the legal order in question. An illustration of this statement can be the legal position of state enterprises in the USSR in the period from the 30s to the mid-60s of the XX century, when they actually participated in civil turnover as subjects, but were not formally recognized as such[107]. However, it seems that under the existing Russian legal order there are no such restrictions.

2.5.2. Legal Personality in the Narrow Sense

Since almost all cases of separate property considered by us in the framework of the study, in addition to property isolation, also have a legally established order of appearance outside (property in trust management, acts in turnover through the manager; non-subordinate property in bankruptcy, acts through the bankruptcy manager, i.e. they all act in an order no less orderly than legal entities), we are inclined to recognize that the legal order recognizes their independent purposes and interests

Let us repeat that according to the theory of H. Kelsen, the legal construct of the subject of law in the narrow sense is not obligatory, but serves only for the purposes of convenience in describing the law. This approach echoes the position of B. Windscheid, who allowed the existence of subjectless rights

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[103] Meyer D. I. Russian civil law: a course of lectures / D. I. Meyer. - 4th ed., corrected and supplemented - Moscow: Statut, 2021. P. 143.
[104] For more details see section 2.2 of Chapter 2 of this paper.
[105] Kozlova N.V. Op. cit. P. 187-188.
[106] Ibid.
[107] Boldyrev V.A. Legal entities - non-owners in the system of subjects of civil law: a monograph / edited by V.A. Sysoev. Omsk: Omsk Academy of the Ministry of Internal Affairs of Russia, 2010. P. 23.

and obligations, which arise in those situations where no artificial subject is created, by personification[108].

At the same time, despite its optional nature, such a construct seems highly desirable for the convenience of working with legal material. B. Windscheid, among other things, points out that subjectless rights "are opposed by a natural feeling rooted in the deep attraction to the individual, which pervades the whole of human nature. Even in this case, this feeling seeks for rights and obligations a subject bearing them and finds it ... in an artificial, imaginary person created by the thought process"[109].

In the same vein, L. Ennekzerus said: "The observance of the mentioned common interests requires that the property be at their service for a long period of time. However, without a substantial transformation of our private law, this can only happen by recognizing the rights to this property ... therefore, if the purpose of the property for the purposes of the named organizations is to be brought into conformity with the rest of private law, this can only be achieved by recognizing these organizations as subjects of law"[110].

However, the category of subjectless rights is not solely a thought experiment of nineteenth-century civilists, as it is, for example, actually explicitly enshrined in the Civil Code of Quebec (hereinafter "**CCQ**"): "property belongs to persons, to the State or, in some cases, belongs to some purpose"[111].

The auxiliary nature of the category of legal personality is evidenced by the early stage of development of legal persons, or rather their prototypes in Roman law. Thus, for example, Roman law knew a large number of situations in which, in order to achieve various goals, a regime of separate property was established, which to a greater or lesser extent allowed to achieve the same goals for which the modern law uses the construction of a legal entity.

From the conducted research[112] we can conclude that personification and asset partitioning are two independent tools of legal technique: asset partitioning and personification of property. The personification of property, in turn, gives the legal entity the opportunity to be a person, to act in civil turnover and in the resolution of disputes in courts on its own behalf, to be the point of attachment of subjective rights and obligations like physical persons.

The construction of fictitious personality allows to use all its advantages only when it is recognized by positive law. Only in this form it allows to order the internal relations of the participants

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[108] Windscheid B. Textbook of Pandect Law. St. Petersburg, 1874. Vol. P. 112.
[109] Windscheid B. Op. cit. P. 110-112.
[110] Ennekzerus L. Course of German civil law / L. Ennekzerus, T. Kipp, M. Wolf; translated from the 13th German edition by Prof. K.A. Grave [and others]; Vol. 1. Semi-volume 1. Introduction and general part. Moscow: Izd-vo foreign literature, 1949. P. 353.
[111] Article 915 Civil Code of Québec. Hereinafter, references to the Civil Code of Quebec (CQC) are given in accordance with the information posted on the official legal portal of Quebec - [Electronic resource]. Access: https://www.legisquebec.gouv.qc.ca/en/document/cs/ccq-1991
[112] For more details see. Ibragimov K.Y. Asset Partitioning in Roman law.

of the community with third parties, for which they become a single center of attachment of rights and obligations. It removes theoretical problems related to the determination of the belonging of rights and obligations of isolated property, liability for obligations and management of property and the consequences of changes in the composition of participants in such relations.

Thus, in our opinion, there are no theoretical obstacles for the legal order to recognize legal personality for certain forms of separate property, which are not currently recognized as subjects of law. At the same time, the more active role the separate property plays in the turnover or the more specific is its regime, the higher such need is. For example, the regime of pledged property is not very different from other property: it has only a weak form of affirmative asset partitioning, has no defensive asset partitioning, is managed, as a rule, by the same person and in the same manner as other property. On the other hand, the regime of property of a unit investment fund is so specific that all its peculiarities require its recognition as a subject of law.

The very personification of property, i.e. giving it the properties of a subject of law: the ability to have its own rights and obligations, to bear responsibility with its property, or, to put it differently, the ability to be a mental point of attachment of subjective rights and obligations, although purely theoretically possible[113], but in most cases makes no sense without legal asset partitioning, while there are many examples of legal asset partitioning without its personification.

However, the combination of these two techniques, which forms the construction of a legal person, has shown its promise and usefulness and has become widespread in all significant legal orders.

2.6. Quasi-Subjects and Partial Legal Capacity

It is also necessary to highlight the problem of correlation of subjects and quasi-subjects raised in science. The concept of quasi-subject is understood in different ways in doctrine. To begin the discussion of this topic, let us cite the concept proposed by E.V. Ponomareva, as well as authors who share her point of view: "quasi-subject is a certain legal phenomenon, for which at the official or doctrinal level it is considered reasonable to recognize certain elements of legal personality at the impossibility of giving it the status of a full-fledged subject of law"[114]. This concept in isolation from the context of this author's work can be perceived as related solely to the distinction at the level of a broad understanding of legal personality – the presence/absence of pre-legal attributes inherent in a social phenomenon, which predetermine the need to recognize the latter as a subject of law, since the definition itself is an explicit opposition between the spheres of due and actual.

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[113] In general, we can imagine a construction of this kind, when several persons unite to achieve a common goal, act for third parties externally as a single entity, having an organizational structure and a specific order of performance in external relations, but do not have any property isolation. An embodiment will be a technique that creates convenience solely for the purpose of designating a certain collective under one name.

[114] Ponomareva E.V. Subjects and quasi-subjects of law: theoretical and legal problems of differentiation: diss. .... Cand. jurid. nauk. Yekaterinburg, 2019. P. 10-11.

At the same time, in reality, the author of this work mixes pre-legal attributes in the form of the presence of independent interest, which is required to recognize an entity as a subject of law in the broad sense, and legal attributes, i.e. those attributes that are already given by the legal order itself (for example, the ability to independently exercise subjective rights and legal obligations; the ability to bear legal responsibility; isolation (property and organizational)[115]. Also, the disadvantage of this concept is that although the author first makes a reservation that it is necessary to analyze the problem of the subject in the framework of the general legal theory, as these provisions may not be applicable to the sectoral legal personality[116], nevertheless, he further applies the criteria developed by him to the sectoral legal personality[117].

A.A. Golovina offers a different understanding of the term "quasi-subject": "objects of law endowed with certain features of a subject of law, namely, autonomy of will and the ability to make independent decisions not covered by the will of their owner, including legal consequences"[118]. This approach, in the context of the problem of legal personality of robots considered by the author does not have internal contradiction, however, the author does not consider the problem of property isolation and, as a consequence, it remains unclear whether the "quasi-subject" becomes a point of attachment of rights and obligations or such a term is used only to justify the specific nature of the responsibility of the owner of such an object.

Approximately in the same way quasi-subjects are understood by A.V. Myskin, namely as the presence of certain properties of a subject in an entity that is not such (the author considers this phenomenon in relation to branches of a legal entity)[119]. Despite the disagreement with the presence of any prerequisites for legal personality, or even quasi-legal personality, of branches of legal entities, this extremely simple and understandable approach to quasi-legal personality has the right to exist.

In this sense, it seems more reasonable to use the concept of quasi-subject for situations when the legal order has already created such regulation, which leads to the appearance of some entity (asset partitioning) of all significant features characteristic of the subject (unity of the complex of rights and obligations), i.e. the legal order has recognized for some entity the existence of independent value and interest, has carried out asset partitioning and fixed the mechanism of formation and expression of will outwardly, but does not formally recognize such entity as a person. It seems that this is the meaning in which the term is used by some authors[120].

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[115] Ponomareva E.V. Op. cit. P. 10-11.
[116] Ponomareva E.V. Op. cit. P. 61.
[117] Ponomareva E.V. Op. cit. P. 84.
[118] Golovina A.A. Quasi-subjects of law in the modern theory of legal relations: the concept and prospects of development in the XXI century // Bulletin of O.E. Kutafin University (Moscow State Law Academy). 2023. No. 4. P. 156.
[119] Myskin A.V. Branch of a legal entity as a quasi-subject of civil law // Civil Law. 2014. No. 1. P. 6-9.
[120] Egorov A.V. Joint property of spouses: at the crossroads // Civil law of the social state: Collection of articles dedicated to the 90th anniversary of the birth of Professor A.L. Makovsky (1930 - 2020) / Ed. by V.V. Vitryansky, E.A. Sukhanov. Vitryansky, E.A. Sukhanov. Moscow: Statute, 2020. // JPS "ConsultantPlus"

There is also in the literature the term "partial legal personality", which seems to be in some cases actually identical to the term "special legal capacity"[121], or is used as a construction synonymous with "quasi-legal personality"[122], but sometimes still has an independent meaning. The phenomenon of relative legal capacity (Relativitat der Rechtsfahigkeit), is developed in the German doctrine, with the help of which the participation of non-subject entities as subjects in turnover is justified[123]. Relative legal capacity seems to be related to an old problem of German law, namely the problem of the isolation of joint property, as well as the legal capacity of partnerships that are not legal persons. The property of such partnerships is jointly owned by the partners and they are liable for their debts, but such a partnership enters into relations in its own name, and the partnership's property is subject to its own insolvency proceedings[124].

This problem will be discussed in more detail below; here we only state that such a situation of the entity differs from the situation we described through the concept of "quasi-subject", since there the legal regime of the entity does not change depending on the situation. Something similar to relative legal capacity in the framework of the current Russian regulation can be seen in relation to inheritance property, as the latter receives the regime of property isolation only in the situation of bankruptcy of the inheritance mass[125].

It should be noted, however, that such partial legal capacity developed in the context of German law has nothing in common with partial legal capacity under the common law, for which the division into branches of law is not formed in the same way as it is done under the continental system of law and, as a consequence, legal personality in general is not considered from a branch point of view. This, in our view, can be seen, for example, when the common law addresses the problem of the division between legal personality and non-legal personality entities: "more generally, there is no clear boundary between 'full-fledged' legal persons and non-persons; a legal entity may be a legal person for some purposes but not for others. For example, indicating that fetuses are legal persons in the context of the law of homicide need not necessarily imply that fetuses may also own property"[126].

Within the common law system, the concept of a "de facto corporation" (corporation de facto) has been developed, which is an organization that has not fulfilled any of the requirements to be recognized as a legal person, but to which, under certain circumstances, the rules of limitation of liability

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[121] Kuznetsova N.V. Artificial intelligence in entrepreneurial activity: problems of legal regulation // LegalTech in the sphere of entrepreneurial activity: a monograph / R.N. Adelshin, E.I. Andreeva, L.V. Andreeva et al; ed. by I.V. Ershova, O.V. Sushkova. Moscow: Prospect, 2023. 200 p.; See: V.V. Laptev. Subjects of entrepreneurial law: Study guide. Moscow: Yurist, 2003. P. 161.

[122] Amelin R.V., Channov S.E. Evolution of Law under the Influence of Digital Technologies. Moscow: NORMA, 2023. 280 p.

[123] Shishmareva T.P. Insolvency Institute in Russia and Germany. Moscow: Statute, 2015. C 69-74.

[124] Ennekzerus L. op. cit. p. 355-356.

[125] For more details see. § 5 of Chapter 2 of this work.

[126] Kurki V. AJ. Op. cit. P. 6.

apply[127]. This situation of the organization differs from the cases before us, as here the separation is a way of protecting the interests of the association, rather than an inherently statutory property regime.

Thus, partial legal personality in the common law context, i.e. legal personality for the purposes of particular area of law (as understood by continental law), differs from the German understanding, where partial legal personality is determined according to a particular situation within a single area of law.

2.7. Legal Entity and Other Forms of Legal Personality

The recognition of legal personality raises another issue, which is not only theoretical but also practical: legal personality can be recognized either by conferring the status of a legal person or by recognizing it as a special subject of law, different from physical and legal persons.

It is necessary to make a reservation that a legal entity can be perceived in a broad sense. Such understanding we can find in G.F. Shershenevich: "a legal person is a subject of law, not corresponding to an individual person[128]", and in this sense the recognition of legal personality for any isolated property will mean the recognition of such property as a legal person. At the same time, a legal person can also be understood in a narrow, strictly normative sense, i.e. as an institution established by civil law with the corresponding strict normative regulation. Therefore, the question raised about the possibility of recognizing separate property as a subject of law other than a legal person refers to the narrow normative understanding of a legal person.

Since a legal person at the normative level is, first of all, a category of civil law, it is there that the concept is constructed, its main features, the order of creation and performance of activities. Despite the fact that the basis of its legal personality is related to civil law, it has objectively become a general legal category, so the granting of the status of a legal person to separate property masses may entail the need to revise the already existing approaches to their place in the relevant areas of law.

In the Russian legal system, more than in many other legal systems, the relationship between the civil legal personality and the tax legal personality is strong, as long as the tax regime of an entity is determined by its organizational and legal form or the status of an individual entrepreneur. For example, some legal entities in the USA and Germany, regardless of their civil legal personality, can choose a tax regime both characteristic of an independent subject of a tax legal relationship (taxes are paid by the entity itself) and uncharacteristic of such (taxes are paid directly by the participants of the entity).

For this reason, it seems not quite correct position, according to which in the framework of the Russian legislation the category of a legal personality is not interbranch, but only civil law category. Thus, for example, E.A. Sukhanov points out that the use of the category of a legal persona in tax law is

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[127] Kozlova N.V. Op. cit. P. 39-40.
[128] G.F. Shershenevich G.F. Op. cit. P. 579.

secondary to the definition of subjects of civil turnover[129]. In our opinion, this is not quite true, because, for example, branches and representative offices of foreign companies are subjects of tax law of Russia, while they are not subjects of civil law.

Also, it is probably not necessary to extend a large number of norms on legal persons to quasi-persons, as many of the existing forms of asset partitioning are either characterized by a simpler structure and do not require the application of a large number of norms on legal persons, or are themselves sufficiently regulated, and the application of norms on legal persons to them may lead to contradictions in regulation.

At the same time, the attribution of separated property masses to other subjects, not related to legal persons, in addition to its main purpose – to give legal personality for the convenience of working with these constructions has other advantages.

The legal capacity of such subjects will be determined not by general rules, but by special rules relating to the relevant civil law institutions, which are characterized by asset partitioning and exactly to the extent that is sufficient and necessary to achieve the relevant goals.

Legal personality in a form other than that of a legal person, which, by virtue of the very word "person" used to designate it, is highly personalized, may help to eliminate misconceptions about the degree of autonomy of such an entity.

For the development of civil law, it seems important to move to a higher level of allowed abstraction in forming the concept of legal personality than is currently the case.

Russian legal regulation contains a reference to "organizations that are not legal entities", and as a rule, the reference to such organizations is made in the context of private international law. Article 1203 of the Civil Code speaks about the personal law of a foreign organization that is not a legal entity. Thus, the first meaning in which the construction of an organization that is not a legal entity is used appears in the meaning of a legal entity under foreign law[130]. The fact that such organizations are subjects of law is evidenced by the very application of the personal law construction to them.

However, the same term is used in a different meaning: "organizations that are not legal entities, but have the right to carry out their activities without forming a legal entity, include representative offices, branches and other separate subdivisions of legal entities, mutual investment funds, simple partnerships, as well as district, city, inter-district courts (district courts)"[131], i.e. entities that do not have the status of a subject of law. A similar use of this term is found in the academic literature in relation to

[129] Sukhanov E.A. Comparative corporate law. Moscow: Statute, 2014. P. 12.
[130] In the same meaning is used in the Resolution of the Government of the Russian Federation dated 01.12.2018 No. 1456
[131] OK 028-2012. All-Russian Classifier of Organizational and Legal Forms (approved by Order of Rosstandart of 16.10.2012 No. 505-st.

branches and representative offices[132]. In this sense, organizations without the status of a legal entity are not of great interest for our study, we only note that at the normative level there is the use of the same construction in relation to fundamentally different phenomena.

In Russian law, as well as in the law of many other countries, the legal persona is the only form of existence of organizations that exist on the same level as individuals and public legal entities. However, this approach is not the only one. For example, in the law of the People's Republic of China, there are organizations with legal personality without the status of a legal person: "Article 102 of the Civil Law of the People's Republic of China provides a list of organizations without the status of a legal person. It includes individual private enterprises (analogous to individual entrepreneurs), partnerships, professional service providers (analogous to self-regulatory organizations), and others. The main difference between these organizations and legal entities is that they have no management structure and can only conduct business in their own name"[133].

At the same time, it is noted that in the PRC legislation such entities, although they were recorded in the Civil Code under the name of "unincorporated organizations", which are not legal entities, but in other normative acts there is also the term "other organizations", due to which there is a problem of establishing the correct correlation between these concepts. The researchers also note that the decision of the legislator to regulate the relations of such entities, which are recognized as subjects, but are not legal entities, within a separate category of subject, rather than a type of legal entity is correct, but point out that the goal has not been achieved due to terminological inconsistency in the legislation as a whole. They propose to use the term "subjects of civil law of the third category" to designate the status of such subjects[134].

More recently, at the normative level, the singling out of a special subject of law, different from a legal person, has occurred in German law. It is noteworthy that this change occurred in connection with attempts to solve the problem of partial legal personality of certain types of partnerships, which we outlined above, since: "the essential difference between a legal person and a legally capable partnership lies not in the existence of legal capacity, but in the degree of legal independence of the partnership from its constituent partners"[135]. At the same time, as we understand, the degree of legal independence is not related to the presence or absence of any pre-legal properties of such an association, but to those legal properties which the legal order, based on political and legal considerations, was ready to endow such

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[132] Gerasimova L.P. Commercial law: textbook / Gerasimova L.P., Sunyaev Y.V. Saratov: Dipol Corporation. IPR Media. 2013. P. 43.

[133] Alekseenko A.P. Characteristic features of the Civil Code of the PRC // Actual problems of Russian law. 2021. No. 12. P. 204. See also Wang Haijun. The Law "General Part of Civil Law of the PRC" and the development of civil law of China // Vestnik of St. Petersburg University. Law. 2018. No. 3. P. 413-421.

[134] Ha Shuju, Nyu Dantong. On the normative content of the term "subject of civil law of the third category" in China // Law. 2022. No. 9. P. 74-85.

[135] Goreva A.A., Zhestovskaya D.A. Reform of legislation on civil partnerships in Germany: translation of Section 16 "Partnership" of the German Civil Code // Bulletin of Economic Justice of the Russian Federation. 2022. No. 6. P. 123-127.

associations with: "Thus, unlike a legal person, a partnership cannot acquire its own shares (§ 711 (1) of the German Civil Code). In addition, a partnership is terminated without liquidation upon the withdrawal of the last partner, and the common property of the partnership is transferred to such last partner by way of universal succession (§ 712a of the German Civil Code)[136]".

Since at the level of positive Russian law there is asset partitioning without endowing the property with the status of a subject, the basic properties that are necessary and sufficient content for the subject of law are actually recognized – there is a confluence of rights and obligations just in respect of this isolated property. In other words, this property is separated from full-fledged legal personality by the last, to a greater extent not essential, but rather a purely formal feature – the absence of direct fixation of legal personality. Despite the formal nature of such an element, its absence creates a large number of both theoretical and practical problems, which will be discussed further in the paper, while legal personality allows to serve the purposes of law to a greater extent when it is fully recognized by positive law.

Thus, it is appropriate to recognize some separate property estates with significant forms of defensive and affirmative property division as legal entities. In some cases, however, it may be more appropriate to recognize their legal personality not by granting them the status of legal persons, but by recognizing them as other subjects of law. Such an approach has the following advantages: first, it will allow to take into account the peculiarities of their current regulation and to develop them, if necessary, without radical changes; second, such a solution will not lead to the need to revise the approach to the legal person in other branches of law. It also seems that there are no theoretical obstacles to such a solution, since from the point of view of doctrine and a broad understanding of "legal person" such subjects will be legal persons, but will not be "legal persons" in the narrow normative sense.

§ 3. Asset Partitioning and Rights in Rem[137]

In addition to the above-mentioned problem of the correlation between asset partitioning and legal personality, it is also necessary to analyze the correlation between asset partitioning and rights in rem, as legal relations associated with asset partitioning have, among other things, an absolute nature, as the resulting priority of claims can be opposed to all third parties. This was emphasized by O. Eldar and A. Verstein, among others: "This asset partitioning role is a form of property law because it is good against the world and cannot be accomplished through bilateral contracts"[138]. The correct interpretation

[136] Goreva A.A., Zhestovskaya D.A. Op. cit. P. 129.
[137] This paragraph contains materials published in the article: Ibragimov K.Y. The problem of legal entities of non-owners in the light of the theory of separate property // Legal Studies. 2024. No. 7. P. 29-41.
[138] Eldar O., Verstein A. Op. cit. P. 216.

of the phrase "property law" in this context means an absolute right, not a right in rem or a right of ownership as understood by domestic doctrine.

It should be specified that hereinafter, when using the terms proprietary rights or ownership rights, it will also mean rights in respect of non-material property, for which no special term has been adopted in the domestic doctrine, to the extent that the specific legal regime of isolation extends to it.

3.1. Separation of Property Through Rights in Rem

At least some asset partitioning occurs through the creation of limited rights in rem.

Pledge. The most obvious way of asset partitioning by means of a limited right in rem is partitioning by pledge, since this instrument itself is explicitly aimed at establishing priority claims in respect of certain property. Pledge has been studied in sufficient detail in the context of asset partitioning by O. Eldar, A. Verstein and R. Squire. The main content of asset partitioning is that pledge creditors receive priority claims on pledged property over other creditors. Given the separation of the two groups of lien creditors and ordinary creditors, such a separation can be perceived as weak affirmative asset division. Such a segregation is defined by R. Squier as asymmetrical because the pledge is created for the benefit of the pledgeholders but without improving the interests of the other creditors[139]. Segregation could become symmetric if non-lien creditors were given priority over lien creditors with respect to all unpledged property[140].

Theoretically, the more important characteristic is the fixed nature of such priority. O. Eldar and A. Verstein define such priority as fixed, because, as a general rule, higher priority claims to the pledged property cannot be established without the consent of the pledgee. It is in this that the researchers see a fundamental difference between the partitioning on the principle of entity and the partitioning on the principle of security[141].

Pledge may also lead to the emergence of a special legal regime, which is manifested in the specific nature of disposal of pledged property, as well as in some cases lead to the separation of ownership and powers to manage pledged property. In addition to general restrictions on the disposal and encumbrance of pledged property, the establishment of a pledge may result in the transfer of rights related to the management of pledged property (Article 358.17 of the Civil Code), which clearly indicates the specific legal regime of such property.

The right of lifetime inheritable possession and the right of permanent use. It is also possible to separate land plots through the right of lifetime inheritable possession or the right of permanent use, but such separation is not directly related to the establishment of any priorities for creditors' claims. Despite the fact that these rights in rem are certainly rudimentary in nature and are gradually being

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[139] Squire R. Op. cit. P. 808-809.
[140] Ibid.
[141] Eldar O., Verstein A. Op. cit. P. 224-232.

withdrawn from circulation, they, unlike the rights of operational management and economic management, which will be considered further, perform an independent function of asset partitioning.

The emergence of these rights actually transfers the entire economic value of the land plot from the mass of the owner to the mass of the right holder, which manifests itself, among other things, in relations with creditors. Despite the fact that the property formally remains with the public entity and no immunity is expressly established for such land plots, they are of no value to creditors due to the presence of such serious encumbrances that leave the title naked (nudum ius).

The use of limited proprietary rights for the asset partitioning instead of transferring the right of ownership in this case is due to historical reasons related to the impossibility to use the construct of private property in the Soviet period for ideological reasons. As noted above, any legal system in choosing a method of legal asset partitioning may be guided not only by economic needs and legal rationality, but also by existing political and ideological attitudes, giving preference to the latter in some cases.

Obligatory rights with the property of succession. Without going into the discussion about the proprietary and obligatory nature of lease, but realizing that the common position is that it is obligatory, we note that a very similar regime of asset partitioning arises in respect of property when it is transferred into lease (leasing). In the same way, the relevant conclusions are applicable to situations of pledge of non-material property, to which it is purely terminologically incorrect to apply the term proprietary right.

3.2. Legal Entities – Non-Owners

Legal entities that are not owners of their property are a characteristic element of the Russian legal system that can be used as an example to demonstrate one of the variants of a possible and, as we shall see, undesirable correlation between limited property rights and asset partitioning. Recently, in connection with such legal entities, the issue of legal asset partitioning was discussed by E.A. Sukhanov, who drew attention to the close connection between legal personality and the right to property, which is manifested in the fact that the whole purpose of establishing a legal entity is to transfer the property from the founders to the entity established by them[142]. In development of this idea, we will substantiate that for such cases the right of ownership is sufficient and there is no need to isolate the property in two ways at once: legal entity and limited proprietary right.

It is generally recognized in the doctrine that the formal lack of legal personality of state enterprises in the Soviet period was ideological in nature and aimed to formally consolidate state ownership of the means of production: "Until the mid-1930s, the most popular was the concept of property separated by the state (authorities and administration) and the enterprise (economic state body).

[142] Sukhanov E.A. Legal forms of realization of civil legal personality of the state // Journal of Russian Law. 2024. Vol. 28, No. 1. P. 10-11.

After the adoption of the Constitution of 1936, for well-known reasons, the fretful discussions around the rights of the trust subsided. Fruitful scientific and practical disputes were supplanted by the politically one-line slogan "The state is the sole and only owner of all state property""[143].

At the same time, despite this unambiguous political attitude, there was also a need to isolate separate parts of state property for their relatively independent participation in turnover and effective management. In the period from the 1930s to the mid-1960s, such a need was met by actual property isolation without any definite solution at the level of positive law[144]. Since 1964, the construction of operational management has been legally established, which was the fruit of the works of A.V. Venediktov, written long before their implementation at the legislative level. At the same time, if we turn to the work of A.V. Venediktov, we can see that this very construction was derived, among other things, by negating the constructions of capitalist countries, which had already solved this problem through the recognition of split ownership[145].

As already noted in connection with the issue of legal personality, some purely civil decisions taken at the normative level may have consequences for other branches of law. For example, V.A. Boldyrev notes that the decision to retain formal state ownership of the property of enterprises could be related, inter alia, to the objectives of criminal law – crimes against state property were more serious[146].

It seems to us that in this case legal asset partitioning of state property was simply a means to achieve sufficient independence of enterprises in a way that did not contradict ideological and political attitudes. Recognition of legal persons, vesting legal persons with the right of ownership, and simple legal asset partitioning (actual recognition of legal personality, without formal recognition) are different techniques of legal technique, which, being mostly interchangeable, can be chosen depending on the existing conditions. In this sense, the inability to recognize a separate legal entity as owner is very similar to an example from Roman law, where, due to socio-cultural attitudes, legal personality could not be recognized for a slave or a son, despite the fact that they actually possessed separate property and participated in the turnover[147].

However, the question remains as to why such double asset partitioning persists in modern Russian law, despite the fact that the existing political regime does not formally deny the right of private property. V.A. Boldyrev offers the following justification: initially in the period of transition from planned to market economy the preservation of legal entities of non-owners served as a means of protection against uncontrolled and widespread privatization, and afterwards it was due to the fact that

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[143] Medvedev D.A. Problems of realization of civil legal personality of the state
Enterprises: Dissertation ... ... kand. jurid. nauk. L., 1990. P. 64-65.
[144] Sukhanov E.A. Russian Civil Law - Private Law P. 258-263; Soviet Civil Law: Subjects of civil law / Edited by S.N. Bratus. Moscow: Yurid. lit., 1984. P. 55.
[145] Venediktov A.V. State socialist property: Monograph. Moscow; Leningrad: Izd-vo AS USSR, 1948. P. 323.
[146] Boldyrev V.A. Op. cit. P. 30-31.
[147] See in detail: Ibragimov K.Y. Asset Partitioning in Roman law P. 77-80. 77-80.

in the social sphere these entities cannot be replaced by something else[148]. The last thesis is also used by other authors as an argument in favor of preserving legal entities of non-owners[149].

Such justification does not seem quite convincing, as the abolition of non-owner legal entities does not mean the withdrawal of the state from the relevant spheres and production chains and the transition from public to private financing. Moreover, even under the current regulation, some researchers argue that in reality the above legal entities have full-fledged ownership rights[150], which, in our opinion, indicates a gap between positive law and the current level of development of theoretical jurisprudence.

The abandonment of non-owner legal entities may be a simple transition from one civil law construction formalizing legal separation to another, devoid of superstructures that have lost their relevance and facilitating the understanding and description of the law. At the moment, there are positive developments related to the gradual withdrawal of state and municipal unitary enterprises from circulation, so in 2019 a law was adopted prescribing the liquidation or reorganization of enterprises operating in competitive markets[151].

We can assume that the incomplete elimination of legal entities – non-owners from turnover is due to the legislator's desire to preserve the status quo in terms of property partitioning of such legal entities, as they have an abnormally strong degree of asset partitioning. Further we will substantiate why such constructions are not necessary even to achieve this goal.

3.2.1. Asset Partitioning of Legal Entities – Non-Owners

Affirmative asset partitioning in unitary enterprises and institutions is arranged as simply as possible – institutions and unitary enterprises are not liable for the obligations of the owner of their property (clause 3 of Article 123.22 of the Civil Code), which means a strong form of affirmative asset partitioning. In general, this is similar to the liability of business entities, but with an important peculiarity – not only do the owner's creditors have no direct claims against the entity's property, but there is also no mechanism for enforcing the owner's rights against such entity (unlike business entities, where participant interests/shares may be enforced). Such a feature leads to a super-strong affirmative asset partitioning in the terminology of H. Hansman and R. Kraakman[152].

This degree of affirmative asset partitioning is justified by the fact that, as a rule, such legal entities are either not of interest to creditors as a subject of foreclosure, or they operate in publicly

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[148] Boldyrev V.A. Op. cit. P. 53-54.
[149] Smertin A. N. N., Greshnykh A. A. Legal analysis of the right of economic management and the right of operational management // Scientific and analytical journal "Bulletin of St. Petersburg University of the State Fire Fighting Service of the Ministry of Emergency Situations of Russia". 2012. No.2. P. 107.
[150] Zaitsev O.R. Contract of trust management of unit investment fund.
[151] Federal Law No. 485-FZ dated 27.12.2019 "On Amendments to the Federal Law 'On State and Municipal Unitary Enterprises' and the Federal Law 'On Protection of Competition'".
[152] Hansmann H. and Kraakman R. H. The Essential Role of Organizational Law P. 395.

important areas, which makes their coming under the control of the owner's creditors or the possibility of foreclosure on their assets partitioning highly undesirable from the point of view of law and order.

However, the need for a higher degree of affirmative asset partitioning does not explain the need for additional affirmative asset partitioning through a limited right in rem, but rather contradicts it. Obviously, the inaccessibility of the property of a unitary enterprise or institution to the creditors of the owner would require no additional explanation if the owner of the property was the institution or enterprise itself.

Defensive asset partitioning. As a general rule, enterprises are subject to strong defensive asset partitioning (the owner of the property is not liable for the debts of the enterprise) with two exceptions: (1) cases when insolvency is caused by the actions of the owner, (2) subsidiary liability of the owner for the debts of budget-supported ("kazennoye") enterprises (Clause 6, Article 113 of the Civil Code). This nature of defensive asset partitioning is generally similar to the defensive asset partitioning of business entities.

In the case of institutions, defensive asset partitioning is more complicated and depends primarily on the type of institution. A budget-supported institution is liable only for the funds at its disposal, while the owner of the property bears subsidiary liability for its obligations (Clause 5 of Article 123.22 of the Civil Code). Thus, there is no defensive asset partitioning, although the main property of such an institution is actually protected by immunity from foreclosure and in this sense is separate.

A budgetary institution is also liable for other property, except for especially valuable movable property, if it was transferred by the owner or acquired at the expense of funds allocated by the owner, as well as immovable property, regardless of what it was acquired at the expense of. The owner also bears subsidiary liability for obligations related to causing harm to citizens, as well as for obligations from a public contract in case of liquidation (clause 5 of Article 123.22 of the Civil Code). An autonomous institution is liable in almost the same way, but, in addition, it is also liable for immovable property, which was acquired not at the expense of funds provided by the owner (Clause 6 of Article 123.22 of the Civil Code). Thus, budgetary and autonomous institutions have strong defensive asset partitioning (with some exceptions), as well as full immunity in respect of certain property.

The existing degree of defensive asset partitioning can be achieved without the use of the construct of limited proprietary rights, as the presence/absence of subsidiary liability of the founder is also possible when the property is assigned by the right of ownership. Otherwise, the nature of property isolation is more similar to executive immunity – a direct provision of the law that certain property cannot be foreclosed. This leads to the idea that if the accessibility of property to creditors is determined not by the fact of assignment of property to an entity, and not by the content of the very right on which it is assigned, then the right of operational management and economic management as a legal institution in reality have no meaning, since the same immunities from foreclosure can be established for property

belonging to an institution by right of ownership, as it, for example, happens in accordance with Article 446 of the Code of Civil Procedure of the Russian Federation.

It might be assumed that the establishment of immunity through a certain limited right in rem serves to describe such immunity, but this is not the case, since the scope of property falling under immunity is determined not by the type of right, but by the type of legal entity and the type of specific property in relation to each type of legal entity.

Specific treatment of the disposal of property. Since asset partitioning may also manifest itself in a specific procedure of possession, use and disposal of certain property, this aspect should also be taken into account. Indeed, such a specific procedure is established for the disposal of property under the right of operational management or economic management.

The following procedure has been established for unitary enterprises possessing property under the right of economic management: in accordance with Article 18 of Federal Law No. 161-FZ "On State and Municipal Unitary Enterprises" dated 14.11.2002 (hereinafter – "**FZ-161**"), movable property is generally disposed of without the owner's consent, while immovable property is disposed of only with the owner's consent. At the same time, the charter of the enterprise may establish additional restrictions on transactions without the consent of the owner. A budget-supported enterprise, which has property under the right of operational management, is even more restricted in the disposal of property and has the right to independently dispose only of the products produced by it (clause 1 of Article 19 of the FZ-161).

The situation is similar for institutions, to which property is assigned under the right of operational management. As a general rule, the procedure for disposal of property is as follows: (1) treasury institutions may not dispose of any property without the consent of the owner (clause 4 of Article 298 of the Civil Code), (2) autonomous and budgetary institution may not dispose of especially valuable movable property assigned to it by the owner or acquired by the budgetary institution at the expense of funds allocated to it by the owner for the acquisition of such property, as well as immovable property (clauses 2 and 3 of Article 298 of the Civil Code).

Thus, the existence of the right of economic management and operational management also in itself does not give anything in terms of the regime of disposal of property, since the freedom to dispose of a particular type of property is determined not by the right under which it is assigned to an enterprise or institution, but by the type of legal entity and the type of specific property.

Therefore, in our opinion, the positions of those authors who write that the right of operational management and the right of economic management differ in the set of legal powers vested in the right

holder can be considered incorrect[153]. Even at the level of legal definitions it is impossible to establish how these rights differ in content, as this part simply refers to the scope established by law. All the differences established in Article 296 of the Civil Code concerning operational management, concerning the disposal of any property by the subject of this right only with the consent of the owner, are in fact blurred by special provisions of the law, which do allow disposal without the consent of the owner. In essence, the definitions set forth in the Civil Code are not so much definitions of the pertinent rights as they are delineations of the scope of legal capacity of enterprises and institutions themselves, operating by default.

The different scope of powers within one right, which depends on the type of property and type of institution/enterprise, in our opinion, does not allow us to assert that these types of proprietary rights have a certain independent content. Moreover, if we follow the logic of the legislator, the content of these rights is determined by the law, namely by the articles concerning the procedure of disposition of the property (there are simply no other options), for example, with regard to the right of operational management of state-owned enterprises, this is Article 19 161-FZ, which states what transactions require the consent of the owner, but paragraph 1 of this article states that the charter may provide for consent to other transactions. Article 18 of the same law contains a similar rule in relation to economic management. If we proceed from the fact that the content of these rights, named at the level of the law as rights in rem, is determined by the freedom to dispose of property without the consent of the owner, it turns out that the scope of such rights can be determined by the charter and make the right of economic management equal in content to operational management or even narrower.

3.2.2. The Role of Limited Rights in Rem

The most common ways of legal asset partitioning are the constructions of a legal person and a limited right in rem (e.g., pledge). These can be used separately from each other to achieve different objectives. They may also be used together, but only if they are used sequentially and each has its own purposes and isolates its own amount of property. For example, having isolated the property of a legal entity, it is possible within this isolated property to isolate its part by pledge. A pledge of the property of a legal entity makes it possible to establish priorities among a large group of creditors of the legal entity with respect to the segregated property by identifying a group of pledge creditors.

Separation by two methods simultaneously to form one separate mass does not make any sense, as it was shown on the example of legal entities that are not owners of their property. Creating any organizational-legal form, the legislator has a full opportunity to establish any in nature and degree of asset partitioning of such property simply by virtue of the prescription of the law.

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[153] Bogatkov, S.A. Distinction of the right of economic management from the right of operational management // JPS ConsultantPlus; Anikina, M.S. Problems arising in the consideration of a civil claim in a criminal case // Russian Law Journal. 2021. No. 3. P. 179 - 187.; Smertin A. N., Greshnykh A. A., Op. cit. P. 105.

It is also necessary to pay attention to the fact that, having full freedom in establishing asset partitioning of certain types of legal entities, the legal system should ensure the comprehensibility of the regulation of relations for all participants of the turnover, so that creditors understand what property they are entitled to claim, entering into relations with such a person. Indication of the right of operational management and economic management, as it was shown above, does not provide such understanding in any way. Indication of a specific organizational-legal form in general provides such understanding, but due to the confusion and high reference of regulation to special acts and exceptions, it complicates the process of such understanding.

It can be stated with a reasonable degree of confidence that the existence of the right of economic and operational management in itself does not provide any guidance with regard to the partitioning of assets. This is true both in terms of determining the range of property available to creditors of the person who possesses it and in a broader sense, in terms of the legal regime as such. Such provisions can be replaced by the right of ownership without any substantial alteration to the extant regulatory framework. This includes the maintenance of immunity from recovery and the procedure for the disposal of the property in question with the consent of the owner, as established by law and the statute.

Therefore, it can be considered that the rights of operational management and economic management in their modern incarnation are a legislative defect, which, as far as the effect of asset partitioning rights is concerned, does not differ from ordinary legal entities – owners of their property – in anything other than special legislative restrictions not really related to property rights.

Moreover, this state of affairs demonstrates that the asset partitioning through legal person and limited real right makes sense only when it occurs sequentially to compartmentalize a piece of property within another isolated property, not when the two methods are used to partitioning the same piece of property, since the construction of legal person is sufficient by itself to establish either character of partitioning of a single piece of property.

3.3. Common Property

The term common ownership combines two concepts which, in the opinion of some researchers[154], are in fact fundamentally different in nature: shared ownership and joint ownership. We agree with this opinion. Since joint ownership, in turn, is also represented by two regimes that have significant differences in the issue of property isolation, it will be analyzed in the relevant paragraphs of Chapter 2 of this paper (joint ownership of members of a peasant farm enterprise in § 2 "Partnerships" and joint ownership of spouses in § 4 "Family Property"). This section will analyze the correlation between shared ownership[155] and asset partitioning.

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[154] Belov V.A. Vest civil law forms : textbook for universities M. Yurait. 2024. P. 189-191.

[155] Since the share ownership of investment fund units has a very specific regime, it will be considered in the § 1 of Chapter 2 "Trust Management".

The idea that such property has the property of isolation was expressed by V.V. Podsosonnaya and E.I. Chervets, indicating that such property has a weak form of confirming isolation. Podsosonnaya[156] and E.I. Chervets[157], pointing to the presence of such property of a weak form of affirmative asset partitioning. Such a conclusion is related to the fact that foreclosure on property in shared ownership is allowed only in the absence of other property. We disagree that this treatment of the property evidences affirmative asset partitioning under the theory of H. Hansman and R. Kraakman, as there is no group of creditors that would have priority over such property. This situation will be considered in detail in relation to simple partnerships.

At the same time, one cannot but recognize that the specific legal regime of property in shared ownership is completely absent.

Repeatedly in the domestic doctrine the position has been expressed that common ownership actually performs a subject-forming function, leads to the emergence of a collective of co-owners, forming a unity in relations with third parties. V.A. Belov and K.A. Blinkovskiy point out the similarity of relations concerning shared ownership and corporate relations, as the possession of a share in the ownership right, as well as the possession of a share in the authorized capital, leads to the emergence of a set of rights and obligations of co-owners related to the management of this property[158].

At the same time, the analogy made by the author is not quite consistent, because if it is followed to the end, it would be necessary to come to the conclusion that legal personality is possessed by the property itself, which is in shared ownership, since in limited liability companies the subjects are the companies themselves, and not the collective of participants. Despite this, the authors point to the legal capacity of the community of co-owners[159].

Moreover, V.A. Belov himself points out the extremely limited nature of the legal capacity of such a subject, the only element of the legal capacity of such a collective is the ability to have property by right of ownership and dispose of it[160].

The approach of V. Flume seems to be correct. Flume, who points out the fundamental difference between legal entities and communities of co-owners – the former conduct their own activities, are the bearers of their own rights and obligations, which is not inherent in objects under shared ownership[161]. However, the absence of own needs of property is obvious only for simple objects and not so obvious for complex objects requiring constant maintenance. In such cases, the law provides for the possibility of creating a special legal entity to serve the collective interest of co-owners: a homeowners' association

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[156] Podsosonnaya V.V. Op. cit. P.
[157] Domshenko (Chervets) E.I. Separation of property without creating a legal entity. P. 34-35.
[158] Belov V.A., Blinkovsky K.A. Op. cit. P. 212-213, 216-219.
[159] Ibid.
[160] Belov V.A., Blinkovsky K.A. Op. cit. P. 213.
[161] Filatova U. B. Civil-legal community of co-owners: a comparative legal study // Russian Justice. 2015. No. 2. P. 18-20.

and a real estate owners' association. Sometimes, to serve such interests, the legal order proposes the creation of appropriate legal entities (Section VI of the Housing Code of the Russian Federation and Articles 123.12–123.14 of the Civil Code).

This solution of the legal order seems to be extremely successful and consistent, because by establishing the emergence of an independent collective interest and related property, i.e. those features of the subject of law in the broad sense, which we emphasized earlier, the legislator has not only provided an opportunity for the formation and expression of the will of such a community outside, but also directly allowed the formation of a new subject of law, which is the owner of its property. Therefore, in such cases the defensive asset partitioning takes place as in an ordinary legal entity with the exception that, unlike economic partnerships, a strong defensive asset partitioning and affirmative asset partitioning is established here. The partnership is not liable for the debts of the partners, and the partners are not liable for the debts of the partnership.

At the same time, the formation of a real estate owners' association is not mandatory, so it is quite possible to have relations similar in their economic content, but without the mediation of an independent subject of law. In such a case, in accordance with Article 259.3 of the Civil Code, the common property is managed by decisions of the general meeting of owners, which is essentially a civil law community[162], but it is not a body of any legal entity. Based on the decision of the general meeting, management powers may be transferred to a management company, resulting in a kind of surrogate of the sole executive body that exists in partnerships. Despite the fact that nothing changes in terms of management, the legal situation is fundamentally different in terms of asset partitioning: instead of ownership of an individual there is shared ownership and there is no asset partitioning as such. The legislator has established a procedure for expressing the common interest of co-owners outside, but did it without forming a subject of law. Thus, in shared ownership, even in those situations when the common property can be defined as having an independent interest, without a special indication of the law there is no defensive asset partitioning or affirmative asset partitioning, and the contractual relationship of all owners with the management company acts as a means of limited participation of such property in turnover.

At the same time, the subject-forming nature of common property can be seen in another aspect of the specific status of such property. A.D. Rudokvas draws attention to the special regime of common property in Roman law when he writes that as an exception to the principle sua res nemini servit (one's own thing does not serve anyone), Roman jurisprudence allowed the existence of servitudes in a situation

[162] For more details on civil-law communities and their legal personality see, for example, Gruzdev V.V. Civil-law communities: concept and types // Journal of Russian Law. 2021. Vol. 25. No. 10. P. 61-71; Filippova S.Y. Plurality of persons and civil-law community: similarities and differences // Law. 2022. No. 6. P. 30-41; Tsepov G. V. Problem of homonyms, or Is the unification of legal regulation of assemblies permissible? // Law. 2016. No. 12. P. 139-148.

where one land plot was in sole ownership of a person, and the neighboring one was in common ownership, but with the participation of the same person[163] .

It is possible, however, that this is not an exception to the rule that one's own thing does not serve anyone, but an indication that the property is not "one's own", in other words, the property in shared ownership is not property "partly one's own", but is property "someone else's", belonging to a collective entity, even if the latter is not an independent subject of law. Probably, this is a strict adherence to the rule that "belongs to the aggregate and not to individuals" (D. 1.8.6.1). The totality (universitas) in relation to which this rule is formulated does not necessarily imply legal personality[164].

Despite the fact that in the situation of establishing payment for easement on the part of such payment there will be a quasi-contractual relation of one person with himself (as the owner of the dominant plot and as a co-owner of the servant), this remains within the framework of internal relations between co-owners and does not require formal recognition of the group of co-owners or the property itself as a subject. These circumstances indicate that the shared property itself is not inherent in defensive asset partitioning and affirmative asset partitioning, but it manifests a specific legal regime related to the order of use and management of such property. The specificity consists in the fact that behind it, as well as behind a legal entity, there is a civil-law community in the form of a general meeting of owners. The specific nature of the legal status is also manifested in the fact that the property in shared ownership cannot be called by any of the co-owners fully its own.

However, these conclusions do not apply to situations where the institution of common property is attempted to replace legal personality. In foreign legal orders, for example, in the law of South Korea, there are attempts to substitute the regulation of collectives and associations as legal entities through the institutions of common (collective) property, which are rightly criticized for their artificial and inconvenient nature[165].

§ 4. Asset Partitioning and Basic Institutions of Foreign Law[166]

Furthermore, the phenomenon of asset partitioning should be considered in the context of its correlation with the basic institutions of foreign law, which do not exist in pure form within Russian law, both at the level of positive law and doctrine. To such basic institutes we refer to the well-known domestic doctrine institute of trust, which, as will be demonstrated below, in reality encompasses a

[163] Rudokvas A.D. Private servitudes in the civil law of Russia // Vestnik VAS RF. 2009. No. 4. P. 198.
[164] Elyashevich V.B. Op. cit. P. 41.
[165] Myoung S. Characteristics of the institution of common property in the Republic of Korea // Jurisprudence. 2022. Vol. 66, No. 3. P. 270-273.
[166] This paragraph contains materials published in the article: Ibragimov K. Y. Asset Partitioning and Legal Personality // Leningrad Law Journal. 2024. No. 1 (75). P. 28-48.

diverse array of constructions, as well as the theoretical doctrine of the French doctrine of patrimony (patrimoine) as a property complex, which has been given much less attention in the domestic doctrine. These institutions of foreign law are directly related to the problems of asset partitioning and legal personality.

4.1. Property Complex (Patrimoine)

The theory of patrimony consists of two elements. Directly from the doctrine of patrimony as a property complex, which was developed in the French doctrine of the XIX century by the researchers Sh. Aubry and Sh. Rau, as well as from the more modern theory of detached patrimony (patrimoine d'affectation), which arose due to the fact that in the legal order began to appear such constructions that do not fit into the classical theory of patrimony.

Despite the fact that the theory of patrimony is primarily related to the issue of legal personality, as explicitly pointed out by Sh. Aubry and Sh. Ro[167], in the domestic doctrine is quite common incorrect understanding of patrimony as a construction of property right, and isolated patrimony as split property[168].

We agree that patrimoine d'affectation leads to the splitting of the property sphere of the subject of law[169], which, at first glance, contradicts the provisions of the theory of patrimoine (patrimoine) of Sh. Aubry and Sh. Rau, which is important for French law. But we cannot agree with the following: "Simply put, one subject of law (fiduciary) began to possess by right of ownership 'his own' as well as 'his own but separate property', which completely destroyed the classical concept of property law of Sh. Aubry and Sh. Rau, who put forward three principles of the institution of property (patrimoine): every person possesses property; any property belongs to someone; one person possesses only one property sphere"[170]. This assertion is predicated on a wholly erroneous interpretation of the theory put forth by Sh. Aubrey and Sh. Rau. This misapprehension is likely the result of the subsequent analysis conducted by other scholars.

First, the concept of patrimoine cannot be equated with either property or any other absolute right in respect of property. They use the term "bien" to refer to property and, moreover, explicitly point out that the idea of patrimoine derives directly from the idea of personhood and patrimoine is a manifestation of legal personality[171].

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[167] Kasirer N. Op. cit. P. 472-473.
[168] Doroshenko L.A. Secured fiducia in the French Civil Code // Vestnik of Economic Justice of the Russian Federation. 2020. No. 2. P. 104-117.; Zikun I.I. Genesis of the category "fiduciary property" in the European civil law // Vestnik Civil Law. 2018. No. 6. P. 192-219.; Zikun I.I. Civil-law title of investors to the property of investment funds SICAV and SICAF // Vestnik of Civil Law. 2020. No. 6. P. 255-301.
[169] Zikun I.I. Genesis of the category "fiduciary property" in the European civil law P. 205.
[170] Zikun I.I. Genesis of the category "fiduciary property" in the European civil law P. 205-206.
[171] Kasirer N. Op. cit. P. 472-473.

Secondly, the very principles emphasized by the authors have a fundamentally different content even regardless of their interpretation. The main provisions of the original theory of patrimony are as follows: (1) only natural and legal persons possess patrimoine, (2) any person possesses patrimoine, even if at some point it does not have any property, (3) a person can possess only one patrimoine[172]. Note that the content of the second principle completely excludes the possibility of identifying patrimoine with the right of ownership.

The erroneous understanding of patrimoine as a property right can also be found in other works: "it is noted that the theory of unitary property right by fiduciary property is destroyed, therefore it is necessary to reconsider the traditional understanding of property"[173], although the original work referred to by the author refers to the transition from unitary patrimoine to fiduciary[174].

In our opinion, it is incorrect to speak about the division of property because the property complex is not divided between the founder and the trustee, but forms an independent property complex. Using the example of a "trust" under Quebec law, M. Lupoi writes about it directly: "The transfer of assets does not take place from the settlor to the trustee, but from one patrimony belonging to the settlor to another, about which nothing more is said"[175].

Researchers also associate with the attitude to the trust as a separate property complex the prescription of Article 915 of the Civil Code Quebec that the property may belong to persons, the state and certain purposes[176]. The construction of a trust in accordance with Article 1268 of the Civil Code Quebec is described as "property appropriated for a specific purpose" (property appropriated for a specific use).

A patrimoine d'affectation may also arise when no new person in the form of an administrator appears at all. For example, in the case of the emergence of a separate property of a sole proprietor with limited liability[177]. If we do not recognize that the separate property has an independent legal personality, then in this situation, even if we wish, we will not be able to raise the question of splitting the ownership right, because only one person is involved in this relationship. Some researchers[178] also use the term special patrimony (special patrimony), to the special cases of which they refer, in addition to the trust, also ancient Roman examples of separate property – peculium and dowry (dos)[179].

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[172] Original text of the principles: (1) Que les personnes physiques ou morales peuvent seules avoir un patrimoine, (2) Que toute personne a necessairement un patrimoine, alors meme qu'elle ne possederait actuellement aucun bien, (3) Que la meme personne ne peut avioir qu'un seul patrimoine, dans le sens proper du mot. Adapted from Cours de droit civil français : d'après la méthode de Zachariae. Tome 9 / par MM. Aubry et Rau. P. 336 URL: https://gallica.bnf.fr/ark:/12148/bpt6k5493942t.
[173] Doroshenko L.A. Op. cit. P. 109.
[174] Barrière F. La fiducie-sûreté en droit français // McGill Law Journal. 2013. V. 58, No. 4. P. 869-904.
[175] Lupoi M. Trusts in mixed jurisdictions // Pravovedenie. 2023. Vol. 67 No. 1. 21-55. P. 37
[176] Popovici A. Quebec's Partnership: une société distincte. // Journal of Civil Law Studies. 2013. Vol. 6 P. 341
[177] For more details see. § 3 of Chapter 2 of this work.
[178] Gretton GL. Trusts Without Equity // International and Comparative Law Quarterly. 2000. Vol. 49(3). P. 609
[179] For more details on asset partitioning in Roman law, see Ibragimov K.Y. Separate Asset Partitioning in Roman law.

At the same time, we certainly agree that fiducia, as well as other institutions of French law, for example, the separate property of an individual entrepreneur, lead to the formation of separate property (patrimoine d'affectation) and, as a consequence, to the emergence of several patrimonial estates (patrimoine) in one person, which directly contradicts the third principle emphasized by Sh. Aubry and Sh. Rau (one person may possess only one patrimoine).

It appears that there are two potential solutions to this apparent contradiction. The first option is to acknowledge the shortcomings of the original theory of patrimony and to supplement it with the concept of a distinct patrimony (patrimoine d'affectations). This alternative view posits an independent theoretical justification for the latter and asserts the practical necessity of its existence. The second option is to adhere strictly to the original theory and recognize that the formation of a distinct patrimony at the level of positive law should result in the acknowledgment of an autonomous legal personality with its own comprehensive patrimony. This would entail utilizing "patrimoine d'affectations" to signify the actual state of such property, which exists as a consequence of a deficiency in legal technique.

In order to justify the first approach, the doctrine opposes the theory of property complex (patrimoine) to the theory of target property Zweckvermögen, the development of which is attributed to A. Brinz and Becker[180]. It is pointed out that the principal difference of their theory is the departure from the mandatory binding of the property complex to the subject and the assumption of the existence of the target property, which belongs not to a person, but to the target itself. In our opinion, such opposition is not correct, since in the theory of A. Brinz, the target property (target property) is owned not by a person, but by the target itself. In Brinz's theory the target property (Zweckvermögen) does not exist on the level with legal persons as some independent category, as it is tried to be presented by researchers opposing it to the theory of patrimony. In fact, it is an alternative to the construction of a legal person, which is based on the idea of a legal person as a legal fiction, with A. Brinz himself pointing out that such target property for its participation in turnover requires its fictitious personification[181].

The ideas of B. Windscheid, who also adhered to the theory of subjectless property, equally testify in favor of such a conclusion: even if we perceive such property as subjectless, it is desirable to personify such property, since it is the point of attachment of rights and obligations[182]. Moreover, P. Lepaule, referred to, among others, by the authors who propose this opposition of the theory of patrimony to the theory of purposeful property (Zweckvermögen), refers to the works of Becker and B.

[180] Popovici A. Op. cit. P. 362; Courtier A. L'entreprise individuelle sans risque et le patrimoine d'affectation: le miroir aux alouettes? // Management & Avenir. 2014. Vol. 74. P. 145-158.
[181] Brinz A. Lehrbuch der Pandekten. 2,1: Erbrecht P. 990-992 URL: https://mdz-nbn-resolving.de/urn:nbn:de:bvb:12-bsb10565236-6
[182] Windscheid B. Op. cit. P. 110-112.

Windscheid precisely in the context of the reasoning of Becker. Windscheid precisely in the context of reasoning about the fictitiousness of legal persons as such[183].

Also, researchers who try to justify the existence of patrimoine d'affectation do not provide any arguments of a practical nature that would explain why a detached patrimoine has any independent value as a legal institution rather than being a defect of legal regulation. The fact that constructions useful to the legal order give rise to it does not in itself demonstrate that the legislator has chosen the right form for them.

Thus, the first option of resolving the contradiction seems to us incorrect for two reasons: (1) the theoretical developments, which are cited by the authors in support of the construction of separate patrimony, in fact do not support this approach in any way, but rather, on the contrary, indicate that such property should be recognized as a subject, (2) there is no practical need for this. Moreover, this approach shows a great methodological error, which consists in the fact that the researchers try to adjust the justified and established theoretical construct to the constructs of positive law, without critically analyzing the legislative decisions themselves.

In order to substantiate the correctness of the second way of resolving the contradiction and, as a consequence, the statement that the concept of patrimony of Sh. Aubrey and Sh. Rau is fully valid in its original form, we can give the following arguments. As I.A. Pokrovsky rightly points out in the sphere of property relations all persons for law are first of all economic units: "Especially in the sphere of property turnover law thinks people first of all as some abstract centers of economic life. The concept of the subject of law, thus, is in general some technical, conditional concept, which as such is quite applicable to legal persons"[184].

As previously discussed, the fact that the category of the subject of law itself is auxiliary in nature allows for the simplification of legal descriptions and the systematization of legal relations. The embodiment technique is an effective and convenient method of organizing relations involving isolated legal entities, and it should not be rejected without justifiable cause, particularly in instances where an abstract center for the attachment of rights and obligations is formed.

I.A. Pokrovsky's assertion that in the sphere of property relations the law considers people as abstract centers of economic activity can also be supplemented by the observation that in many respects other participants in the turnover process also act without reference to the legal construction of legal relations. This is evidenced by the fact that when selecting a counterparty, the primary consideration is its capacity as a debtor in a legal relationship, which is determined by the amount of available property to satisfy claims and the extent to which such property is encumbered by obligations.

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[183] Lepaulle P. Op. cit.
[184] Pokrovsky I. A. Basic problems of civil law: monograph M. Statut, 2020. P. 147.

Given that the interrelated community of property and obligations constitutes patrimony, it is of consequence to other participants in turnover to ascertain the nature of the patrimony with which they engage in relations. Accordingly, in order to obtain such information, it is necessary to individualize the aforementioned community within the context of turnover. This can be achieved by personifying the property in question within the turnover context. A patrimoine constituting a unit investment fund is individualized by a management company through the indication of the specific fund in the interests of which it acts. Similarly, a natural person who is the general director of a company indicates that they are acting not as a natural person but as the sole executive body of the company.

Without any detailed argumentation, but in general, other researchers share the approach of legal personality. D. Gretton points out that the emergence of special patrimony is associated with the emergence of a subject or quasi-subject, as well as at the level of natural language in relation to the trust are used such formulations that indicate that some property belongs to the trust, as if the trust is a legal entity[185]. The appeal of this author to natural language, in our opinion, is also a rather strong argument in favor of the fact that the embodiment of isolated patrimony is the most reasonable solution of this problem.

Other researchers have perceived separate patrimonium in a similar way, but in relation to sole proprietorships with limited liability[186].

In the aforementioned arguments, we believe that the concept of patrimony holds significant value. Rather than attempting to refute it by citing examples from positive law, we propose that researchers evaluate legislative decisions not only in terms of their intrinsic content but also in consideration of the legal form chosen by the legislator for their implementation.

Thus, in our opinion, the contradiction of the construction of separate patrimoine to the general theory of patrimoine should be eliminated by recognizing a new subject of law. Additional justification and practical benefits of such a solution are given in § 3 of Chapter 2 of this study on the example of the figure of a sole proprietor with limited liability, whose property is considered by French jurists as patrimoine d'affectation.

4.2. Trust and Its Analogues

It is common in domestic doctrine to consider the trust in the context of property law, but we will try to substantiate that in reality this is not quite correct. L. Smith against the understanding of trust as split property: "The common law trust was not created by a change in the idea of property; it was not created by any decision to divide the right of ownership into 'legal title' and 'equivalent title'. Rather, it was created by a distortion of the law of obligation, in particular by a vast expansion of the generally

[185] Gretton G. Op. cit. P. 617.
[186] Bailly-Masson C. L'intérêt de la personnalité morale // La revue des sciences de gestion. 2008. No. 230. P. 99.

recognized possibility of third-party liability for interference with obligations."[187] . In domestic doctrine, a rather detailed argumentation on the absence of an inseparable link between trust and split property is given by A.D. Rudokvas[188] .

It should also be stipulated that the classical trust and its counterparts from continental and mixed legal orders have fundamentally different nature of property isolation.

4.2.1. Traditional Trust

The signs of asset partitioning in a traditional trust are less pronounced than in the continental analogs of trusts and trusts existing in mixed legal orders. Therefore, the signs of legal personality or the existence of a separate patrimony are less pronounced in the traditional trust. The actual absence of patrimony does not allow the traditional trust to be recognized as a legal person, but makes it a specific institution, which is fundamentally different from any continental counterpart[189]. Although in some aspects it is still close to a legal person: the trust as a "surrogate of an artificial legal person", in which asset partitioning is achieved through the clever use of the doctrine of equity[190].

Asset partitioning in a trust is, in fact, much like collateral partitioning in that the primary priority is the priority of the beneficiary's claims against the trustee as to the property comprising the trust[191].

L. Smith points out that the perception of the trust as a separate property complex (patrimoine) is characteristic of the Scottish trust, while the common law trust has a specificity connected with the fact that although the property of a classical trust is inaccessible to personal creditors, it is inaccessible to the creditors of the trust itself – they cannot bring a claim specifically against the trust property (Jennings v. Mather, [1902] 1 K.B. 1 (C.A.).)[192]. They can, however, still voluntarily obtain satisfaction from that property. A creditor of a trust may in some cases get to the trust property, but may do so not by directly foreclosing on the trust property, but by compelling the trustee to execute a disposition of the trust property in his favor and this will not always be of a purely formal nature, since such a demand is derived from the very ability of the trustee to dispose of such property[193].

These circumstances show the incorrectness of the conclusions of those authors who make general conclusions that the trust forms a patrimony[194], while in reality the traditional trust does not form a patrimony, but it can be formed by similar constructions, which will be discussed further.

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[187] Smith L. D. Trust and Patrimony // Revue générale de droit. 2008. Vol. 38(2). P. 392.
[188] Rudokvas A. D. Paragraph 4 of Article 209 of the Civil Code of the Russian Federation: the future of one illusion // Property Law: yesterday, today, tomorrow: a collection of articles for the 50th anniversary of A. O. Rybalov / ed. by K. I. Karachkova; scientific ed. by A. D. Rudokvas. Moscow: Statute, 2023. P. 172-173.
[189] Smith L. D. Op. cit. P. 381.
[190] Ollikainen A. Asset partitioning in the trust [PhD thesis]. University of Oxford. 2018. P. 2
[191] Sukhninder P. Equity & Trusts // 4th Edition, Pearson Education Limited. 2020 P. 375, see also Reid K. Patrimony not Equity: The Trust in Scotland // Valsan, Remus. Trusts and Patrimonies. Edinburgh University Press, 2015.
[192] Smith L. D. Op. cit. P. 386.
[193] Smith L. D. Op. cit. P. 388.
[194] Gretton G. Op. cit.

L. Smith provides a rather convincing argumentation justifying why a common law trust cannot be recognized as a subject of law. The first and main reason, which was stated above, is the fact that the trust, as a general rule, does not contain any obligations (debts), all acquired debts are personal debts of the trustee[195]. The second argument is that the trust in the common law system is an independent institution precisely because it is used for those cases where the standard constructions of property law and the law of legal persons are unsuitable.

Since the trust has no creditors of its own who can directly claim the trust property, all creditors are personal creditors of the trustee, so there can be no question of defensive asset partitioning and affirmative asset partitioning. The isolation of the trust property at this stage consists only in the fact that such property, being the property of the trustee, is not available to all his creditors. It should be noted that A. Ollikainen describes such a situation of the property through the constructs of defensive asset partitioning and affirmative asset partitioning[196], but such a description seems incorrect to us for the above reasons (all creditors are personal creditors of the trustee). Moreover, the application of such categories leads to a misconception of the nature of asset partitioning, because the statement that the trust has defensive asset partitioning means that the personal creditors of the trustee should have priority over the claims of the trust creditors in foreclosing on the personal property of the trustee, but this is not the case.

However, the absence of affirmative asset partitioning and defensive asset partitioning at the time of the trust property's existence does not mean that there is no asset partitioning at all when the trust is utilized, as the allocation of preferred creditors occurs with respect to a specific asset such as the compensation owed to the trustee from the trust property.

By incurring expenses with personal property for the purpose of administering the trust (voluntarily or by court order), the trustee automatically receives property in the form of the right to remove the relevant property from the trust. In this aspect, the logic of L. Smith, who tries to justify the absence of patrimony, becomes somewhat speculative, since, on the one hand, he points out that, as a general rule, in the event of the trustee's bankruptcy, the property received as compensation should be distributed proportionally, but, on the other hand, he immediately points out that the law of equity still establishes the priority of the claims of the trust creditors with respect to the property of the trustee received from the trust[197]. The observation that this priority is particularly pertinent in the context of bankruptcy is also made by K. Reid[198].

The existence of priority of the claims of the creditors of a trust over the trust property, or, to be more precise, over the consideration due to the trustee for the assumption of such obligations for the

[195] Smith L. D. Op. cit. P. 395-402.
[196] Ollikainen A. Op. cit.
[197] Smith L. D. Op. cit. P. 389-390.
[198] Reid K. Op. cit. P. 20-21.

benefit of the trust, was established in the decision of Jennings v. Mather [1902] 1 K.B. 1 (C.A.)[199]. Thus, the law of equity introduced in effect affirmative asset partitioning in a weak form – personal creditors are entitled to claim reimbursement from the trust property only after the claims of the trust creditors have been satisfied. The need for such a severance was convincingly demonstrated by the judge in In Re Richardson 1911 2 KB 705, in which he pointed out that it seems absurd that the greater the debt of the "trust" (formally the trustee's debt, but in respect of which he can be indemnified out of the trust property) the more favorable becomes the position of the personal creditors of the trustee himself if they were to share that property pro rata with the trust creditor[200].

A strong defensive asset partitioning in the form of limited liability of the trustee of the trust property may also, but need not, manifest itself. Although such a limitation is in fact contractual in nature, an indication that the administrator enters into some contract specifically as a trustee and not personally is sufficient to establish it. Such a rule is set out in the decisions In Re Robinson's Settlement [1912] 1 Ch 717 and Warborough Investments Ltd vs Berry and Others[201] .

Moreover, the law of equity has developed a construction whereby property is segregated within the trust itself, an example of such a construction is recorded in Ex Parte Garland [1804], where property included in a trust, the beneficiaries of which were the testator's wife and children, was effectively divided into pools of assets depending on the purposes to which the trust was attributable, with the result that liability for the debts of the business was limited to the part of the trust attributable to the business and other property was not available to creditors[202].

4.2.2. Analogs of Trust

With regard to the construction of a trust under the law of Quebec, which belongs to a mixed legal system influenced by the common and continental law systems, Y. Caron points out that theoretically the construction of a trust can be alternatively justified through split ownership or through legal personality[203]. Despite the fact that these conclusions of Y. Caron are made in relation to the old Quebec trust, which was in force from 1888 to 1991, in our opinion, this methodological approach to solving the problem of trust is relevant to the current Quebec trust and to other similar constructions in other legal orders.

Note that studies of the old Quebec trust represent valuable theoretical material for the following reasons: (1) they represent an attempt to comprehend the common law construction through civilistic constructions and within the framework of continental law principles; (2) due to the scarcity of normative regulation, which did not reveal the legal nature of the phenomenon, but gave only a general (external)

[199] Ollikainen A. Op. cit. P. 34.
[200] Ollikainen A. Op. cit. P. 35.
[201] Ollikainen A. Op. cit. P. 41-42.
[202] Ollikainen A. Op. cit. P. 42-43.
[203] Caron Y. The Trust in Québec // McGill Law Journal. 1980. Vol. 25 No. 4. P. 421-444.

description reminiscent of the English trust, the significance of the theoretical study had a high practical value.

An example of a different approach is the theory of D. Mettarlin, which consisted in the fact that the ownership of the founder of the trust is suspended (suspended ownership) and for the period of the trust there is a special real right relating to the administration of the trust (real right relating to the administration of the property). If certain conditions occur, the ownership right is transferred to the beneficiary, and if they do not occur, the special proprietary right is terminated and the full ownership of the settlor is restored[204]. As a disadvantage of such theory, it is pointed out that it contradicts the law, as it contains an explicit indication that the founder transfers the property, accordingly, it cannot remain with him[205].

L. Smith points out that the perception of the trust as a separate property complex (patrimoine) is characteristic of the Scottish trust, which he contrasts in this context with the classical trust[206]. The fact that trusts in mixed and continental jurisdictions form a patrimoine is also pointed out by other researchers[207].

At the same time, the attempts of such researchers to directly oppose the concept of patrimony to the personification of the trust seem extremely strange. Thus, for example, H. Warhagen points out that trust property cannot be recognized as a legal entity for formal reasons (due to the lack of registration) and only on this basis rejects the concept of personalization of trust property, and further uses the concept of patrimony to justify property priorities within the concept of trust as a mere obligation[208]. He does it in such a way as if the concept of patrimony is not really connected with the problem of legal personality, and the priorities existing within it are something natural for this construction in isolation from legal personality. S.G. Kolesnikova repeats these theses and agrees with them, despite the fact that she also sees only one objection to the legal personality of such trusts – the absence of their registration as corporations[209].

It is noted in the doctrine that it was the French researcher P. Lepaule who was the first to propose to perceive the trust property as a separate property complex without an owner (patrimoine affecte)[210] and, more importantly, it was him who later proposed to consider the trust as an ordinal legal entity[211].

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[204] Caron Y. Op. cit. P. 429.
[205] Caron Y. Op. cit. P. 430.
[206] Smith L. D. Op. cit. P. 386.
[207] Verhagen H. Trusts in the Civil Law: Making Use of the Experience of "Mixed" Jurisdictions // European Review of Private Law. 2000. Vol. 8. No. 3. pp. 477-498 ; Reid K. Op. cit.; Kolesnikova S. G. On the penetration of the institute of trust property (trust) in the system of Romano-Germanic law // Izvestiya vysshee izdel'nosti vysshee obrazovaniya. Jurisprudence. 2007. No. 5(274). P. 29-40.
[208] Verhagen H. Op. cit. P. 492-496.
[209] Kolesnikova S. G. Op. cit. P. 35, 39.
[210] Caron Y. Op. cit. P. 431
[211] Lepaulle, "La Notion de 'trust' et ses applications dans les divers systemes juridiques", in Unidroit, Actes du congras international de droit prive (1951), vol. 2, 206. cited in Caron Y. Op. cit. P. 431.

However, the first thesis that the trust forms a patrimonium, but is not a legal person, is important to understand in the context of the relevant publication of P. Lepaul, who at the beginning of the work discusses in some detail the problem of fictitious legal person and speaks in favor of the theory of trust property, and after the phrase “a trust is a separate patrimony, but not a legal person” makes a reservation that in the continental system of law the concept of “person” plays an important role, but is no more than a convenient device, justified only insofar as it is useful[212].

Thus, in our opinion, the objections that are raised against P. Lepaul's position that the trust in the continental system of law is most effectively reproduced through the construction of the subject of law, in fact, are reduced to a terminological disagreement due to different goal-oriented approach. It seems to us that whenever the question of introducing an analog of trust is raised, it is never a question of introducing an institution completely analogous to trust in all its diversity and theoretical justification. Explaining the specificity of the trust in its comparative legal study D. Gretton rightly notes that the functionality of the trust cannot be unambiguously identified, so that the trust is functionally diverse: "trusts are quasi-incomes, quasi-usufructs, quasi-wills, quasi-properties, quasi-corporations, quasi-valuables, collective investment schemes, bankruptcy management mechanisms, borrowing mechanisms, etc."[213] . In this sense, the trust represents a specific form rather than functional content.

First, because it is impossible without perceiving the law of equity as a subsystem of law[214] . It is necessary to specify that by the perception of the law of equity we do not mean the perception of the specific nature of fiduciary obligations, the organicity of which to the continental law is justified by A.D. Rudokvas[215], but giving an absolute character to the relative legal relations between the beneficiary and the trustee. Secondly, and perhaps more importantly, the aim is not to introduce trust in all its diversity into the legal system, but to introduce only one or several constructions, which in other legal orders are formed by means of trust.

Continental legal systems, including the Russian one, for example, do not try to reproduce in the framework of fiduciary or trust management such constructions called implied trust or imputed trust, but consider analogues of express trust only. An implied trust arises when no person expressly expresses a will to create a trust or enters into any contract to that effect. Examples of such implied trusts (constructive trust) include: (1) the "joint" estates of unmarried couples where one partner is enriched at the expense of the other (Supreme Court of Canada in Pettkus v Becker;), (2) or a court finds that a fiduciary duty arises between business organizations when they come together to operate jointly

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[212] by Caron Y. Op. cit. P. 431

[213] Gretton G. Op. cit. P. 599

[214] See, for example, Bagaev V.A. Functional method and comparison of English and Russian property law // Law. 2021. No. 1. P. 78.

[215] Rudokvas A.D. Continental trusts" and conceptualization of "fiduciary obligations" in civilistic tradition / Issues of private law: collection of articles for the 50th anniversary of A. A. Pavlov / compilers and responsible editors: A. G. Karapetov / compiled by A. A. Sargsyan. G. Karapetov, T. A. Sargsyan. - M. Statut. 2023. P. 284-306

(Canadian case LAC Minerals Ltd v International Corona Resources Ltd); (3) an agent entering into a contract in his own interest when he was originally acting in the client's interest, (4) property acquired with the proceeds of a bribe (decision of the Privy Council in A-G for Hong Kong v Reid) gives rise to priority claims in respect of property resulting from the commingling of that property with other property[216].

Continental orders do not need to create a functional analog of a trust to deal with such issues, as the continental legal system has its own quite effective institutions of versioning and conditional claims[217].

The "Convention on the Law Applicable to Trust Property and its Subsequent Recognition" (hereinafter – "The Hague Convention on Trusts") can be cited in support of this thesis, as Article 3 of this document expressly states that it applies only to trusts created voluntarily and in writing. Whereas "a constructive trust is a formula in which the conscience of equity finds expression. Where property has been acquired under such circumstances that the title holder cannot in good conscience retain a beneficial interest, equity converts him into a trustee"[218].

All examples of trust constructions in continental law are aimed at achieving only two functions: management of property by a professional or, at any rate, by a person who should cope with it better than the beneficiary/founder of the management; isolation of property with some degree. It seems that it is this set of functions that A.D. Rudokvas writes about, proposing to "fix the intended purpose of certain property"[219], and not the functions that the implied trust performs. It is therefore evident that we are not discussing the complete analogue of a trust, but rather its discrete functions, which it is reasonable to achieve through the establishment of a subject. Furthermore, there is no risk in continental legal orders that the trust will be abolished as an independent institution, given that it does not exist in such systems and there is no foundation for its creation. The objective of continental law is to establish its own constructs that would fulfil the distinct functions of a trust and integrate into the legal system, be sound from a doctrinal perspective and have predictable regulation in practice.

Furthermore, it is uncertain whether the common law trust is better equipped to fulfill the aforementioned set of functions than its continental counterparts, particularly given that, as M. Lupoi asserts, the trust is as inconsistent as all English private law, however, this inconsistency is a defining

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[216] Sukhninder P. Op. cit. P. 364-366.
[217] Thus, for example, the criteria for the creation of a constructive trust in Sorochan v Sorochan are exactly the same as for unjust enrichment under Russian law, although they may differ in other cases: Sukhninder P. Op. cit. P. 364-367.
[218] Sukhninder P. Op. cit. P. 362.
[219] Rudokvas A.D. Item 4 of Article 209 of the Civil Code of the Russian Federation: the future of one illusion / Proprietary Law: yesterday, today, tomorrow: a collection of articles for the 50th anniversary of A.O. Rybalov / ed. by K.I. Karachkova; scientific ed. by A.D. Rudokvas. Moscow: Statute, 2023. P. 175.

characteristic of the trust and represents its strength[220]. It seems that by embedding an inconsistent institution into a relatively coherent system of continental law, all of its existing strength may be lost.

It should also be noted that even within the common law there are proposals to reform the trust and give it legal personality (giving it the status of an entity without giving it the status of a person). Among the prerequisites for this, it is pointed out that the common man is under the illusion that by entering into a relationship with a trust, he is claiming the property of the trust and the trustee is acting as an agent of the trust[221]. The lack of affirmative asset partitioning in bankruptcy of the trustee is also pointed out and it is suggested that claims of trust creditors against trust property should be given priority[222].

Thus, in our opinion, at the moment, due to the specificity of relations with creditors (all obligations of the "trust" are personal obligations of the manager) predetermined by a special understanding of the obligation within the subsystem of the law of equity, there are really no grounds for the legal personality of the trust in the common law, but trust-like constructions in continental and mixed jurisdictions should be generally realized through the construction of a legal entity, as suggested by P. Lepaule and Y. Caron. In general, this is also allowed by L. Smith with the reservation that such a construction cannot be considered a full-fledged analog of a trust.

§ 5. Functions of Defensive Asset Partitioning and Affirmative Asset Partitioning

We have substantiated that the institutions of legal personality and legal person have an auxiliary function, and the essential function is performed by property isolation and its special case – limited liability. Especially considering that a legal entity may not have limited liability: "limited liability presupposes the creation of a separate entity (in the broadest sense of the word). However, it does not arise from or result from the creation of such an entity"[223], it seems important to highlight what functions defensive asset partitioning and affirmative asset partitioning themselves perform.

The problem of limited liability as such is not the subject of wide study in the domestic doctrine. The functions of affirmative asset partitioning, as well as weak defensive asset partitioning, which arise in the case of separate entities, except for some theses of the works of E.I. Chervets[224], are not studied at all in the domestic doctrine. However, these aspects of asset partitioning have been well studied by H. Hansman and R. Kraakman, as well as other foreign researchers, which determines a significant

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[220] Lupoi M. Op. cit. P. 24.
[221] Rights of Creditors Against Trustees and Trust Funds. Consultation Paper issued in 1997 by the English Trust Law Committee. URL: https://www.ucl.ac.uk/laws/sites/laws/files/tlccreditorsrightsagainsttrusteesreport.pdf
[222] Ibid.
[223] Kuntz T. Asset Partitioning, Limited Liability and Veil Piercing - Review Essay on Bainbridge/Henderson, Limited Liability // European Business Organization Law Review, Forthcoming. 2017. P. 8
[224] Domshenko (Chervets) E.I. Separation of property without creating a legal entity. P. 31.

degree of abstractness of this paragraph, which, however, is important for understanding the results of the study as a whole.

It is also noteworthy that the issue of affirmative asset partitioning and its rationale, which arises in the context of establishing a pledge[225], has received comparatively more attention in the domestic doctrine, primarily due to the contributions of R.S. Bevzenko.

The functions of asset partitioning are proposed to be understood as those advantages that the use of these structures gives to civil turnover in terms of fair and reasonable decisions. Like any other legal means, asset partitioning is associated with disadvantages, some of which are inherent to this institution as such, and some of which simply create a fertile ground for abuse.

In examining the advantages and disadvantages associated with asset partitioning, we will deliberately exclude two aspects from our consideration:

1. **Overcoming asset partitioning.** Various ways to overcome asset partitioning: piercing the corporate veil, the practice of bringing controlling persons to subsidiary liability in the bankruptcy of the organization and other similar tools that allow as an exception to the general rule to gain access to personal assets. In our opinion, the existence of such means of access to personal assets of the participants of corporations in no way casts doubt on the fact of isolation of the property of these organizations. The piercing of the corporate veil is connected with the fact that in fact there was no independent legal entity, but only the appearance of separation of assets was created. Subsidiary liability, in our opinion, is an independent liability for causing harm. Since these issues are generally sufficiently studied in the domestic doctrine, we will not consider this aspect.
2. **The problem of involuntary creditors.** The problem of property isolation and limited liability in the context of the issue of liability to involuntary creditors. The main reason for independent consideration of this problem is that most of the arguments in favor of asset partitioning are applicable only to contractual (voluntary) creditors. Moreover, in our view, the decision on asset partitioning in relations with contractual creditors need not be exactly the same when dealing with involuntary (primarily tort) creditors. Since this issue presents an independent problem, it will be considered separately.

5.1. Benefits of Affirmative and Defensive Asset Partitioning

R. Posner considers only the phenomenon of limited liability and the effects it produces, but does not take into account what functions affirmative asset partitioning and a weak form of protective[226] can perform. The contribution of H. Hansman and R. Kraakman to the development of the economic and

[225] Bevzenko R. S. Justifiability of the priority granted to the creditor by the security in rem: Sketch of dogma, theory and policy of law // Vestnik of Civil Law. 2017. Vol. 17, No. 4. P. 10-44.
[226] Posner R. Op. cit. P. 521-551.

legal justification of the phenomenon of affirmative asset partitioning should be noted. While all the economic benefits of the existence of a strong form of defensive asset partitioning (limited liability) have already been studied in detail, the reverse side of asset partitioning has not received so much attention.

Since, as a general rule, any partitioning is related to the order of liability to creditors – defensive asset partitioning and affirmative asset partitioning constructs that involve prioritizing certain property for different creditors – the functions will be directly related to such priorities. H. Hansman, R. Kraakman and R. Squire distinguish 6 advantages of affirmative asset partitioning, with a weak form of asset partitioning providing only the first 3 of them, and a strong form providing all 6: (1) lower creditor information costs, (2) lower management agency costs, (3) lower bankruptcy administration costs, (4) protection of going concern value, (5) capital accumulation and asset diversification, (6) ensuring the negotiability of participant interests/shares[227].

Reduction of transaction costs is the main function of asset partitioning. However, the reduction of transaction costs, which R. Posner mentions in relation to limited liability (strong protective isolation) and the reduction of transaction costs. Posner mentions in relation to limited liability (strong defensive asset partitioning), and the reduction of transaction costs, which are distinguished by H. Hansman and R. Kraakman in relation to affirmative asset partitioning have completely different content. R. Posner speaks first of all about the reduction of transaction costs due to the fact that limited liability is a standard contractual condition, which operates by default and thus in most cases reduces the costs of negotiating this condition[228].

In fact, the real reduction of transaction costs occurs due to the reduction of costs for checking and monitoring the financial solvency of the counterparty and despite the fact that, according to H. Hansman and R. Kraakman, this function is achieved to a greater extent through affirmative asset partitioning[229], in fact, to the same extent perform both defensive and affirmative asset partitioning, depending on whose financial condition a particular creditor is interested in (personal or business).

At the same time, most of the positive effect can be obtained with even a weak form of property isolation, i.e. simple priority. Since if a creditor of a company has priority over all personal creditors when foreclosing on the company's property, it is enough for it to monitor only the solvency of the company itself, and the growth of debts to personal creditors does not have a direct negative effect on it, since it will receive its part in priority.

At the same time, it cannot be argued that the personal state of a company member is indifferent for a business creditor for the following reasons: firstly, under a weak form of defensive asset partitioning, personal creditors (even with a lower priority of claims) may initiate bankruptcy

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[227] Hansmann H., Kraakman R. H., Squire R. C. Law and the Rise of the Firm. P. 1344-1350.
[228] Posner R. Op. cit. P. 521-551.
[229] Hansmann H., Kraakman R. H., Squire R. C. Law and the Rise of the Firm. P. 1346.

proceedings against the business, which may negatively affect the relationship that was planned as a long-term one; secondly, the creditor may enter into a relationship with the business, taking into account, among other things, the personal assets of the owner. These risks can be completely eliminated by giving a strong form of affirmative asset partitioning. However, the second aspect may remain if the creditor obtains personal collateral from the owner.

At the same time, as R.S. Bevzenko rightly notes, referring to the study conducted by J. Franks and O. Sussman, the monitoring concept shows its failure in the fact that in more than half of cases credit organizations require personal collateral, in fact giving up the advantage of reducing monitoring transaction costs[230]. Thus, asset partitioning in this part has a downside, the disadvantages of which often outweigh the advantages.

The reduction in agency costs is that it is more predictable in terms of consequences for the creditor if the manager of each enterprise can bind the property with debts only in relation to his separate enterprise, without affecting other enterprises with the same participants. This function balances the risks of the owner of the enterprise, which arise for him in situations where there is a separation of ownership and management (this function will be discussed later)[231].

The reduction of administrative costs in bankruptcy is that since the bankruptcy of one individual enterprise does not affect other enterprises, it can go through the bankruptcy process more easily and efficiently[232]. The authors attribute the above two functions to affirmative asset partitioning, but since the examples given by the authors do not describe the isolation of the assets of a business from the personal assets of its members, but the isolation of several businesses among themselves, it seems abundantly clear that when we are talking about different groups of business creditors, isolation among them in the same way can be achieved by both affirmative and defensive asset partitioning.

At the same time, in this context it should be noted that at the moment a rather popular area of research is the justification of the possibility of bankruptcy of a group of companies, since it is assumed (quite reasonably) that without such an instrument it can be extremely difficult to protect the interests of creditors properly[233]. Thus, despite the obvious thesis about the convenience of separate bankruptcy, it directly entails corresponding costs.

Indeed, the specific function of affirmative asset partitioning is to **preserve the value of** the **going concern**, which is accomplished by establishing liquidation protection, which is characteristic of a strong form of affirmative asset partitioning. Liquidation protection involves the inability of personal

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[230] Bevzenko R. S. Justifiability of the priority given to the creditor by in rem security. P. 18.
[231] Ibid.
[232] Hansmann H., Kraakman R. H., Squire R. C. Law and the Rise of the Firm. P. 1346-1348
[233] Napolskaya P. V. Bankruptcy of a group of companies: future is coming // Vestnik of Economic Justice of the Russian Federation. 2023. No. 10. P. 132-157.; Karelina S. A. Signs of the group of companies in the legislation on insolvency (bankruptcy): problems of legal regulation // Business, Management and Law. 2022. No. 4(56). P. 10-18.

creditors to make claims directly against the assets of the enterprise or to initiate the liquidation of the enterprise in order to gain access to its assets. With liquidation protection, personal creditors can foreclose on participant interests/shares and further exercise these rights to the extent permitted by applicable law.

All of the above functions should ultimately lead to a reduction in the cost of credit in the broadest sense.

Capital accumulation and diversification of investments. While R. Posner, speaking about limited liability, pointed to indirect negative consequences of different levels of shareholders' wealth – the assumption that under unlimited liability the creditors of the enterprise will make claims to the wealthiest shareholders, H. Hansman and R. Kraakman highlight that affirmative asset partitioning (particularly in its strong form) effectively mitigates the more critical and directly impacting shareholder interests. In the absence of this, affluent shareholders would not only face heightened exposure to the claims of the company's creditors but also experience a direct correlation between the value of their shares and the wealth of other shareholders whose personal creditors could potentially make claims against them[234].

The negotiability of shares. R. Posner argued that limited liability is necessary to allow shares to be disposed of without the consent of other shareholders, as it helps to eliminate the risks associated with the solvency of the shareholder himself[235]. The social consequence of this is that limited liability allows investments to be made by individuals of varying wealth, as wealthier shareholders do not feel under increased threat of creditor claims. P. Halper, however, notes that even in the situation of unlimited liability the share market may exist, but in this case its structure will change – the value of shares will be largely determined by the solvency of shareholders[236].

At the same time, H. Hansman and R. Kraakman correctly pointed out that in reality unlimited liability allows to achieve a **high turnover of shares** (including the possibility of alienation without the consent of other shareholders), namely the presence of affirmative asset partitioning in a strong form. Especially since, according to the authors, limited liability is not a necessary element and its functions can be fulfilled by a weaker form of defensive asset partitioning – proportional liability[237]. Under proportional liability the solvency of other shareholders does not really affect the amount of possible recovery, each participant is liable only in its part, but proportional liability retains the following disadvantages, which are eliminated by limited liability: (1) under the proportional system, the majority participants are in an obviously more vulnerable position, as they are the primary targets of creditors,

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[234] Hansmann H., Kraakman R. H., Squire R. C. Law and the Rise of the Firm. P. 1353.
[235] Posner R. Op. cit. P. 531.
[236] Halpern P., Trebilcock M., Turnbull S. An Economic Analysis of Limited Liability in Corporation Law // University of Toronto Law Journal. 1980. Vol. 30. No. 2. P. 118.
[237] Hansmann H., Kraakman R. H., Squire R. C. Law and the Rise of the Firm. P. 1350.

while attempts to recover assets from minority shareholders are unlikely to be justified in terms of recovery costs; (2) limited liability is a crucial factor in attracting substantial investments, as even under proportional liability, there is a risk of unlimited investment losses.

Another specific function of limited liability **is a better allocation of financial risks**. Limited liability is not a means of eliminating the risk of default of the company, but a means of transferring this risk to the creditors, which is a more fair and balanced solution[238] . Transferring the risk to the creditors is more justified because in such a situation each of the participants, both shareholders and creditors, have limited liability and clearly realize the limits of their risks. Creditors (especially banks) can always diversify their risks, while shareholders would not be able to diversify without limited liability. At the same time, an alternative to limited liability can be personal liability insurance, because in this case the risk of insolvency of the company is transferred to the insurance company. Researchers conducting economic analysis of limited liability point out that in reality, no matter who accepts the risk, the assumption of this risk is always "paid" and is somehow included in the amount of the transaction[239].

Limited liability is only a general rule and can be waived by shareholders in order to cheapen the loan by providing personal collateral.

Limited liability can be seen as an implied insurance clause within a commercial contract, as it involves the counterparty assuming part of the risk that lies with the debtor[240]. At the same time, some authors argue that in certain cases creditors are more suitable and cheaper "insurers" than a professional insurer because they are more aware of the specifics of their industry. At the same time, employees are also considered as creditors, as they are better informed than the insurance company about what is going on in the company[241].

In addition to these advantages, it is also stated that limited liability makes it possible to invest in high-risk projects[242].

It should also be noted that limited liability, in addition to its own advantages, which it directly provides, also helps to avoid a sufficient number of difficulties that could arise in its absence: (1) the impossibility to establish a fair and effective way to realize joint and several liability in a situation with a large number of participants in the company, (2) the definition of the range of persons who bear subsidiary liability for the company's debts in public companies, etc.

To the positive properties of property isolation, in our opinion, should also be attributed the **fair distribution of risks of accidental loss of property**. This function can be most clearly illustrated when

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[238] See, for example, Easterbrook F. H., Fischel D. R. Limited Liability and the Corporation // The University of Chicago Law Review. 1985. Vol. 52(1). P. 89-117.; Posner R.A. The Rights of Creditors of Affiliated Corporations // The University of Chicago Law Review. 1975. Vol. 499 No. 3., Posner R.A. Op. cit. P. 531.
[239] Halpern P., Trebilcock M., Turnbull S. Op. cit. P. 129.
[240] Halpern P., Trebilcock M., Turnbull S. Op. cit. P. 138.
[241] Halpern P., Trebilcock M., Turnbull S. Op. cit. P. 139
[242] Kuntz T. Op. cit. P. 1.

comparing the model of liability of heirs with inherited property and within the value of inherited property. Despite the fact that at the moment of opening the inheritance these models have identical monetary value, in the process the final result may become different. If the liability is built within the limits of the inherited property, the risk of destruction of this property will lie on the creditors of the testator, but not on the heir and his personal creditors, while the second model (liability within the value at the moment of opening) does not imply the asset partitioning, and therefore, the risk of destruction of this property lies entirely on the heir and is evenly distributed on the creditors of the testator and personal creditors of the heir.

5.2. Disadvantages of Affirmative and Defensive Asset Partitioning

Asset partitioning also has a downside, which is represented by a set of disadvantages or difficulties caused by it. H. Hansman and R. Kraakman cite the following set of disadvantages: (1) opportunism of the debtor – the possibility of arbitrary movement of assets between different pools of property. This problem is especially acute for single person companies and is actually lost as the number of participants increases, (2) increased enforcement and administrative costs, since controlling the movement of assets between different pools, as well as the unfair use of legal entities, requires remedies, and such remedies do not have a high degree of predictability in their application, (3) the complexity of personal bankruptcy with a weak form of asset partitioning, because when a personal creditor claims against the common property, it is necessary to immediately determine its sufficiency and understand whether it can be satisfied at its expense or whether it is necessary to open bankruptcy of the company, (4) diversification of creditors' claims (meaning that when there is no segregation of assets and several businesses form one total mass available for collection, it turns out that this mass is more diversified), (5) illiquidity of investments, which applies to minority owners of non-traded shares/shares (it is difficult for minority owners to get their share), (6) exploitation by controlling persons[243].

We find the last three disadvantages somewhat strange: (1) the diversification of creditors' claims actually takes place only in those situations where the debtor's business is actually diversified, and this is usually characteristic only of large companies, which in most cases are already reliable debtors. Moreover, the diversification of contractual creditors' risks occurs due to the fact that they have not just one counterparty on which their business depends, but several; (2) the predicament of minority shareholders, on the one hand, and, on the other hand, the concentration of all management levers in the hands of controlling persons are not specific negative consequences of property isolation. These problems would still exist even if there were no isolation, therefore, in our opinion, they are direct consequences of the possibility of non-parity participation as such.

[243] Hansmann H., Kraakman R. H., Squire R. C. Law and the Rise of the Firm. P. 1350-1354.

In our opinion, the main negative consequences of asset partitioning are: unfair or simply extremely inefficient division of assets – growth of complex structures, including for the direct purpose of hiding property from personal creditors. Naturally, modern legal orders use various means to combat such behavior, but these means themselves, as a rule, have rather abstract criteria and rules of application and therefore do not provide the desired level of predictability, which would allow to rely on them for risk assessment.

Also one of the problems is the problem of negligence risk (moral hazard), although it is more manifested in relation to involuntary creditors, as it may be related to harm caused by insufficient investment in safety, it may still affect contractual creditors. Especially if tort creditors will have priority claims in bankruptcy, as it is partially realized in Russian law. It is pointed out that it is small companies that are more exposed to this risk[244].

Strong forms of affirmative asset partitioning can significantly worsen the position of personal creditors if they are used solely to conceal assets[245] . In essence, this is a special case of debtor opportunism, which, since Roman law, has presented a problem that has not found an unambiguous solution: on the one hand, the absence of the right of the heir's creditors to segregate property was explained by the fact that any debtor could always worsen the position of his creditor by assuming a new debt (D. 42.6.1.2), but on the other hand, the lack of affirmative asset partitioning of the estate of the peculium could be explained by the fear of opportunism of the father of the family – the fear that he might transfer the entire estate to the peculium to conceal it from collection on the debts of personal creditors[246].

At the same time, in our opinion, the use of the legal entity structure to conceal personal property from personal creditors can only occur in a small number of cases: firstly, it makes sense only when personal creditors for one reason or another cannot foreclose on the debtor's shares, and secondly, if the possibility of foreclosure is present, the debtor has no special rational incentives to transfer property to a legal entity, as the only result will be a lower priority of personal creditors' claims.

As mentioned above, limited liability as a standard contractual condition serves the purpose of reducing transaction costs. However, there is also an opposing viewpoint, which is that the unlimited liability regime should be the default, while limited liability should be negotiated every time, at least when it comes to the liability of a company with a small number of participants and not a public company[247].

In most cases where property is segregated according to the substance model, symmetrical segregation occurs because each group of creditors receives some form of priority for its claims against

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[244] Halpern P., Trebilcock M., Turnbull S. Op. cit. P. 148.
[245] Hansmann H., Kraakman R. H., Squire R. C. Law and the Rise of the Firm. P. 1351-1352.
[246] Ibragimov K.Y. Asset Partitioning in Roman law. P. 86.
[247] Halpern P., Trebilcock M., Turnbull S. Op. cit. P. 148-149.

certain property, so that such segregation generally does not raise questions about the fairness of the treatment as such. However, in cases involving security constructions and certain organizational and legal forms, asymmetric segregation occurs, with only one group of creditors receiving priority, effectively to the detriment of the interests of the other creditors.

With regard to priorities arising under pledge, this issue was considered by R.S. Bevzenko, who concluded that the establishment of such a priority would be unfair to certain groups of creditors: subsequent voluntary creditors who were unaware of the existence of established security, as well as involuntary creditors who do not have alternative protection mechanisms (e.g., not protected by insurance)[248]. In order to eliminate the resulting injustice, legal orders, including the Russian one, establish various mechanisms to mitigate this situation: compulsory insurance, limiting the effect of priority in relation to certain groups of creditors, setting a percentage of the value of pledged property to satisfy the claims of such creditors, etc.

At the same time, the approach proposed by R. Squire, which consists in a shift from asymmetrical to symmetrical segregation in pledge, may also be considered as an additional mechanism for equalizing the balance of interests between secured and unsecured creditors. Symmetrical segregation implies (in addition to prioritizing pledge creditors with respect to pledged property) also prioritizing non-secured creditors with respect to non-secured property[249]. Although his arguments are not objectionable in themselves and seem quite reasonable, it seems that a complete transition to such a model requires resolving the issue of "partial" collateral, i.e., situations where the amount of collateral is much less than the amount of the secured obligation. It seems to us that in such a situation symmetrical segregation would significantly worsen the position of the pledge creditor. We believe that this issue requires additional independent study.

5.3. The Problem of Involuntary Creditors

The problem of limited liability to non-voluntary creditors stands apart, as all the above arguments, not only justifying the usefulness of limited liability, but also its nature as a standard contractual condition, obviously cannot be extended to non-voluntary creditors. As stated above, the main argument in favor of limited liability is its fairness, since all participants are almost always aware of the marginal amount of money, they are risking by entering into a contractual relationship. If we proceed from the economic rationality of the behavior of such participants, each of them, depending on the degree of risk, puts the value of this risk into the price, i.e. receives compensation for taking such risk. Moreover, contractual creditors can actually regulate the balance between risks and potential

[248] Bevzenko R. S. Justifiability of the priority given to the creditor by in rem security. P. 25.
[249] Squire R. Op. cit.

remuneration on their own, while involuntary creditors, as a rule, are deprived of the opportunity to receive compensation for risk.

H. Hansman and R. Kraakman point out the following problems associated with the existence of limited tort liability: (1) the use of corporate structures by large companies to separate potentially dangerous activities into separate legal entities in order to minimize potential losses[250], (2) increased risks of harm due to reckless conduct (moral hazard)[251] .

5.3.1. Involuntary Creditors

The range of persons who may be classified as involuntary creditors and the reasons why they may be so classified are varied, so simply stating that any "non-contractual" creditors are involuntary creditors is not sufficient for the purposes of determining the balance of interests. The position of an employee who is harmed and an accidental person who is also harmed, as well as of a person whose actions have enriched another person who then fails to fully satisfy a claim for unjust enrichment, may be assessed differently. Contractual creditors may also be significantly restricted not only in their ability to negotiate terms, but also generally in their freedom of choice of counterparty.

This issue has been considered in sufficient detail by V.I. Grigoriev[252], so we will not dwell on it in detail, but will only mention that we believe it is appropriate to consider only tort creditors as involuntary creditors (regardless of whether they were bound by any contractual relations with the inflictor of harm). However, as R. Kraakman and H. Hansman point out, the difficulty may arise in cases where the harm is caused by a service/good, in respect of which the purchaser/customer understood or should have understood the risk of harm[253]. We, as well as V.I. Grigoriev, do not see any political-legal and economic grounds to consider tax and public liability claims in the context of involuntary creditors[254].

R. Posner points out that involuntary creditors in some cases also receive some compensation for bearing such a risk, for example, the premium for bearing the risk of injury at work with limited liability of the employer may already be included in the salary[255]. However, it seems to us that such a form of elimination of negative consequences is inadequate to the nature of the relationship, as it represents insurance in reverse: the employer pays a "premium" to the employee in order to transfer the risk of his own insolvency in the event of injury to the employee, who is not factually able to properly protect his interests in the event of such a situation. In this sense, it is conceptually more correct to pay such a

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[250] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts. P. 1881.
[251] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts. P. 1889.
[252] Grigoriev V.I. Involuntary creditors: is there a place for them in Russian legislation and doctrine? // Vestnik of Economic Justice of the Russian Federation. 2022. No. 12. P. 162-199.
[253] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts. P. 1921
[254] Grigoriev V.I. Op. cit. P. 172-177.
[255] Posner R. Op. cit. P. 535.

"premium" in favor of the insurer, so that it is the insurer that covers the relevant costs (in fact, this is how it is arranged in domestic law).

5.3.2. Methodological Difficulties

All attempts to find a fairer solution and somehow justify the possibility of limited liability to involuntary creditors at the moment look more like steps towards the impossibility of unambiguous justification of this or that position from the point of view of economic analysis of law. In this regard, it is proposed to demonstrate the complexity of the problem and the possibility of justifying radically opposite solutions, and then proceed to highlight the main arguments without attempts to prove or disprove each of them separately.

Obtaining satisfaction from multiple debtors. H. Hansman and R. Kraakman propose to establish proportional liability of shareholders with respect to such claims[256], S. Bainbrich and T. Henderson point out that such an approach is associated with significant costs, the need to obtain recovery from a huge number of shareholders[257]. T. Kuntz, however, rightly points out that the difficulty of collecting from all shareholders should not be an obstacle to denying them the opportunity to obtain satisfaction from easily accessible majority creditors, but draws attention to another aspect: a large amount of risk may become disastrous for shareholders, which would be an incentive to reduce large participation[258].

Opposing results of one solution. The concept of limited liability for torts serves to encourage two opposing trends simultaneously. Firstly, there is a decrease in investment in safety. Secondly, there is an overall increase in investment in such companies. This is due to the fact that the danger and riskiness of objects increases potential profits, while risks due to limited liability are reduced. It is important to note, however, that the possibility of isolating assets within a group of companies does not allow for a positive effect from the inflow of investments, as investments are attracted to the holding company and liability is limited to the property of the spun-off company[259].

5.3.3. Possible Solutions

The best solution, which H. Hansman and R. Kraakman see, is a system of proportional liability of participants for torts, the main arguments in favor of such a solution are: (1) fairness of such a solution in relations with persons who are harmed (the risks of insufficiency of separate property are borne not by the victims themselves, but by the beneficiaries of the enterprise), (2) fair distribution in internal relations (everyone is responsible only for himself – there is no joint liability), (3) incentives to invest in safety are preserved and, consequently, there is no moral hazard risk.

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[256] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts.
[257] Kuntz T. Op. cit. P. 12.
[258] Kuntz T. Op. cit. P. 12-14.
[259] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts. P. 1883

H. Hansman and Kraakman recognize that, in the absence of limited liability, small companies will not be able to engage in activities that carry a high risk of causing great harm, but they see a positive side in that such small companies are effectively subsidized by the victims of their torts and therefore have no right to exist[260]. Equally, they believe that unlimited liability will help reduce the number of public companies "with uncontrolled management in risky industries"[261].

The problem of determining the time for which the circle of obliged subsidiary shareholders is fixed[262]. In our opinion, the attempts of H. Hansman and R. Kraakman to solve this problem look like a reasoned search for a bad solution out of many terrible ones[263].

Moreover, their position also contains clearly erroneous conclusions, for example, that unlimited liability allows to painlessly lower the priority of tort creditors in bankruptcy, as the latter can claim personal property, which, in turn, will lead to cheaper credit for the organization itself, as the risks of contractual creditors will be reduced, and this will be reflected in the cost of credit[264]. It seems to us that such a thesis does not take into account the fact that the status of a personal creditor may be worse than that of an ordinary creditor in a company's bankruptcy.

Especially considering that they realize that the introduction of unlimited liability will stimulate shareholders to use schemes to reduce their own liability by hiding personal assets, transferring shares to persons with a low level of own assets, etc. However, they do not see a big problem in the latter, since, in their opinion, all these tactics of avoiding liability are already used even under limited liability, and unlimited liability will help to get rid of the simplest and most effective tactics of creating fictitious identities[265].

Recognizing the great disadvantage of their approach, due to the fact that it can potentially lead to situations where a shareholder with a small share of ownership (both in percentage and absolute terms) may face claims against it that are substantially higher than its share of ownership and, more importantly, arise for reasons that are not even remotely within its control (due to the insignificance of corporate rights). H. Hansman and R. Kraakman point out that in such situations it is for the courts to ascertain on a case-by-case basis what would be an equitable solution[266].

At the same time, these authors also admit that alternative mechanisms to reduce the negative consequences of unlimited liability for torts may in fact be no less effective, although they themselves

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[260] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts. P. 1888.
[261] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts. P. 1908.
[262] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts. P. 1896.
[263] They propose to use the criterion of the emergence of information about the possibility of tort claims, instead of the criterion of determining the moment of harm (because it does not work when harm is caused by long processes - asbestos cases), instead of the moment of claims, because it encourages a sharp mass sale of shares when a clear event occurs (e.g., Bhopal disaster) or, conversely, leads to the sale of shares by persons informed about the harm even if it is not known to the general public.
[264] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts. P. 1902.
[265] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts. P. 1912.
[266] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts. P. 1916-1917.

are convinced that proportional unlimited liability is the best option. They identify the following groups of alternative approaches: (1) creating coverage for situations of potential liability, (2) assigning personal liability to persons other than shareholders (actually to management) (3) expanding the scope of application of the doctrine of piercing the corporate veil[267].

P. Posner probably thinks that the best solution is to keep limited liability, but, realizing the unfairness of such a solution to involuntary creditors, points out that state regulation in general should take measures aimed at eliminating the negative social consequences of bankruptcy, and cites the following possible measures: setting requirements for the acceptable equity/borrowed funds ratio, restrictions on participation in risky ventures, introduction of increased requirements similar to those set for banks[268].

We agree with the general approach, but the specific measures proposed by R. Posner seem controversial, as actions aimed at reducing transaction costs may lead to an adequate increase in administrative costs. Posner seems to be controversial, since actions aimed at reducing transaction costs may lead to an inadequate increase in administrative costs. Insurance, which the same R. Posner proposes to use for hazardous objects, seems to us to be a more universal mechanism[269] .

Examples of the implementation of this approach are found in Russian law, first of all, by licensing certain types of activities and establishing compulsory insurance.

However, the following idea seems more important to us: "if we recognize that shareholders may in principle be personally liable for corporate torts, then it would seem logical to use general principles of tort law, rather than the formalities of the corporate structure, to determine the scope of their potential liability"[270] . In our view, the problem of tort creditors is primarily a problem of tort law, not corporate law.

Neither proportional nor even joint and several liability of the participants/shareholders is a guarantee of redress and, in this sense, the victim of the harm caused never knows how much the solvent will harm him/her.

The liability of individuals is also called limited due to the possibility of bankruptcy[271] , since individuals are not liable with all their property, but only with all the property they have at the moment, and since they are liable only with their cash property, the unpaid part of the debt is discharged after bankruptcy. However, Russian law, in order to protect the interests of involuntary creditors, generally does not exempt an individual from such debts after bankruptcy (Article 213.28 of the Bankruptcy Law).

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[267] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts. P. 1926.
[268] Posner R. Op. cit. P. 535.
[269] Posner R.A. The Rights of Creditors of Affiliated Corporations // University of Chicago Law Review. 1975. Vol. 43. P. 520.
[270] Hansmann H. and Kraakman R. Toward Unlimited Shareholder Liability for Corporate Torts. P. 1932.
[271] Easterbrook F. H., Fischel D. R. Op. cit. P. 90.

Thus, we believe that the problem of liability to involuntary creditors both in terms of the issue of limited liability of legal entities and in terms of the interrelated issue of priority of claims of lien creditors over the claims of involuntary creditors are a promising area for further study.

§ 6. Other Functions of Asset Partitioning

In addition to the above-described functions, advantages and disadvantages of asset partitioning in the narrow sense, i.e. as defensive asset partitioning and affirmative asset partitioning in relations with creditors, asset partitioning in the broad sense, by virtue of giving it a specific legal status, not necessarily related to liability to creditors, can perform other functions.

6.1. Separation of Possession and Control

Asset partitioning is also associated with the separation of economic ownership of the object and the authority to manage it. The most obvious way such separation occurs in the case of asset partitioning of legal entities. At the same time, the degree of separation in terms of management may vary significantly: on the edges of this spectrum there are, on the one hand, companies consisting of one person who is also the general director, and such separation will be purely formal, and on the other hand, commanders and owners of preferred shares completely lose any control over the activities of the company, remaining the beneficiaries of the activities of such organizations.

Such a division in legal entities, owners of their property, as a division of the right to profit and powers of management seems natural. In this case, depending on the specific situation, the transfer of management functions through the transfer of property to a legal entity may be even more important than the emergence of asset partitioning.

This function should be of primary importance in trusts and some trusts[272] , and defensive asset partitioning has more of an auxiliary function, aimed at protecting the interests of the beneficiary primarily from the actions of the trustee himself. The importance of defensive asset partitioning is of least significance in situations where the administration is established only to safeguard the property. In such cases, however, the affirmative asset partitioning, which is necessary to protect the beneficiary from himself, is of greater subsidiary importance. The importance of the function of "protection against oneself" is also emphasized by E.I. Chervets[273].

[272] We certainly recognize that in fact these constructions may not be used according to their original meaning, but only to obtain asset partitioning, including concealment of property.
[273] Domshenko (Chervets) E. I. Personal funds: opportunities and risks of property isolation. P. 116.

Also, the separation of powers to manage property and legal asset partitioning occurs in the following cases of asset partitioning: common ownership of units of a unit investment fund, pledge of participatory interests in an LLC, when the rights of a participant are transferred to the pledgee.

6.2. Technical Separation

As a rule, technical separation is a necessary condition for the existence of legal separation, however, in some cases technical separation (isolation) of property can perform an independent role, which does not lead to legal separation, i.e. giving the property a specific regime, but has a legal significance.

Technical separateness may serve an auxiliary function for the purposes of determining the content of the internal relations between the parties to an obligation, for example, for the purposes of controlling the intended use of a donation or funds provided under a special-purpose loan/credit. Similarly, technical separation is relevant for the purposes of determining mutual obligations between the parties to a simple partnership agreement; for the purposes of determining what property is joint under Russian law, as well as for the purposes of determining mutual obligations of spouses in foreign legal orders, where instead of the regime of commonality the so-called regime of deferred commonality is established; for the purposes of determining the obligations of an heir to the creditors of the testator, etc. The above examples will be discussed in detail in the following sections. The given examples will be analyzed in more detail further in the relevant sections of the study.

Technical segregation may also be used for the purpose of controlling the activities of organizations by the legal order as such. Thus, the legal order may prescribe the creation of various kinds of funds that are not segregated for the purposes of liability to creditors, but the obligation to maintain assets in these funds allows to maintain the overall financial stability of the organization, which is beneficial for the turnover as a whole.

However, it should be noted that in some cases technical separation does not have any civil law significance at all, for example, this applies to separate accounting at branches and representative offices, as well as other cases where it is relevant only for accounting and tax accounting purposes.

6.3. Property Immunities

A specific legal regime, which is associated with property isolation, is also inherent in the property in respect of which property immunity is established. Such a regime is established in respect of the property of individuals (part 1 of article 446 of the Code of Civil Procedure) and may be established by law in respect of the property of organizations (part 2 of article 446 of the Code of Civil Procedure). The nature of asset partitioning in such cases, however, is not homogeneous, so it should be considered separately.

As for the property of individuals specified in part 1 of Article 446 of the Code of Civil Procedure, it cannot be described in the categories of defensive asset partitioning and affirmative asset partitioning, as such a regime does not imply the allocation of several groups of creditors – it is a regime of executive immunity, which blocks the forced access of any creditors to such property. It is important to note that there are no restrictions on the voluntary disposal of such property, so this immunity is executive immunity. Based on the list of property specified in the relevant norm, it can be concluded that the establishment of such immunity has a pronounced social function, as it is primarily aimed at preserving for the debtor the minimum amount of property necessary to maintain vital activity: "Such legal regulation, prohibiting foreclosure under executive documents on certain types of property by virtue of its intended purpose, properties and attributes characterizing the subject in whose ownership it is located, is due to the desire of the federal legislator by granting the citizen-debtor property (executive) immunity to preserve to him and his dependents the conditions necessary for a decent existence"[274].

The Constitutional Court also points to the constitutional-legal nature of executive immunity[275]. We believe that in this part we should agree that this instrument, although directly related to civil law consequences, has no other background than the will of the legal order to protect the constitutional rights of individuals by a direct prohibition of forced foreclosure on certain property. At the same time, the inclusion or non-inclusion of certain property in this list may be the subject of legal discussions, which are currently taking place, for example, with regard to the limits of the effect of immunity in respect of the only residential premises.

Property immunity in respect of the property of organizations is more diverse in terms of the prerequisites for its establishment and the nature of its effect. Some immunities are of a similar nature to immunity of individuals, as they have constitutional and legal prerequisites for establishment and make the property inaccessible to all creditors: property for liturgical purposes[276], some property of historical heritage centers of the presidents of the Russian Federation[277], rights to a secret invention (clause 6 of Article 1405 of the Civil Code). Such immunity can also be qualified as executive immunity in the full sense.

Similar in some aspects is the legal regime established for property that is barred from recovery for all creditors, but it falls away if other property is insufficient (e.g., property held in common ownership or shares in the authorized capital). Such immunity may be called "weak". The similarity in terms of asset partitioning between such property and property subject to a complete ban on recovery

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[274] Resolution of the Constitutional Court of the Russian Federation of 14.05.2012 No. 11-P "On the case of verification of the constitutionality of the provision of the second paragraph of the first part of Article 446 of the Civil Procedure Code of the Russian Federation in connection with the complaints of citizens F.H. Gumerova and Y.A. Shikunov".
[275] Ibid.
[276] Par. 5 Art. 21 of the Federal Law No. 125-FZ "On Freedom of Conscience and Religious Associations" dated 26.09.1997.
[277] Par. 3 Art. 6 of the Federal Law of 13.05.2008 No. 68-FZ "On the centers of historical heritage of the presidents of the Russian Federation who have ceased to exercise their powers".

(executive immunity) is that such partitioning, as a rule, does not imply the separation of different groups of creditors, and also applies only to cases of forced foreclosure. The purpose of such prioritization is probably to ensure that compulsory foreclosure of the debtor's property does not unnecessarily become a problem for third parties.

Weak property immunity may in some cases also serve a subsidiary function to defensive asset partitioning and affirmative asset partitioning where such property (usually participatory interests or units) establishes rights in relation to separate property that has its own creditors, but this is not always the case. Thus, for example, property held in shared ownership is available to creditors only if other property is insufficient, and such property has no creditors of its own. Equity interests in an LLC are also available to personal creditors only if there is insufficient other property, but the property behind the rights to the interests has its own creditors who have priority claims against the property of such a company.

At the same time, with regard to the property of organizations, in most cases a complete ban is not established, and the property is reserved for certain creditors or types of expenses, which leads to the division of creditors into groups and makes it possible to apply the categories of defensive asset partitioning and affirmative asset partitioning: (1) compensation fund of the notary chamber[278], (2) lottery funds[279], (3) compulsory deposit insurance fund[280], (4) compensation fund of SRO arbitration managers[281], (5) escrowed property Such immunities have a clear security nature, which is similar in many respects to a pledge, but with an essential difference, which is that the claims of such creditors in respect of segregated property have an exclusive, rather than priority, nature. Unlike executive immunity, such restrictions also apply to voluntary alienation and encumbrance of property, so it seems that the application of the term "executive immunity" to immunities of this kind is not fully correct, since executive immunity does not exhaust the specific regime of isolation of such property. For the same reason it is incorrect to identify property immunities and executive immunities in general.

The legal nature of such reservation of property for certain creditors or types of obligations, leading to the isolation of property, has not been considered in the doctrine in any way. It seems to be more complicated than that of executive immunities, behind which, apparently, there is nothing but the will of the legislator to establish certain restrictions for the protection of constitutional and legal values. At the same time, such isolation of property is organized in a much simpler way than isolation according to the model of a legal entity, since such property is not actively involved in turnover, like the property

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[278] Article 18.1 of the "Fundamentals of Legislation of the Russian Federation on Notariate" (approved by the Supreme Soviet of the Russian Federation on 11.02.1993 No. 4462-1).
[279] Article 17 of the Federal Law No. 138-FZ "On Lotteries" dated 11.11.2003.
[280] Par. 5 Art. 33 of the Federal Law No. 177-FZ dated 23.12.2003 "On Insurance of Deposits in Banks of the Russian Federation".
[281] Par. 12 Art. 25.1 of the Federal Law of 26.10.2002 No. 127-FZ "On Insolvency (Bankruptcy)".

of legal and quasi-legal entities (for example, mutual funds and investment partnerships), and the obligations that can be satisfied at the expense of such property are fully the obligations of the owner of this property, and there is no need to see them as a new subject of application of rights and obligations.

As noted above, such isolation most resembles isolation on the model of a security structure (pledge) imperatively established by statutory prescription.

Therefore, we believe that, without being able to recognize such isolation as a pledge in accordance with positive law, it should be perceived as isolation sui generis. At the same time, taking into account the clearly securing nature of such isolation, as well as the fact that the list of methods of security is open, relative asset partitioning may be perceived as a method of security imperatively established by law, and obligations may be considered secured, including for the purposes of application of Article 319.1 of the Civil Code.

In order to systematize the approach to describing various types of property immunities, they can be typified as follows:

Absolute immunities are immunities that apply equally to all creditors, such immunities are usually enforcement immunities, as they apply to cases of forced collection and do not affect cases of voluntary fulfillment of the obligation. Absolute immunities can be strong or weak.

— **Strong immunity** in general makes some property inaccessible to creditors, including in case of bankruptcy, such immunity has, for example, the property defined in part 1 of article 446 of the Code of Civil Procedure of the Russian Federation. The purpose of establishing such immunity is the protection by the legal order of certain constitutional and legal values, as a rule, related to ensuring a minimum level of life support.

— **Weak immunity** makes some property available for recovery only under certain conditions, usually when other property is insufficient. Such immunity is available, for example, for property held in common ownership, shares in business entities, etc. The purpose of such immunity is to make the enforcement of foreclosure available only under certain conditions. The purpose of establishing such immunity is to make compulsory foreclosure, if possible, less burdensome for third parties.

Relative immunities are immunities that apply only to certain creditors of a person, such immunities usually impose restrictions not only on the ability to enforce foreclosure, but also impose restrictions on the voluntary disposal of any separate property. The purpose of such immunity is to protect the interests of certain groups of creditors.

It should be noted that earlier in the doctrine V.V. Yarkov proposed the division of immunities of organizations into absolute and relative[282], the content of which textually fully corresponds to the strong and weak immunities that we have proposed, so it is necessary to clarify what the proposal of new terminology is related to, despite the fact that it is already used by other authors[283]. It is difficult to conclude from the work of V.V. Yarkov whether he considers those situations where property is reserved for certain creditors as relative immunities. It seems that no, the author puts such cases out of brackets, which we fully agree with, since the nature of such immunities is different, but lexically the term "relative immunity" (in the sense that it acts differently with respect to different creditors) is more applicable to such cases.

Therefore, in our opinion, strong and weak immunities should be considered as varieties of absolute immunities, as they act equally with respect to all creditors, and relative immunities, which act only with respect to certain creditors and form an independent group of immunities on a par with absolute immunities.

Thus, asset partitioning can perform, in addition to its securing function, also the function of protecting certain constitutional and legal values by prohibiting the enforcement of certain property.

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[282] Yarkov V.V. Property immunities from recovery in entrepreneurial relations // Arbitration and Civil Procedure. 2003. No. 10. P. 9-12.

[283] Malyushin K.A. Principles of civil executive law: problems, concepts and systems. M. Infotropic Media, 2011. 238 p; Gureev V. A. Imuschestvennye immunities in enforcement proceedings -M. Delovoy Style, 2019. 127 P.

CHAPTER 2. COMPARATIVE LEGAL ANALYSIS OF INDIVIDUAL SITUATIONS OF ASSET PARTITIONING

§ 1. Trust Management[284]

Trust management is of the greatest interest for the purposes of the study of the problem of isolated property, as the property under trust management and especially the property constituting a unit investment fund, not only has obvious signs of asset partitioning, but also actively acts in property turnover, without being formally a legal person.

Despite a certain number of works, including monographs[285], on the topic of trust management of property in Russian law, the study of this institution, especially in the aspect of property isolation, is insufficient. In particular, the need for an independent study of the problem of ownership of rights and obligations arising from contracts concluded in the process of trust management "within the framework of one or even several independent studies" was pointed out by A. V. Egorov in 2002[286] , but since then only one small article by O. R. Zaitsev[287] has been published on this issue.

1.1. Asset Partitioning in Relations with Creditors

Directly in terms of asset partitioning as a construction of liability to creditors of separate property, the current legislative regulation gives quite an unambiguous answer about the nature of such partitioning: "Debts on obligations arising in connection with the trust management of property shall be paid at the expense of this property. In case of insufficiency of this property, the recovery may be applied to the property of the trustee, and in case of insufficiency of its property to the property of the management founder, not transferred to trust management" (clause 3 of Article 1022 of the Civil Code).

At the same time, although some authors controversially argue that by virtue of paragraph 3 of Article 1022 of the Civil Code defensive asset partitioning is achieved[288], it seems that such a construction, which simply establishes the order of property masses, at the expense of which debts related to trust management are satisfied, is such a weak form of asset partitioning that it borders on its complete absence. The weakness of this form lies in the fact that when claims are made against the

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[284] The paragraph contains materials published in the article: Ibragimov K.Y. The problem of belonging rights and obligations arising in the implementation of trust management // Law and Politics. 2024. No. 8. P. 57-67.

[285] See, for example, Zaytsev O.R. Contract of trust management of unit investment fund; Benevolenskaya Z.E. Trust management of property in the sphere of entrepreneurship. M., 2018. 304 p.; Ilyushenko A.A. Contract of trust management of the property of the ward / under. Ed. Y.V. Truntsevsky. Moscow: Yurist, 2007. 192 p.

[286] Egorov A.V. To the issue of the concept of an intermediary in interested party transactions // Vestnik VAS RF. No. 5. 2002. P. 128

[287] Zaitsev O.R. About the party in the contracts concluded by the trustee // Legislation and Economics. 2005. No. 10. P. 41-42

[288] Podsosonnaya V.V. Op. cit.

personal property of the trustee or the founder of management, their personal creditors will not have any priority over the creditors of the isolated property.

In case of trust management of the property of a unit investment fund by virtue of Article 16 of the Federal Law No. 156-FZ dated 29.11.2001 "On Investment Funds" (hereinafter referred to as the **"Investment Funds Law"**) the same problem remains with respect to the trustee, but a strong defensive asset partitioning has already been established with respect to the management founder (shareholder), as the creditors of the partitioned property do not have any claims against the personal property of the management founder.

Affirmative asset partitioning is more pronounced than defensive asset partitioning, as foreclosure of the property held in trust for the personal debts of the trustee is not allowed under any circumstances, which is a strong form of affirmative asset partitioning. As a general rule, foreclosure on the personal debts of the trustee is also not allowed, but there is a fundamental difference in the exception to this rule for ordinal trust management and mutual fund property management: in ordinal trust management, in case of bankruptcy of the trustee, the trust management is terminated and the property can be foreclosed, while in mutual fund trust management, in case of bankruptcy of the unit holder, foreclosure is allowed only on the units, not on the unit itself

The degree of defensive asset partitioning in the second case is stronger and the strength of this partitioning lies in the important element of asset partitioning, which is highlighted by H. Hansman and R. Kraakman – protection from liquidation.

With regard to the effect of confirming property isolation in the case of ordinary trust management, there is a legislative uncertainty in the question of whether the creditors of the isolated property have priority over such property: two options are conceivable, depending on whether the termination of the trust management agreement in case of bankruptcy of the management founder is preceded by a preliminary fulfillment of obligations for the debts of the isolated property. This uncertainty is indirectly pointed out by E.I. Chervets[289]. More correct, it seems to be the approach when termination of trust management will lead to acceleration of liabilities, but trust creditors will not have priority in respect of such property over personal creditors, since trust creditors also still have access to the estate of the trustee. Granting additional priority seems unnecessary in such a situation.

It seems that this difference in the degree of affirmative asset partitioning in its two varieties is directly related to the degree of asset partitioning necessary to achieve the goals that are characteristic of these varieties of management of other people's property, since an ordinary trust is established in the interests of one person, while a mutual fund trust is generally in the common interests of an association

[289] Chervets E.I. Trust as one of the ways of isolation of property ... P. 215

of investors. The existence of a collective interest requires the existence of a liquidation defense for the purpose of protecting other shareholders.

1.2. The Problem of Ownership of Rights and Obligations

Usually, the ownership of rights and obligations by a particular person determines the property to which creditors are entitled to claim under the relevant obligations. As it was mentioned above, in the case of trust management the estates to which a creditor is entitled to claim are established by the prescription of the law and, therefore, are not directly related to the issue of belonging of obligations to a particular person. This state of affairs certainly raises questions from the point of view of the theoretical justification of such a liability procedure, which will be discussed below, but, in our opinion, uncertainty on the question of ownership of rights and obligations is not limited to the problem of liability and entails other difficulties of a practical nature.

In the absence of recognizing legal personality for the segregated property under trust management, such rights and obligations may be attached to either the management founder or the trustee, but the law does not directly answer the question, offering instead contradictory provisions: (1) para. 3 of Article 1012 of the Civil Code, which states that the trustee concludes the contract "in its own name", (2) paragraph 2 of Article 1020 of the Civil Code, which says that the rights acquired as a result of trust management are included in the property transferred into trust management.

A number of researchers have drawn attention to this problem. (1) A.V. Egorov: "the design of domestic trust management of property is peculiar and the answer to the question whether, in fact, the trustee is a party to the transaction as a bearer of subjective rights and obligations from it is ambiguous"[290], (2) O.R. Zaitsev also devoted one small work to the description of part of the contradictions related to the ownership of rights and obligations[291], and later came to the following conclusion "the current general model of trust management actually tries to combine two incompatible constructions – trust management based on the transfer of rights and trust management based on representation"[292]. The same author raises the question of whether the same model applies to ordinary trust management and unit trust management[293].

In the doctrine one can find the position that the bearer of rights and obligations is the trustee[294]. This is probably due to the fact that decisive importance is attached to the wording "on its own behalf" used in paragraph 3 of Article 1012 of the Civil Code. The distinction "on its own behalf" / "on behalf of another" is characteristic for the problem of differentiation of relations of direct and indirect

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[290] Egorov A.V. To the question about the concept of an intermediary in interested party transactions / Vestnik VAS RF. 2002. No. 5. P. 128.
[291] Zaitsev O.R. About the party in the contracts concluded by the trustee.
[292] Zaitsev O.R. Contract of trust management of unit investment fund.
[293] Ibid.
[294] Benevolenskaya Z.E. Trust management of property in the sphere of entrepreneurship. M. 2018. P. 112.

representation (in the second case the term representation is used conditionally) when differentiating relations under the contract of assignment and commission.

The disadvantage of such a solution is related to the complete disregard of p. 2 of Article 1020 of the Civil Code, which says that the property acquired as a result of trust management is included in the property transferred into trust management, and since it is undisputed that the owner of such things is the founder of management, the same property regime – belonging to the founder of management – should be applied to the obligatory rights.

The phrase "in his own name" should be understood in a different way than in a commission agreement, as suggested by V.A. Dozortsev: "the rule about the manager acting in his own name serves his interests, expressing his independence in decision-making, freedom from interference of the owner, and inadmissibility of revocation of the manager's powers by him. At the same time, the manager is obliged to indicate that he acts not in his personal capacity, but represents the property under management"[295].

At the same time, theoretically, there is a possible interpretation that can harmonize the provisions of Articles 1012 and 1020 of the Civil Code, in which "property" in Article 1020 of the Civil Code means only assets that belong to the management founder, and clause 3 of Article 1012 of the Civil Code indicates that the trustee is obliged to the contracts. 3 of Art. 1012 of the Civil Code indicates that the trustee is obliged under the contracts. In other words, there is a division of rights and obligations under such contracts between the management founder and the trustee. O.R. Zaitsev, for example, considers such a division strange[296].

Note that this division does not seem so strange to us, as it is similar to the different treatment of rights and duties inherent in a classical trust. As described above, a classical English trust consists only of assets (these assets are not available to the personal creditors of the trustee), and all obligations assumed in connection with the administration of the trust property are personal obligations of the trustee himself, and the trust creditors cannot make claims against the trust property. At the same time, we agree that Russian law does not have prerequisites for a different treatment of rights and obligations, since, in accordance with Article 1022(3) of the Civil Code, debts related to trust management are primarily repaid from the property held in trust, which is a significant difference from a classical trust where such a division is justified.

In such a division of interest arises in relation to obligations in rem, i.e. such obligations in which the owner of the object is considered to be obliged. In court practice, there is an example of a situation when a dispute arose as to who is obliged under obligations to pay for public utilities: the shareholders or the trustee. In this case, the court rightly pointed out that "In accordance with subparagraph 2,

[295] Dozortsev V.A. Op. cit.
[296] Zaitsev O.R. About the party in the contracts concluded by the trustee.

paragraph 1, Article 10, paragraph 1 of the Federal Law of 29.11.2001 No. 156-FZ "On Investment Funds" directly establishes that UIF is not a legal entity, from which it can be concluded that it is not a subject of civil law at all, and as a consequence, it lacks the ability to acquire and exercise property and personal non-property rights on its own behalf, to bear obligations, to be a plaintiff and defendant in court (para. 1 of Article 48 of the Civil Code)", but further made a non-controversial conclusion that it is the trustee that has "legal personality in relation to the separate property complex of the unit investment fund", from which, in turn, it has already concluded, directly contradicting the law, that the trustee is the owner of the separate property[297]. There is a similar practice on the ownership of obligations to pay for utilities by the management company[298].

Thus, at the level of judicial practice, the idea of separation of rights and obligations between the founder of management and the manager is also not supported. Moreover, the court is even inclined to go into direct contradiction with the law, but not to recognize the separation of rights and obligations.

It should also be noted that in the legislation there is still a direct answer to the question about the belonging of rights and obligations, but the location of such answer does not allow us to give it a decisive meaning: paragraph 12 of Article 3 of the Law "On Investment Partnerships", in relation to the situation of contribution to the investment partnership of the property held in trust management, directly indicates that all rights and obligations related to such property belong to the management founder, but are exercised and performed by the manager.

Despite the fact that within the framework of current regulation and in the absence of formal legal personality of the separate property itself, this option seems to us the most correct (the same conclusion tends to O. R. Zaitsev[299]), it will be further demonstrated that at the level of positive law and judicial practice it does not always work.

Who can be a lessee of property held in trust? A management founder transfers immovable property into trust management and the trustee has a desire to lease this property – can he do so? The rules of the Civil Code on trust management do not contain a direct prohibition on such a transaction, any political and legal obstacles are also not obvious (provided that we assume that the trustee performs this transaction on market conditions), but there may be a theoretical obstacle associated with the fact that if we recognize on the basis of paragraph 3 of Article 1012 of the Civil Code that the bearer of rights and obligations is the trustee, it turns out that he becomes both a debtor and a creditor in one obligation.

This issue was the subject of judicial consideration and within the framework of this case the courts actually came to the conclusion that the rights and obligations under such a transaction arise from

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[297] Resolution of the Arbitration Court of the Moscow District from 29.09.2022 No. F05-18102/2022 on the case No. A40-1322/2022, hereinafter references to judicial acts are given in accordance with the information posted in the JPS "ConsultantPlus".

[298] Resolution of FAS Far Eastern District of 21.01.2003 No. F03-A73/02-1/2903.

[299] Zaitsev O.R. About the party in the contracts concluded by the trustee P. 42.

the founder of the management[300]. The reasoning of the courts cannot be called exhaustive, as the courts referred to Art. 1018 of the Civil Code and completely ignored the provisions of paragraph 3 of Art. 1012 of the Civil Code, actually avoiding the resolution of the above-described conflict between the two norms. It can be assumed that such a decision was dictated by the desire to preserve the concluded contract in the absence of a direct prohibition and to avoid resolving the general theoretical problem. Moreover, in those situations where the lease agreement is concluded with a third party, court practice tends to the opposite conclusion, that it is the manager who is obliged under the lease agreement[301].

In this connection, it is interesting: would the court's approach have changed if the lessee was not the trustee, but the management founder? In such a case the situation would be even more complicated, in addition to the possible coincidence of the debtor and the creditor in one person, there may also be a problem of the right of the lessee to its own thing. This situation can be criticized for lack of economic sense, but it should be noted that in practice it is quite common in relation to mutual funds, when the latter are used to regulate the tax burden. It should also be noted that in such a case the problem of the right to rent one's own thing is hidden behind the mask of such a non-subject entity as a mutual fund, since the Unified State Register of Legal Entities displays information that the object is in the shared ownership of the shareholders of such a fund, even if this shareholder is one and shared ownership is out of the question.

Since formally there are no formal grounds to recognize the property held in trust as an independent entity, it will inevitably be necessary to recognize that either in the first or in the second case there is a situation of coincidence of the debtor and creditor in one person, which in the norm should lead to the termination of the obligation (Art. 413 of the Civil Code). At the same time, in our opinion, the establishment of such coincidence does not mean the unambiguous impossibility of the existence of such a construction, since Article 413 of the Civil Code expressly states that the termination of an obligation by the coincidence of the debtor and the creditor does not occur in cases where the substance of the obligation implies otherwise. It seems that it is the different legal treatment of the right and obligation that coincide in one person, caused by their property isolation, that may prevent them from terminating.

Thus, in our opinion, the coincidence of the debtor and creditor in one person should not be an obstacle to the possibility of concluding such contracts, regardless of who is considered as a party to the obligation.

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[300] Resolution of the Ninth Arbitration Appeal Court of 13.12.2011 No. 09AP-31511/2011-AK in case No. A40-76017/11-75-313.

[301] Decision of the Supreme Court of the Russian Federation of 21.02.2022 No. 305-ES21-28867 in case No. A40-181026/2020, Resolution of the Arbitration Court of the Central District of 16.02.2023 No. F10-5775/2022 in case No. A36-4354/2021.

Assignment of rights and obligations due to change of manager.

The question of ownership of rights and obligations under concluded contracts also becomes crucial in a situation where there is a potential situation of a change of person in the obligation. Such situations may be, inter alia, the following: (1) termination of the trust management relationship; (2) a change in the figure of the trustee, which may occur either by the decision of the management founder (shareholders) or by the decision of the trustee itself.

Change of the manager on his initiative. In accordance with clause 5 of Article 11 of the Law "On Investment Funds", a management company, if so provided for by the trust management rules, may, in accordance with the procedure established by the Bank of Russia, transfer its rights and obligations under a unit investment fund trust management agreement to another management company. Although this clause, strictly speaking, refers to rights under the trust management agreement and not rights related to it, the Bank of Russia indicates that the transfer of rights and obligations to another management company requires the consent of creditors: "A management company must take measures to obtain from all persons who are creditors under obligations related to the trust management of a unit investment fund a written consent to the transfer of debt under such obligations to the legal entity to which the rights and obligations of the management company under the unit investment fund trust management agreement are transferred"[302].

The very wording "obliged to take measures to obtain consent" rather than "obliged to obtain consent" raises questions, but, as we understand it, judicial practice takes this rule as an obligation to obtain the relevant consent, without which it is impossible to change a management company as such[303]. Thus, for the above situation, the Bank of Russia and judicial practice assume that the rights and obligations under contracts concluded in the course of trust management belong to the management company of a unit trust fund.

It remains unclear whether such a transfer of obligations is regarded as a transfer of a debt by virtue of an agreement, which as a general rule requires the consent of the creditor and the Central Bank's guidance simply states such a necessity, or whether it is regarded as an exception to the general rule that the transfer of a debt by operation of law does not require the consent of the creditor – this does not have any practical significance in this case, but will be of fundamental importance for the following.

Change of the management company by decision of the shareholders. A management company may also be changed in accordance with subpar. 2, paragraph 9 of Article 18 of the Law "On Investment Funds" on the basis of a resolution of the general meeting of shareholders. The difference in this situation

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[302] FCSM Resolution No. 37/ps dated 11.09.2002 "On Approval of the Regulations on the Procedure for Transfer by a Management Company of its Rights and Obligations under a Unit Investment Fund Trust Management Agreement to Another Management Company".

[303] Resolution of the Arbitration Court of the Central District of 18.12.2018 No. F10-5335/2018 in case No. A23-3420/2014.

is that in such a case it is not directly stipulated anywhere that the consent of creditors to debt transfer is required.

It seems logical that the ownership of rights and obligations should not change depending on the reason for the change of the management company, but no, in this situation we find the opposite solution: "the right to lease the land plot belonging to the owners of the Fund's investment units has not terminated in connection with the transfer of rights and obligations under the trust management of the Fund to another management company. Thus, the transfer of rights and obligations under the Fund's trust management agreement did not result in a change of the owner of the Building, the title to the Building and the right to lease the land plot remain with the owners of the Fund's investment units. Obligations subject to fulfillment at the expense of the Fund's property are still subject to fulfillment at the expense of the Fund's property, but by the new management company"[304]. In other words, the court recognized that the rights and obligations under the lease agreement belonged to the unit holders themselves and not to the management company.

It should be noted that in the above judgment there is an indication that the original management company notified the landlord of the decision of the shareholders and asked for consent to the transfer of the debt, i.e. they assumed that the rights and obligations belonged to the manager.

It is also interesting to note that in a separate case, but with the same parties, a dispute was considered about the recovery of management fees from a new management company in favor of the former one and despite the fact that the court correctly stated that the fees were paid from the property of the fund itself, it added that the obligation lies with the manager, stating: "the obligation to pay remuneration to the plaintiff for the period of the latter's trust management of the fund lies with the defendant"[305].

At the same time, there is a directly opposite practice in relation to the rights to use a water body[306]. In this case, a new management company applied for reissuance of the right to use a water body, but was refused, as the court pointed out that the permit was issued to the management company and not to each individual member of a unit investment fund, so a change of management company requires a new permit, not reissuance of the old one. Thus, the court proceeded from the fact that the right to use the water body belonged to the management company and not to the shareholders.

Assuming that the court practice in this case also consistently proceeded from the fact that the rights and obligations belong to the manager, the decision on the need for consent depended on the problem described above: should such a debt transfer be considered as a transfer by operation of law, which as a general rule does not require the creditor's consent? In our opinion, the answer should be in

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[304] Resolution of the Ninth Arbitration Appeal Court of 01.11.2022 No. 09AP-64515/2022 in case No. A40-116787/2022.
[305] Decision of the Arbitration Court of Moscow dated 26.10.2023 in case No. A40-139347/23-117-874.
[306] Resolution of the Tenth Arbitration Court of Appeal of 14.09.2023 No. 10AP-15915/2023 in case No. A41-5516/2023.

the affirmative, since by the decision of the shareholders there is a change of the management company and the very fact of such change leads to the transfer of rights and obligations, moreover, it seems extremely unreasonable to make the possibility of the shareholders to change the manager dependent on the will of the creditors.

At the same time, it is necessary to note the downside of such a decision: the change of the management company directly affects the interests of creditors, since the solvency of the manager determines the amount of property available to creditors from which they can satisfy their claims. However, it seems that this circumstance should not be perceived as a significant obstacle, since the fund's counterparties should primarily rely on the property constituting the fund, which does not change in composition when the manager is changed. Moreover, it is difficult to determine the financial position of the management company itself, as it bears subsidiary liability for the "debts" of other funds.

Public relations. An independent question is related to who should be the subject of violations related to the use of property under trust management. It seems that in this matter judicial practice correctly assumes that the subject will be the trustee[307]. It seems that the solution of this issue is not directly related to the belonging of civil rights and obligations, as it is related to the improper order of their implementation, the obligation for which, due to the specifics of the relationship lies precisely on the trustee.

1.3. Composition of Separate Property

At the regulatory level, the issue of the composition of separate property is solved in the following way: first, such property includes the property that was transferred by the management founder into trust management (article 1012 and 1018 of the Civil Code, article 10 of the Law "On Investment Funds"), secondly, such property includes "the rights acquired by the trustee as a result of actions on trust management of property" (clause 2 of article 1020 of the Civil Code of the Russian Federation) or a similar wording "property obtained in the process of such management" (clause 1 of article 10 of the Law "On Investment Funds").

Property transferred into trust management

The first component of the property under trust management does not present any difficulties for the purposes of its determination, as this information is fixed in the agreement (clause 1 of Article 1016 of the Civil Code), but there is a practical and theoretical problem related to the following: can such property be transferred not by the management founder, but by some third party for him? Special regulation of trust management neither in the Civil Code, nor in the Law "On Investment Funds" does not contain a direct answer to the question of the possibility of transfer of property by a third party, so

[307] Resolution of the Tenth Arbitration Court of Appeal of 15.12.2021 No. 10AP-23573/2021 in case No. A41-96344/2019.

when posing the question in this way, there is a temptation to refer to the general provisions on the possibility of fulfillment of obligations by a third party (Article 313 of the Civil Code).

Guided by Art. 313 of the Civil Code one can come to an unambiguous conclusion that such fulfillment is possible, as para. 3 of Art. 313 of the Civil Code does not indicate the complete impossibility of such fulfillment even in those cases when from the essence of the obligation follows that it must be fulfilled personally, because the creditor has the right to accept such fulfillment, although also has the right to refuse it. However, the very possibility of applying Art. 313 of the Civil Code to this situation is not quite obvious due to the fact that the contract of trust management, as follows from the normative material and is commonly believed in the doctrine, is real, which means that when the property is transferred to trust management the fulfillment of the obligation as such does not occur at all.

However, it should be noted that researchers believe that it is necessary de lege ferenda to extend the rules of Art. 313 of the Civil Code to the implementation of actions on the transfer of property under real contracts[308], although without making changes to the normative material, and examples of this approach are found in court practice.

It should be noted that the Civil Code and the Law "On Investment Funds" explicitly state that it is the management founder that transfers the property: "The trust management founder transfers the property to the management company"[309], "Under the trust management agreement one party (the management founder) transfers the property to the other party (the trustee)"[310]. Probably, such wording alone cannot be given decisive importance, since in describing any contract, the performance of which is unambiguously allowed by a third party, the party to the contract will be indicated as the debtor, and the possibility of performance by a third party is always put out of brackets.

Thus, positive regulation does not provide an answer to the question of the possibility of transferring property for the management founder by a third party. Based on the logic of regulation, the following conclusions can be drawn:

1. The third party transferring the property does not become a management settlor because the management settlor retains its status until the end of the trust agreement and is not only liable to the trustee, but is also liable for the debts incurred as a result of the management of the property. Moreover, the third party may not be aware that such transfer is related to trust management, because if such execution occurs within the framework of redirection of execution, the third party is not obliged to find

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[308] Sarbash S.V. Execution of contractual obligation. Moscow: Statute. 2005. 636 p. [Electronic resource]. - Mode of access: SPS "ConsultantPlus".
[309] Paragraph 2 of Article 11 of the Law "On Investment Funds".
[310] Clause 1 of Article 1012 of the Civil Code of the Russian Federation.

out the internal relations between the creditor and the person to whom the execution occurs, which is confirmed by court practice and generally recognized in the doctrine.

2. The structure of trust management itself does not provide grounds for the transfer of ownership, so, in our opinion, the transfer of property into trust management by a third party is possible, but only with the simultaneous transfer of ownership to the founder of management, and the transfer of ownership requires an independent basis (sale and purchase, gift, etc.), therefore, when property is directly transferred from a third party to a trustee, such property first becomes the property of the management founder and then immediately enters into trust management.

Property acquired as a result of trust management

The issue of property acquired as a result of trust management is more complicated, since the law does not expressly define what property should be considered acquired as a result of trust management. Four approaches are possible: (1) to consider as received as a result of trust management everything received under contracts concluded by the trustee acting as a trustee, (2) received from the use of the property transferred to trust management, (3) if the above two criteria are met simultaneously, (4) alternatively, if one of the first two criteria is met.

There is no question that a situation in which something is acquired with property held in trust and under a contract entered into by the trustee as trustee, then that acquisition should be included in segregated property. However, more complex situations may arise.

The trustee acquires some new ***property at the expense of the property under trust management***, but does not specify in the contract that it acts as a trustee. According to Clause 3 of Article 1012 of the Civil Code, the absence of an indication of the status of "D.U.» in the contract leads to the fact that the trustee is obliged personally and is liable to the counterparty with its own property, while the question of ownership of the arising rights in such a situation is not expressly resolved. We believe that in such a case the management founder should have the ownership right to such acquired property, and if the manager has registered the ownership right to himself, the management founder (shareholder) has the right to demand recognition of the ownership right for himself (or share ownership of shareholders). It should be emphasized that it is the recognition of the right, not the transfer of such right.

The gratuitous acquisition of property. It seems that the gratuitous transfer of property to a separate property for the purposes of its management is possible. The legal argument will be the dispositive method of regulation of private relations and the absence of direct or indirect prohibition of such transfer. The political-legal argument may be the absence of any negative consequences associated with such provision. Also in favor of such a possibility is the fact that it allows for the transfer of property in relation to the ordinary trust management to ensure its safety and its protection from unreasonable

behavior of the beneficiary, for which it is necessary to give third parties the right to gift such a beneficiary, but through separate property. In the case of trust management of UIF the issue is somewhat more complicated, as we can model only one situation in which such a need may arise – a single shareholder wishes to replenish the fund by means of gratuitous transfer (including from third parties) of property bypassing the procedure of payment for new units. However, there are no private-law arguments against such an action either.

Thus, in our view, two criteria should alternatively be used, in the presence of one of which the property should be included in the composition of segregated property: the use of the property constituting the fund, and acting on behalf of the trustee (including by expressing the will to accept the property as part of the fund).

1.4. The Problem of Legal Personality of Property Held in Trust Management

In our opinion, the non-application of the technique of personification to property held in trust may be due to the following circumstances:

Historical tradition. Modern trust administration is known to have the following historical roots: trust from common law and fiducia from Roman law. However, neither leads to any legal personality, but why? Fiducia (fiducia cum amico) was an obligation of a personal nature, which was aimed at preserving property, at managing property, usually in an emergency situation, so this property was not in active circulation and did not need personification and detailed regulation. Moreover, the construction of fictitious person in Roman law was not developed even for those situations when the emerging relations were much more similar to those involving legal entities (peculium, societies, etc.)[311]. However, fiducia in the form of non-subordinate separate property exists now in France.

Therefore, a much more interesting question is why a trust, which is more involved in civil turnover, was not recognized as a legal entity. For this, in our opinion, there are a number of reasons explaining this situation. The first is related to the absence in the common law of a general doctrine of branch legal personality in the usual sense and the fact that, as noted in the literature, English lawyers are generally less inclined to divide the law into separate and independent branches[312] . The second is related to the fact that trust, as one of the main instruments of equity law, is much broader in its functionality than trust management, in particular, the so-called "implied trust" (implied trust) arises without the expression of the respective will by the settlor in order to balance the interests of the persons involved: for example, the right of one of the cohabitants to the property created/improved with his participation, but registered to the other cohabitant, etc.[313]. It is clear from the nature of such a relationship that there is no need for an embodiment of a trust. The third and perhaps the main one relates

[311] See, in detail, Ibragimov K.Y. Asset Partitioning in Roman Law P. 74-88.
[312] Belykh V. S. Contract law of England: a comparative legal study Moscow: Prospect, 2022. 328 p.
[313] Pettit Ph.H. Equity and the Law of Trusts // 12th ed. Oxford. 2012. P. 193-195

to the fact that, as discussed above, the classical English trust does not form an independent patrimony because all the duties arising from the administration of the trust are personal debts of the trustee.

However, the analogues of trusts in mixed and continental systems have, as a rule, a different structure leading to the formation of patrimony and therefore, as justified above, have every reason to be recognized as legal personality entities. Thus, the historical tradition of not recognizing such constructions as legal personality is not justified in any way in relation to trust administration.

Political-legal and economic justification. It should be noted here that in Russian law trust management can be sufficiently diverse in its content. Above we, as a rule, referred to the trust management of investment funds or trust management of other significant means of production, where there is such a complex set of relations, which causes the desire to apply the technique of personification of property to simplify the understanding and systematization of emerging legal relations. At the same time, trust management may look much simpler: trust management aimed not at making profit, but simply at ensuring the safety of property.

In such cases, the property, as it is supposed to be, acts as an object of management and actually does not show signs of a subject. Therefore, there may be no real need to personify property, despite the presence of property isolation, simply because such property is not actually involved in turnover. Thus, for example, there is no need to personify a residential building held in trust for the purpose of maintaining it in proper condition, but such a need may arise if the trustee or the management founder decides to rent it.

However, in relation to trust management of a unit trust fund, which itself involves a large number of registration and formal procedures, giving such property the status of a subject is expedient, since the peculiarity of the regime of such property is universally manifested in activities related to trust management.

At the same time, a positive trend should also be noted, which is that recently instruments that can be perceived as functional analogs of a trust in Russian law have been created in the form of legal entities, such as inheritance and personal funds.

§ 2. Partnerships[314]

Interesting from the point of view of asset partitioning is the construction of partnership, under the common name of which the institutions of general partnership and limited partnership, which are legal entities, as well as simple partnership, which is a contractual association without the formation of

[314] This paragraph contains materials published in the article: Ibragimov K.Y. Legal Asset Partitioning in Partnerships // Legal Science. 2024. No. 7. P. 356-362.

a subject of law, are united. It is also appropriate in this connection to consider a peasant farm enterprise (hereinafter also – "**PFE**"), which is a non-subject contractual association.

2.1. Business Partnerships

Since business partnerships are legal entities, in general, asset partitioning in them is constructed in the same way as in other legal entities with some exceptions.

First, in limited partnerships, the nature of defensive asset partitioning depends on the status of the member: (1) general partners (like partners in a general partnership) are fully vicariously liable for the partnership's debts with their personal property, and their personal creditors have no priority with respect to personal property, i.e., there is no defensive asset partitioning in their relationship in general; (2) limited partners are not liable with personal property, so there is a strong form of defensive asset partitioning in their relationship.

Secondly, affirmative asset partitioning exists, but its degree is somewhat less than in business companies. If in business companies' personal creditors of a participant (shareholder) do not directly foreclose on the property of the legal entity, but foreclose on the shares/shares themselves, the situation is different in partnerships. In case of insufficiency of other personal property, personal creditors file a claim for allocation of a part of the partnership property attributable to the debtor's share in the share capital and foreclose directly on this property (Article 80 of the Civil Code). It should be noted that this procedure of foreclosure is rather characteristic for common property relations than for corporate relations.

In view of the above circumstance, partnerships, unlike companies, actually lack such an element of affirmative asset partitioning as a defense to liquidation, since a personal creditor of a partner does not replace the partner in the corporate relationship, but is entitled to make claims against the property at once.

The absence of strong defensive asset partitioning (limited liability) in partnerships makes them an unattractive form for entrepreneurial activity, which explains their almost complete absence in turnover, but this does not create big problems, as this risk is taken by the partners voluntarily and consciously. The absence of weak defensive asset partitioning (priority of personal creditors with respect to the personal property of the partnership) creates increased risks for third parties – personal creditors of the partnership.

This asymmetrical nature of asymmetry (strong affirmative asset partitioning in the absence of defensive asset partitioning) makes business partnerships under Russian law similar to American general partnerships and makes them different from English general partnerships. H. Hansman, R. Kraakman and R. Squire as a justification for this asymmetry point out that in the presence of developed limited liability companies partnerships are a tool for those who want to direct all their personal property to

achieve the goals of the partnership[315], but this logic is speculative, because with a weak form of defensive asset partitioning the partner also risks all his property, its absence reflects not on the partner himself, but on his personal creditors, who have not expressed their consent to such risk in any way. It is clear that any debtor can assume any obligations, creating additional risks for his personal creditors, and this is the risk of choosing a counterparty, but in the case of partnerships, these additional debts may be created not even by the debtor himself, but by the partnership, in which there are other participants.

Given these circumstances, it seems fairer to endow partnerships and companies in which the members are personally liable with a weak form of defensive asset partitioning that would give priority to personal creditors against personal property.

2.2. Simple Partnerships

In general, the researchers' conclusion that defensive asset partitioning does not arise in the case of creation and functioning of a simple partnership is correct[316], but the mere indication that it follows from the fact that the partners are liable with personal property is not enough, because in accordance with Art. 1047 of the Civil Code on contractual obligations of a simple partnership, not related to business activities, the partners bear proportional, not joint and several liability, which in accordance with the theory of H. Hansman and R. Kraakman is a weak form The absence of defensive asset partitioning, in our opinion, is connected with the absence of division of creditors and property into different pools in principle, which will be proved below.

It is surprising that several works that have tried to apply the theory of H. Hansman and R. Kraakman to Russian law institutions contain the same and at the same time absolutely wrong conclusion about the weak form of affirmative asset partitioning in a simple partnership, which is manifested in the fact that according to Article 255 of the Civil Code, the property constituting shared ownership may be foreclosed only if other property is insufficient[317].

As stated above, affirmative asset partitioning manifests itself in the fact that creditors of the "entity" receive priority in the satisfaction of their claims out of separate property (this is also understood by authors who argue that affirmative asset partitioning is inherent in a simple partnership). Even if we limit the analysis of asset partitioning in a simple partnership not to the "common property of the partners," but only to the property owned by them in common, although this is an optional element of a simple partnership[318], we still do not find affirmative asset partitioning.

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[315] Hansmann H., Kraakman R. H., Squire R. C. The New Business Entities in Evolutionary Perspective // European Business Organization Law Review. 2007. Vol. 8. P. 4-5.
[316] Domshenko (Chervets) E.I. Separation of property without creating a legal entity. P. 37.; Podsosonnaya V.V. Op. cit.
[317] Podsosonnaya V.V. op. cit. op. cit.; Domshenko (Cherevets) E.I. Obozavlenie propriety without creating a legal entity. P. 38.
[318] Goreva A.A. Contract of simple partnership and its types: Russian law in comparative legal aspect // Vestnik of Civil Law. 2020. No. 6. P. 30-66.

First, the fact that foreclosure on a common property can be accomplished only when other property is insufficient does not result in the division of property into pools and creditors into groups, which is a necessary condition for the application of the construct of defensive asset partitioning and affirmative asset partitioning and itself precludes their application. The statements of V.V. Podsosonna: "the law restricts the possibility of personal creditors of participants of common ownership to foreclose on the property constituting common ownership" and E.I. Domshenko "the law restricts the possibility of personal creditors of participants to foreclose on the isolated – common property" are incorrect in this context and misleading, as the law restricts the creditors of the partnership in the same way. In other words, the procedure for personal and partnership creditors is the same.

In this respect, the construction of a simple partnership under Russian law is fundamentally different from a simple partnership under German law[319], as in the latter the general debts of the partners are to be satisfied first of all at the expense of the partnership property (§ 733 of the German Civil Code).

Second, even if the "creditors" of the partnership were given the right to foreclose first on the common property, i.e., the "partnership property," by and large that would not give them any priority either, as it would essentially constitute eating the pie from two different sides without any priority.

However, it should be noted that despite the absence of property division into pools and inapplicability of the categories of defensive asset partitioning and affirmative asset partitioning, some properties of property partitioning still arise when common ownership arises in a simple partnership. First, to some extent, the property of property isolation, which was emphasized by H. Hansman and R. Kraakman – preservation of the going concern value – is ensured, but it is achieved not due to protection from liquidation, but due to the fact that foreclosure on the property in common ownership occurs in the last turn, i.e. due to the weak property priority established by law.

Secondly, if we perceive asset partitioning more broadly, as endowing the property with a specific legal regime, which is not necessarily related to the procedure of liability to creditors, we can find all those properties that are characteristic of common property as such. "Speaking about the role of the object of the right of common ownership, it should first be recalled that the subjects participating in common ownership, together with common property form a certain unity with a complex structure"[320]. A.A. Goreva also rightly notes that the emergence of common ownership protects the interests of other partners, so does not allow any of them to dispose of the object of shared ownership, because they can only in the prescribed manner to dispose of shares in the right of ownership[321].

The absence of affirmative asset partitioning is a fundamental difference between simple partnerships and the legal personality forms of partnership; moreover, a simple partnership in which

[319] It is about the non-subordinate partnership in its pre-reform form.
[320] Belov V.A., Blinkovsky K.A. Op. cit. P. 204.
[321] Goreva A.A. Op. cit. P. 50-51.

there is no affirmative asset partitioning does not form only a legal person according to the notions of continental law, but does not even form any separate entity.

As rightly noted in the doctrine, the interests of the creditors of a simple partnership are protected not by isolating the property, but by granting joint and several liability of the partners for the debts[322].

For this reason, we also cannot agree with the position of V.A. Belov and K.A. Blinovsky, who see the signs of legal personality of a simple partnership in the fact that a simple partnership, as well as a business partnership, "is capable of acquiring rights and obligations realized and performed at the expense of common property (by itself and for itself)"[323]. The category of common property of the partners is relevant only for the internal relations of the partners and in no way manifests itself externally, because, entering into a relationship with a simple partnership, the creditor does not have a relationship with any isolated property, but has a relationship with each of the partners separately. Thus, this isolation of property is of a technical nature and is necessary to determine the internal relations of the parties to the obligation.

At the same time, the old German simple partnership, which, unlike the Russian one, had a weak form of affirmative asset partitioning, as mentioned above, despite the formal non-recognition of its legal personality at the level of law, actually had legal personality, which was a prerequisite for the recognition of its legal personality at the level of jurisprudence[324]. With the recent reform of partnerships in Germany, this discrepancy between the literal text of the law and the actual state of affairs has been eliminated, and now a partnership with property autonomy is recognized as a subject of law, while a partnership without autonomy is not recognized as a subject of law. The creation of a particular type of partnership is at the discretion of the partners themselves.

Thus, a simple partnership in Russian law, due to the lack of affirmative asset partitioning and defensive asset partitioning, can be recognized neither as an entity nor even as a quasi-entity from the point of view of the Russian legal order.

The French legal order has an interesting history of legal personality of partnerships. At the end of the XIX century, the legal personality of civil partnerships was not formally established, but the wording used at the level of law created the impression that the rights and obligations belonged to the partnership as a subject, because of which the French Court of Cassation[325] recognized that they have an independent legal personality and, as a consequence, their own property complex (patrimoine)[326].

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[322] Goreva A.A. Op. cit. P. 50.
[323] Belov V.A., Blinkovsky K.A. Op. cit. P. 218.
[324] Goreva A.A., Zhestovskaya D.A. Op. cit. P. 125.
[325] Popovici A. Op. cit. P. 346.
[326] Popovici A. Op. cit. P. 346.

The recognition of civil partnerships as legal entities at the level of jurisprudence was criticized at the level of doctrine, until in 1978 their legal personality was enshrined at the level of law[327].

The partnership structure in Quebec is more complex. Despite the fact that it has the name General Partnership (which corresponds to a general partnership), under the Civil Code of Quebec it has no formal legal personality (Art. 2188 Civil Code of Quebec), so it can be considered as an analog of a simple partnership. In accordance with Article 2221 of the Civil Code of Quebec such partnership has a weak form of defensive asset partitioning, as despite the unlimited and joint liability of partners for partnership debts, foreclosure of personal property is allowed only in case of insufficiency of partnership assets and after satisfaction of claims of personal creditors of the partner.

Affirmative asset partitioning (in a weak form) is manifested in the same way as in business partnerships under Russian law, by giving priority to the creditors of the partnership due to the fact that foreclosure of a partnership interest involves accounting for the liabilities and assets attributable to that interest (2226 Civil Code of Quebec). Affirmative asset partitioning is also available in respect of limited partners (2241-2242 Civil Code of Quebec).

The existence of such forms of property autonomy, the direct division of creditors into groups (creditors of the partnership and personal creditors) at the statutory level, and the granting of priority to these groups in respect of different pools of assets, clearly demonstrate the attributes of legal personality. This state of affairs has led the Court of Appeal of Quebec, in the context of the bankruptcyability of the partnership itself, to recognize such partnerships as having the qualities of essence and autonomous and separate property (patrimoine), but without legal personality. The lack of personification, however, does not prevent the recognition of the belonging of rights and obligations to the partnership itself[328].

Thus, examples from foreign legal orders also indicate the desirability of establishing a weak form of defensive asset partitioning, the absence of which we pointed out in relation to business partnerships under Russian law.

2.3. Peasant Farm Enterprise (PFE)

The contradictory and inconsistent construction of the system of legal entities in Russian law has led to such phenomena, when an association of persons having the same name "peasant (farm) farm" can be a legal entity in accordance with Article 86.1 of the Civil Code, but can be a non-subject association of citizens in accordance with the Federal Law of 11.06.2003 No. 74-FZ "On Peasant Farm Enterprise " (hereinafter – the **Law "On PFE"**). At first glance, a legal entity and a nonlegal entity PFE differ from each other as simple and general partnerships, but the legal status of PFE property differs significantly from the regime of common property of a simple partnership.

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[327] Chiron G. La personnalité morale des sociétés depuis le XIXe siècle en France, en Allemagne et en Angleterre // Droit. Université 2 Panthéon-Assas. 2008. P. 122.
[328] Popovici A. Op. cit. P. 355-357.

Some such differences are not of fundamental importance for our study, so we will simply list them: a PFE not being a subject of civil law, can be a subject of public legal relations (part 4 of article 1 of the Law "On PFE"); a PFE can consist of one person; a PFE is subject to registration; a PFE has a more orderly procedure of external speech, etc.

Significant differences are that, as a general rule, the property of a PFE is in joint, not shared ownership of its participants, which in itself creates a different nature of asset partitioning. However, even if the property is in shared ownership, the Law "On PFE" contains special provisions that testify to the isolation of property: "under transactions made by the head of the farm in the interests of the farm, the farm is liable for the farm with its own property"[329], which gives a completely different level of asset partitioning.

In the aspect of **affirmative asset partitioning**, this rule is special in relation to the general one established by Article 255 of the Civil Code, and therefore the property held in the joint ownership of the members of the PFE is closer to the creditors of the PFE itself and remains remote from the claims of personal creditors. However, this in itself does not create a full-fledged affirmative asset partitioning, because, strictly speaking, it still does not give priority to the creditors of the PFE in case the claims of personal creditors reach this property. Despite the fact that in judicial practice one can meet such examples of interpretation of norms that can be regarded as signs of strong affirmative asset partitioning[330], it seems to be more correct position according to which such property remains available for foreclosure on personal debts[331]. At the same time, it is necessary to note cases when courts ignore the literal text of the law altogether and include claims of personal creditors into the claims to the property of a private farm[332].

In the aspect of **defensive asset partitioning**, this rule establishes a strong form of defensive asset partitioning – personal property is, as a general rule, completely inaccessible to the creditors of the PFE. The only exception is the case of subsidiary liability of a citizen who left the PFE within 2 years within **the value of the share**, which is out of the general logic of liability of PFE members. It should be noted that contrary to the literal meaning of paragraph 3 of Article 9 of the Federal Law "On PFE", the courts apply this rule of subsidiary liability within two years to those situations when the PFE was

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[329] part 3 of article 8 of the Federal Law of 11.06.2003 No. 74-FZ "On peasant (farm) economy".

[330] Resolution of the Arbitration Court of the West Siberian District from 20.01.2017 No. F04-6447/2016 in case No. A70-2766/2015: By virtue of the second paragraph of paragraph 3 of Article 1 of the Federal Law of 11.06.2003 No. 74-FZ "On peasant (farm) economy" to the entrepreneurial activities of the farm, carried out without the formation of a legal entity, the rules of civil law that regulate the activities of legal entities that are commercial organizations, unless otherwise follows from the federal law, other regulatory legal acts of the Russian Federation are applied According to paragraph 2 of Article 56 of the Civil Code of the Russian Federation, the founder (participant) of a legal entity or the owner of its property is not liable for the obligations of the legal entity, and the legal entity is not liable for the obligations of the founder (participant) or the owner, except in cases provided for by the Code or other law".

[331] Appellate determination of the Supreme Court of the Republic of Altai from 03.04.2019 in case No. 33-209/2019.

[332] Resolution of the Arbitration Court of the Central District of 25.12.2023 No. F10-6277/2023 in case No. A48-11123/2021.

terminated not due to the withdrawal of a participant[333]. Despite the literal inconsistency of such a position with the text of the law, such a solution seems to be fairer, as otherwise it would actually allow to terminate the activities of the PFE at any time on the basis of a decision and avoid any liability for the debts of the PFE.

However, in practice defensive asset partitioning actually does not work so well, which is considered in detail in the work of E.N. Agibalova[334], but this is a problem of erroneous judicial practice, as the law clearly shows limited liability. It is extremely unambiguous in bankruptcy of PFE (part 3 of article 221 of the Federal Law "On Bankruptcy"). There are also attempts to apply by analogy to a non-subject PFE on the subsidiary liability of the participants of the legal entity PFE[335]. Thus, a non-subject PFE formally possesses a strong form of defensive asset partitioning, which is not possessed not only by a simple partnership, but also by a general partnership and a legal entity PFE.

Some authors have expressed bewilderment as to why there are special rules for the bankruptcy of a private farm, while there are no special rules for the bankruptcy of a simple partnership[336], but it is quite understandable that these structures are not related due to the lack of regulatory prerequisites for the property isolation of a simple partnership.

It seems important to note that the very provisions of the Federal Law dated 26.10.2002 No. 127-FZ "On Insolvency (Bankruptcy)" (hereinafter – the "**Bankruptcy Law**") are contradictory and may mislead as to which PFE bankruptcy they refer to. The Law "On Bankruptcy" contains provisions on peculiarities of bankruptcy of peasant farms, and taking into account that in accordance with part 2 and part 3 of Art. 1 of the Law "On Bankruptcy" the law applies to bankruptcy of legal entities and individuals, it could be assumed that we are talking about bankruptcy of farms that are legal entities, but based on the content of these provisions and their place in the text of the law (section on bankruptcy of citizens), we can only draw a clear conclusion that we are talking about a farm that is not a legal entity. In general, the doctrine has repeatedly drawn attention to the fact that the subjects of bankruptcy can be formally non-legal entities from the point of view of civil law[337].

It could be assumed that this is a legal and technical inaccuracy and in reality this paragraph should be called – bankruptcy of an individual entrepreneur – head of a private farm, but in essence this paragraph represents the rules concerning the bankruptcy of a separate property mass that does not have legal personality, and not the head of a private farm. Some researchers, who agree that the debtor should

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[333] Determination of the First Cassation Court of General Jurisdiction of 23.06.2022 No. 88-15569/2022 in case No. 2-1196/2021.
[334] Agibalova E.N. Property liability of peasant (private) farms // Laws of Russia: experience, analysis, practice. 2023. No. 9. P. 48-55.
[335] Resolution of the Arbitration Court of the Central District of 25.12.2023 No. F10-6277/2023 in case No. A48-11123/2021.
[336] Anashkin S.P. Theory of personalized bankruptcy estate // Vestnik of economic justice of the Russian Federation. 2022. No. 10. P. 199.
[337] See, for example, Bankruptcy of economic entities: textbook for bachelors / Y.O. Alimova, N.N. Viktorova, S.S. Galkin, et al; ed. by I.V. Ershova, E.E. Enkova. Moscow: Prospect, 2016. 336 p.

be recognized as the PFE itself, note that in court practice the head of the farm is recognized as insolvent (bankrupt), and the bankruptcy estate includes the property of the entire farm[338] .

Thus, the paradoxical nature of the current regulation of PFE activity is not only in the fact that under the same name peasant farm enterprise can be understood both a legal entity and a formally non-legal entity, but also in the fact that these two forms have mirror-opposite nature of asset partitioning. A non-legally subject PFE has a strong form of defensive asset partitioning and no affirmative asset partitioning, while a legal entity PFE, on the contrary, has no defensive asset partitioning, but has strong affirmative asset partitioning.

In this regard, it is also completely unclear how the transition from a non-subjective PFE to a legal entity PFE should take place in accordance with subparagraph 1, par. 1, Art. 86.1 of the Civil Code. 1 of Article 86.1 of the Civil Code. Will there be some quasi-legal succession in such a case or will the complex of rights and obligations arisen in connection with the activities of a non-lawful PFE remain in the former status (termination and subsidiary liability of former participants within two years).

The current situation cannot be recognized as satisfactory. It seems that in order to improve regulation it is necessary to recognize as a subject of law the current PFE, which, although not a legal entity, is a quasi-subject by its actual position; the very fact of recognition of legal personality should endow such property with affirmative asset partitioning. At the same time, it is important that in contrast to the current legal entity PFE, the new PFE on the basis of the Law "On PFE" should have a defensive asset partitioning, which could provide the necessary protection to agricultural producers, as the legal order in general recognizes the high risk of this sphere and ensure fair distribution of risks between creditors of PFE and personal creditors of its participants.

2.4. Investment Partnership

The Law on Investment Partnerships explicitly defines investment partnership as a type of simple partnership: "[the Law on Investment Partnerships] regulates the peculiarities of a simple partnership agreement concluded for the implementation of joint investment activities (investment partnership agreement)"[339], followed by some researchers[340]. Some, however, note that despite the qualification of investment partnership as a type of simple partnership, it has significant differences[341]. In our opinion, in reality, the legal regime of such an entity as investment partnership is fundamentally different from a simple partnership, especially in the aspect of property isolation, which makes this institution more like

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[338] Shishmareva T.P. Federal Law "On insolvency (bankruptcy)" and the practice of its application: textbook for the exam on the Unified program of training of arbitration managers. Moscow: Statut, 2015. P. 128-129.
[339] Part 2, Article 1 of the Law "On Investment Partnerships".
[340] See, for example, V. Bondarenko. V. Some features of the legal status of economic partnership and investment partnership // Legal Science: History and Modernity. 2012. No. 11. P. 59-66; Shushlebin V.V. Legal status of the investment partnership // Economics. Law. Print. Vestnik KSEI. 2013. No. 3(59). P. 231-236.
[341] Naletov K. I. Economic partnerships and investment partnerships - new institutions of civil legislation // Civil and Law. 2012. No. 9. P. 76.

a trust management than a simple partnership. Therefore, we agree with those researchers who also believe that the investment partnership has almost nothing from the simple partnership[342], point out the similarities with unit investment funds and economic partnerships[343].

2.4.1. Defensive and Affirmative Asset Partitioning

In an investment partnership, unlike a simple partnership, there is affirmative asset partitioning, as there is a division of creditors into general and personal creditors. General creditors have priority in relation to the common property, as within the meaning of part 2.3. art. 4 and Art. 16 of FZ-355, the foreclosure occurs on the share in the common property of the partnership, which within itself already takes into account the obligations of the partnership attributable to it, which means the existence of affirmative asset partitioning in a sufficiently strong form. Therefore, we do not agree with E.I. Chervets that affirmative asset partitioning in investment partnerships is as weak as in simple partnerships[344].

The defensive asset partitioning of an investment partnership is differentiated depending on the nature of the claim and the status of the partner. Regardless of the nature of the claim, there is no defensive asset partitioning for managing partners – they are liable with their personal assets for all obligations. For the same reasons described above in relation to business partnerships, we consider the absence of a weak form of defensive asset partitioning in this case as a shortcoming of the current regulation.

The liability of partner-depositors is structured according to the nature of the obligation: (1) tax claims extend to personal property, (2) non-contractual claims extend to personal property only if there is established fault on the part of the partner-depositor, (3) contractual claims do not extend to personal property. Thus, strong defensive asset partitioning of the property of the depositor partners occurs only with respect to voluntary creditors. In this aspect, we fully agree with the conclusions previously drawn by E.I. Chervets[345].

In such defensive asset partitioning one can see an obvious contractual nature of limited liability, as entering into relations with the investment partnership its contractual creditors actually accept the condition of limited liability. Moreover, the law directly prescribes to specify in the contract that the liability of partners of investors is limited (paragraph 2, part 4, article 14 of the Law "On Investment

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[342] Mareev Y. L. Investment partnership: an attempt of reanimation // Bulletin of Nizhny Novgorod University named after N.I. Lobachevsky. 2023. No. 6. P. 82.

[343] Yakimova E. C. Prospects for the development of legislation on investment partnerships // Modern Lawyer. 2014. No. 2(7). P. 8; Semilyutina N.G. Problem of correlation of civil legislation and special legislation on the market of financial services (on the example of the Federal Law "On Investment Partnership") // Journal of Russian Law. 2012. No. 7 (187). P. 116-124.

[344] Domshenko (Chervets) E.I. Separation of property without creating a legal entity. Simple partnership and investment partnership. P. 44-45.

[345] Domshenko (Chervets) E.I. Separation of property without creating a legal entity. Simple partnership and investment partnership. P. 44.

Partnerships"). As A.N. Borisov points out the initial draft of the law did not contain such a requirement, which was added in order to inform creditors about the conditions of liability[346].

The law calls such a condition as essential, but this seems to be somewhat incorrect, because in the absence of special regulation it means that failure to include such conditions in the contract will lead to the non-conclusion of such a contract in accordance with the general rule of Art. 432 of the Civil Code, which, of course, contradicts the logic of regulation, since the absence of such a provision should lead to unlimited liability. The same applies to other conditions defined by the contract as essential.

Compared to the usual contractual limitation of liability, the only atypical thing is that the liability under the contract is limited not by a monetary threshold, but by certain separate property (as it happens in legal entities). It should be noted that the wording of part 3 of Art. 14 para. 3 of Article 14 of the Law "On Investment Partnerships" speaks precisely about the liability by the property itself, and not its value: this is unambiguously evidenced by the phrase "is not liable for its other property", and the reference to the value of the property should be understood precisely as the current value, in the sense that in case of accidental loss of such property the amount of potential liability will be reduced by the amount of loss.

2.4.2. Attribution of Rights and Obligations

Not less complicated than in trust management is the question of the belonging of rights and obligations under contracts concluded in connection with the activities of the investment partnership[347].

Although the managing partners are vested with such a set of powers in respect of the common property, which almost fully corresponds in scope to the powers of the owner or trustee, at the same time in the state registers (USRN and USRYUL) the information on the owner of the relevant asset will be reflected in a similar way to the UIF, which allows to determine that the asset belongs to the community of investment partnership partners[348].

A similar trust management problem arises, including due to internally contradictory provisions of the law, so in accordance with part 8 of article 9 of the Law "On Investment Partnerships" the managing partner acts on behalf of the partners, which implies that the rights and obligations belong to all partners at the same time, but in accordance with paragraph 2 of part 23 of article 9 of the same law the managing partner, upon termination of his powers, transfers the rights and obligations under the contracts concluded by him in the interests of the partners, which already indicates that the rights and obligations belong to him. 23 part 23 of article 9 of the same law the managing partner at the termination

[346] Borisov A.N. Commentary to the Federal Law of November 28, 2011 No. 335-FZ "On Investment Partnership" (article-by-article). Moscow: Delovoy dvor, 2012. P. 35.
[347] It seems funny that the fact that, as it was mentioned earlier in the paragraph about trust management, the Law "On Investment Partnership" contains an indication that in case of trust management all rights and obligations belong to the founder of management, but the issue of ownership of rights in the investment partnership itself was not directly resolved.
[348] Par. 5 and 6 of Art. 10 of the Law on Investment Partnerships.

of his powers transfers the rights and obligations under the contracts concluded by him in the interests of the partners, which already indicates that the rights and obligations belong to him.

Moreover, in effect the managing partners become creditors of the general partnership estate in liability for the payment of fees.

2.4.3. Legal Personality

The presence of property isolation, as well as the established procedure for the formation of the expression of the will of such an association outwardly indicates that the legislation has already established the basic properties characteristic of a subject of law. For this reason, in order to optimize the normative regulation, the investment partnership should be recognized as a subject of law. Other authors also point to the presence of signs of legal personality, but justify it through the necessity of individualization of the investment partnership in the turnover[349].

Moreover, due to the property isolation of separate pools of property within the investment partnership, the question of legal personality of each of the separate masses may also be raised. The form of an investment partnership with isolated property is more similar not to a limited partnership but to a cell company[350], in which different isolated masses are united by a single management center, or to several mutual funds managed by one company.

Given the availability of a large number of sources that contain information on the history of the introduction of the institution of investment partnership in Russian law, we can assert with a high degree of certainty that the lack of legal personality of the investment partnership was not a conscious decision, but occurred due to the confluence of several erroneous assumptions and the desire to copy the model of the American limited partnership (limited partnership). In order to gain a full understanding of the rationale behind the legislation, it is essential to examine the explanatory note accompanying the Law on Investment Partnerships[351]. We will not consider the entire justification for the introduction of this construction[352], we will consider only the arguments concerning legal personality: (1) the first – the lack of legal personality allows to avoid double taxation, which is probably understood as the fact that the investment partnership itself is not a subject of tax legal relations, (2) The second, probably, the decisive argument is the need to implement the instruction of the President of the Russian Federation on the results of the meeting of the Presidential Commission on Modernization and Technological Development of the Russian Economy dated July 27, 2010, according to which it is necessary to ensure

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[349] Mareev Y.L. Op. cit. P. 83.
[350] See, for example, British Virgin Islands Commercial Companies Act, 2004 // Consultant Plus JPS
[351] Minutes of August 1, 2010 No. Pr-2279.
[352] It does not stand up to any criticism and is reduced to justification of inflexibility and unclaimedness of the command and simple partnership constructions, from which, however, the conclusion is made not about the necessity of reforming these constructions, but about creation of a special variety of the latter.

"the development of legislation regulating the ways of organizing collective investments without forming a legal entity"[353].

Although the minutes with instructions are currently unavailable, its content can be judged by two available documents: (1) report on the results of control measures[354], (2) transcript of the meeting[355]. By referring to the relevant documents, one can fully appreciate the idea behind this approach. These materials show that the main purpose of non-granting the status of a legal entity is to avoid double taxation, and no other arguments that would be directly related to legal personality were made.

Then, to develop this idea, I.R. Agamirzyan orally proposed to create an analog of a limited partnership, since "the form of a limited partnership, which is a contract without forming a legal entity" is preferable for achieving the set goals[356] . Despite D.A. Medvedev's answer: "In general, all these organizational-legal forms, I can tell you, I have -been engaged in legal practice a lot, – all this is nonsense. If there is no correct climate, whether this agreement will be called a limited partnership or it will be called a simple partnership agreement, an agreement on joint activity – these are secondary things"[357], the key link was the form itself, not its functionality and content.

Despite the fact that the discussion in no way implied that the new form should in principle not have the status of a legal entity, this very thesis was taken as the main feature of the new form and began to be unnecessarily strengthened by new arguments.

At the same time, the proper way to avoid double taxation, in our opinion, is to change the tax legislation, rather than to build a civil law entity that breaks out of the general logic of regulation. Especially since the legislation itself establishes in this case a different regime of asset partitioning for the purposes of contractual and tax claims (there is no defensive asset partitioning for tax claims).

In addition, it is pointed out the disadvantages of business entities as a tool for investment due to the "extreme degree of regulation of the conditions of formation (change) of the authorized capital", but the means of solving this problem is again chosen not to improve this mechanism, but to create a construct even more problematic in terms of clarity and predictability of regulation. In this aspect, more successful from the point of view of approach was the introduction of the construct of economic partnership, a legal entity, with a very dispositive regulation of internal relations[358]. Moreover, some

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[353] Minutes of August 1, 2010 No. Pr-2279.
[354] Report on the results of the control measure "Verification of the efficiency of spending of the federal budget funds aimed at the formation of the infrastructure of the innovation system of Russia" URL: https://ach.gov.ru/upload/iblock/ae0/ae004a23a769292b0b700e7b361d456c.pdf?ysclid=lu1h4gocwh531631255 (accessed on 14.08.2024).
[355] Verbatim report on the meeting of the Commission on Modernization and Technological Development of the Russian Economy URL: http://www.kremlin.ru/events/president/transcripts/8474 (date of access: 14.08.2024).
[356] Ibid.
[357] Ibid.
[358] Federal Law of 03.12.2011 No. 380-FZ (ed. of 23.07.2013) "On Economic Partnerships".

researchers also note that the implemented deregulation was also excessive and reduced guarantees for unqualified investors[359].

Moreover, a compromise option could be to give the investment partnership the status of a subject other than a legal entity, because this would, on the one hand, avoid double taxation and simplify the procedure for depositing financing, and on the other hand, would formally recognize the investment partnership or its separate mass as a point of attachment of rights and obligations, which would fully correspond to the nature of the emerging relations.

2.4.4. Perspective on Investment Partnership

One of the arguments for the creation of investment partnerships was the unpopularity of business partnerships as an organizational-legal form of conducting business, but from the explanatory note to the Law on Amendments to the Law "On Investment Partnerships"[360] one can see that for almost 10 years of existence of this form about 80 investment partnerships have been created. One of the reasons for this situation was the lack of possibility to segregate investment portfolios within one investment partnership and, as a consequence, the possibility to make project-by-project investments. This was the reason for the introduction of investment partnerships with separate property in 2021.

As some researchers suggested, the attempt to "resuscitate" the investment partnership in 2021 was not successful[361]. Despite the fact that from the legal point of view it seems to us necessary to give the investment partnership the status of a legal entity, we quite admit that this will also not lead to a significant increase in the attractiveness of this form for the purposes of collective investments.

The form of an investment partnership with separate property is more similar not to a limited partnership, but to a cell company, in which different separate masses are united by a single management center. In itself, such a step seems to us promising and creating new opportunities, but we believe that it is unlikely that it will fundamentally affect the scale of use of this structure, which will confirm the words of D.A. Medvedev that it is not about the organizational and legal form, but about the right climate.

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[359] Semilyutina N.G. Op. cit. P. 120-124.

[360] Explanatory note to draft law No. 1171688-7: Legislative Support System (duma.gov.ru) URL: https://sozd.duma.gov.ru/bill/1171688-7?ysclid=lu2faxs6ee479843965 (accessed on 14.08.2024).

[361] Mareev Y.L. Op. cit. P. 90-91.

§ 3. Individual Entrepreneurs[362]

3.1. Legal Status in Russia

Most legal orders do not consider individual entrepreneurs as independent subjects of law, different from natural persons. Russian law also adheres to this position. However, this is not the only possible solution, as there are examples of recognizing their independent legal personality. Thus, in particular, the PRC law considers individual entrepreneurs in the context of organizations without legal personality.

Domestic legislation also speaks about the right to carry out entrepreneurial activity without forming a legal entity, by registering as an individual entrepreneur (Article 23 of the Civil Code). Generally accepted and in general not subject to doubt in the doctrine is the position that one person as an individual entrepreneur and as a natural person who does not carry out entrepreneurial activity is one and the same subject of law. In our opinion, it does not follow so unambiguously from the literal text of the law and it is possible to find in it the basis for an independent legal personality of individual entrepreneurs, but in the absence of asset partitioning there are no essential reasons for an independent legal personality of an individual entrepreneur at the moment.

It should be recognized that the non-recognition of the independent legal personality of an individual entrepreneur means that the registration of a person as such, by and large, has a purely administrative nature – is a condition for the implementation of entrepreneurial activity, without having any impact on the sphere of private legal relations. This, in our opinion, is confirmed by cl. 4 of Article 23 of the Civil Code, which says that the relevant rules and regulations will be applied to entrepreneurial relations regardless of registration. It seems that this is also another example of how a private law institute is more important in the sphere of other branches of law than in civil law[363].

In the domestic legal system, the property of an individual entrepreneur is not segregated in any way: "According to Article 24 of the Civil Code, a citizen is liable for his obligations with all the property belonging to him, with the exception of property, which in accordance with the law may not be foreclosed. The said norm enshrines the full property liability of a natural person regardless of the status of an individual entrepreneur and does not differentiate between the property of a citizen as a natural person or as an individual entrepreneur"[364]. "At the same time, when ... foreclosing on the property of an individual entrepreneur debtor on claims related to his entrepreneurial activity (Article 23.3 of the

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[362] This paragraph contains materials published in the article: Ibragimov K. Y. Asset Partitioning and Legal Personality // Leningrad Law Journal. 2024. No. 1 (75). P. 28-48.

[363] For more details on the problem of the lack of property isolation of an individual entrepreneur for the purposes of tax law, see, for example, Kozlova N.V., Filippova S.Y. Legal status of an individual entrepreneur // Nalogoved. 2019. No. 7. P. 73-76.; Kozlova N. V., Filippova S. Y. Features of the civil legal status of an individual entrepreneur under the legislation of the Russian Federation // Khozyaistvo i pravo. 2019. No. 9(512). P. 31-40.

[364] Paragraph 55 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 50 of 17.11.2015.

Civil Code), it is necessary to observe not only the priority established by Article 69 of the Law on Enforcement Proceedings, but also other provisions of the laws that determine the priority of recovery taking into account such status of the debtor, in particular the norms of Article 94 of the said Law"[365].

This state of affairs has been confirmed by the Constitutional Court: "This is consistent with the legal provisions defining the peculiarities of the legal status of a citizen engaged in entrepreneurial activity without forming a legal entity: since legally the property of an individual entrepreneur used for personal purposes is not separated from the property directly used for individual entrepreneurial activity, he is liable for obligations, including those related to entrepreneurial activity, with all his property, except for that which cannot be foreclosed in accordance with the law (Article 23, paragraph 1, Articles 24 and 25 of the Civil Code)"[366].

However, it should be noted that some, purely external exceptions, signs of asset partitioning are found in domestic law. For the purposes of enforcement of tax liabilities, accounts opened as an individual entrepreneur and an individual are distinguished: "In this regard, the compulsory debt collection procedure provided for by Article 46 of the Tax Code may be applied to individuals with the status of individual entrepreneurs to a limited extent: in respect of debts for taxes paid in connection with entrepreneurial activity (e.g., value added tax, tax under the simplified taxation system, taxation under the simplified taxation system, taxation under the simplified taxation system, taxation under the simplified taxation system, taxation under the simplified taxation system, taxation under the simplified taxation system, taxation under the simplified taxation system, taxation under the simplified taxation system, taxation under the simplified taxation system, taxation under the simplified taxation system). Such exceptions, in our opinion, are not of principal importance and do not indicate real isolation.

At the same time, although other legal orders generally do not recognize the separate legal personality of individual entrepreneurs, in some legal orders the property of an individual entrepreneur is isolated, primarily for the purpose of introducing limited liability to protect the interests of the individual entrepreneur himself.

3.2. Limited Liability

The introduction of limited liability and property isolation in relation to individual entrepreneurs has been discussed in American literature. As a reason for unlimited liability, the author explicitly mentioned "the absence of any entity that could shield the owner from liability"[367], therefore it is proposed to introduce into the legal order the construct of a sole proprietor with limited liability

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[365] Ibid.
[366] Definition of the Constitutional Court of the Russian Federation from 15.05.2001 No. 88-O.
[367] Crusto M. F. Extending the Veil to Solo Entreprenuers: A Limited Liability Sole Proprietorship Act (LLSP) // Columbia Business Law Review. 2001. Vol. 2. No. 381. P. 399.

(hereinafter – "SPLL")[368].[369]The following conclusions can be drawn from the regulation proposed by the author: (1) unlike an ordinary sole proprietor, a SPLL requires compliance with formalities and filing a relevant application with an authorized body (and here it should be noted that in the USA a person, as a general rule, does not have to comply with any formalities in order to operate as a sole proprietor), (2) SPLL appears as a separate entity but is not referred to as a corporation, which essentially means that SPLL has a separate legal personality, i.e. it is recognized as a separate entity but not as a person.

The legal order of France is of the greatest interest in the context of this problem, as it is there that attempts to limit the liability of individual entrepreneurs have been going on for half a century, and each time different legal constructions are used for this purpose, which demonstrate their advantages and disadvantages.

The first step taken in 1985 was the introduction of the "single person limited liability company". This solution seems quite logical and understandable and, importantly, it allowed the principle of the unity of the estate (patrimonie) to remain intact by creating a new subject of law, a legal person. According to French jurists, this did not solve the problem of liability by personal property, as banks always required a personal guarantee, which, in fact, eliminated the limited liability[370] . Other researchers note that this construction was not popular and the main reason was the complexity of their legislative regulation and the need to comply with administrative procedures[371] .

The possibility to waive limited liability at the level of the contract demonstrates the nature of such defensive asset partitioning as a standard contractual condition, which could be created even without a special indication of the law. Apparently, in the legislator's mind, the introduction of such a general rule at the level of law should strengthen the negotiating position of an individual entrepreneur due to the fact that the general rule is limited liability, and the other order will already be the result of an agreement.

Limited liability is associated with the problem of limiting liability to involuntary creditors. The problem of involuntary creditors in relation to individual entrepreneurs is proposed to be solved by introducing compulsory insurance of such liability[372]. It should be noted that the arguments against insurance presented in the first chapter of this paper are less applicable to individual entrepreneurs, since, given the scale of their activities, such risks are quite insurable.

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[368] Ibid.
[369] Ibid.
[370] Le Corr-Broli E. Individuals and French law of enterprises in difficulty / Legal regulation of insolvency in Russia and France: Collection of articles / National Research University Higher School of Economics and University of Nice - Sophia Antipolis. Moscow: Justitsinform, 2016. P. 34.
[371] Yamova Y.I. Status of an individual entrepreneur with limited liability in French law // Law and Politics. 2013. No. 8. P. 982.
[372] Crusto M. F Op. site. P. 420.

Another trend in protecting the personal property of the entrepreneur was the introduction of constructions similar to executive immunity. Such constructions are: (1) family property (bien de famille), introduced in 1909, which formally continues in force, but in fact has lost its relevance due to the fact that the maximum value of such property is insignificant due to inflation; (2) declaration of inability to foreclose on personal real property (declaration d'insaisissabilite), introduced in 2003[373].

The declaration of inability to enforce personal immovable property has the following differences from the Russian version of executive immunity: (1) it does not operate by default, but requires the making of an appropriate declaration and making this information public, (2) it applies only to commercial creditors whose claims arose after the publication of the appropriate declaration. E. Le Corr-Brolly assesses such a construction as an attempt to reduce the negative consequences of the principle of unity of the property complex without affecting its fundamentals[374]. Such a construction of asset partitioning does not resemble asset partitioning, but rather resembles a general pledge in favor of an indefinite number of personal creditors and can be attributed by us to the group of relative property immunities.

The asset partitioning (patrimoine d'affectation) of a sole proprietor's estate as a separate entity occurred in 2010 with the introduction of the limited liability sole proprietorship. This isolation is associated with the emergence of a strong form of both defensive asset partitioning and affirmative asset partitioning, since in bankruptcy these estates act separately and the bankruptcy of one estate does not affect the other[375]. At the same time, affirmative asset partitioning seems to have a super-strong form, as commercial property is completely inaccessible to personal creditors due to the fact that shares/shares cannot be foreclosed due to the absence of the latter.

Technical isolation was also required for the emergence of legal asset partitioning: an individual entrepreneur could obtain the status of an individual entrepreneur with limited liability if he assessed and isolated the property necessary for entrepreneurial activity in accordance with the established procedure – this information was made public. Personal creditors had the right to challenge the classification of a particular property as entrepreneurial.

According to the evidence of researchers this reform did not lead to the desired result and did not lead to the formation of the planned number of individual entrepreneurs with limited liability[376]. A possible reason for this was the disproportionality of the costs of obtaining the status (valuation and segregation of property) to the benefits that it could bring, since, given the small value of "commercial"

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[373] Yamova Y.I. Op. cit. P. 982-983.
[374] Le Corr-Broli E. Op. cit. P. 36.
[375] Le Corr-Broli E. Op. cit. P. 35-38.
[376] Y.I. Yamova, Op. cit. P. 986-987; Courtier A. Op. cit. P. 154-155.

property (and this norm was designed precisely for the smallest enterprises), creditors considered this property insufficient and continued to demand personal collateral[377].

The 2022 reform of the individual entrepreneur status eliminated the separate regime of the individual entrepreneur with limited liability, replacing it with a general rule limiting the liability of all individual entrepreneurs to their "commercial" property, which now does not require special individualization in the form of a declaration, but is determined in accordance with criteria established by law (in essence, by determining what property can be attributed to commercial activities). Also, after the reform, exceptions to the principle of limited liability – liability for tax and other compulsory payments and cases of voluntary waiver of limited liability at the contractual level – have been explicitly enshrined.

It may be noted that this approach to the isolation is fundamentally different from the usual one, because as a rule, asset partitioning in all other situations considered by us took place by assigning a strictly defined property to a legal entity or some other entity. In this case, however, an indefinite, but determinable in accordance with established criteria, set of property is isolated. There are advantages and disadvantages to this approach.

3.3. The Problem of Separate Legal Personality

Strong property isolation leads to the fact that the point of attachment of rights and obligations is the isolated property itself, and whenever there is a unity of the complex of rights and obligations, we can talk about the recognition by the legal order of the legal personality of such an entity in the broad sense. Moreover, the recognition of the independent legal personality of separate property would allow to preserve the principle of unity of the property complex (patrimoine), the main idea of which, in our opinion, lies precisely in the certainty of the property to which the creditor, entering into relations with the debtor, is entitled to claim.

In order to maintain such certainty, a sole proprietor with limited liability must indicate that he is acting as such[378] . The necessity of such an indication is obviously determined by the fact that it is of fundamental importance to the creditor as to the status of the debtor, since entering into a relationship with an entrepreneur or with a mere natural person is not the same for the creditor, and it is not different in terms of consequences from the fact that the debtor is a third person. However, in the French legal order this rule is not fully implemented, as it is only required to indicate that the person acts as an entrepreneur with limited liability, although since 2013 one entrepreneur could have several separate complexes[379], which, of course, requires specifying "on behalf of" which of the complexes he acts.

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[377] Y.I. Yamova, Op. cit. P. 986-987; Courtier A. Op. cit. P. 154-155.
[378] Y.I. Yamova, Op. cit. P. 987.
[379] Y.I. Yamova, Op. cit. P. 987.

In this context, the reference to the original meaning of the word "persona" as "mask" is extremely illustrative, because for a creditor it is more important not what kind of person is his creditor, but under what mask this person acts. It is this mask that becomes the point of attachment of rights and obligations and therefore, in our opinion, gives grounds for recognizing its independent legal personality. Moreover, according to the evidence of researchers, already Roman jurisprudence in this sense was able to conceptualize the notion of persona in such a way that one person can bear several persona[380].

The problem of legal personality, however, in this case is somewhat more complicated due to the fact that its absence in a sole proprietor may itself fulfill a protective function. As E. Le Corr-Brolly notes, the construction of a sole proprietor with limited liability is better than the construction of a single person company in that the creditors of the entrepreneur, although they can demand the provision of personal property as security in rem, but they cannot demand personal surety, because it is impossible to be a guarantor for oneself[381]. At the same time, such a partial solution to such a point problem, in our opinion, does not justify a cardinal departure from the principle of unity of the property complex. Moreover, we believe that the lack of possibility to provide personal security may itself predetermine the non-viability of this form, the implementation of entrepreneurial activity.

At the same time, one can see inconsistency in French researchers, who, in our opinion, correctly interpret the theory of property complex, pointing out that "if the assets and liabilities of the company should be separated from the assets and liabilities of the partners, it is necessary to recognize that there is a new person who owns these assets and liabilities"[382], but in the end, following the formal content of the law, they agree that isolation can take place in another way and a legal entity is not formed in relation to the commercial asset partitioning of an individual entrepreneur[383]. It seems to us a more correct approach, according to which the formation of an autonomous property complex (patrimoine) means the emergence of a legal entity[384].

Thus, we believe that individual entrepreneurs, when their property is endowed with the property isolation property, become independent subjects of law, and the term patrimoine d'affectation should be perceived not as a departure from the principle of unity of the property complex, but as a designation of a defect of positive law, which endowed the property with the properties of legal personality, but did not formally recognize the latter.

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[380] Pestov M. M. Op. cit. P. 281.
[381] Le Corr-Broli E. op. cit. p. 35.
[382] Chiron G. Op. cit. P. 120.
[383] Chiron G. Op. cit. P. 124.
[384] Bailly-Masson C. Op. cit. P.99.

§ 4. Family Assets[385]

Property isolation of family property is directly related to the legal regime of the spouses' property – the regime of joint ownership. Therefore, asset partitioning of family property is inherent only to the extent that it is inherent to joint property as such and provided that such regime is not abolished by the marriage contract. It should also be noted that the regime of joint property of spouses differs from the previously considered regime of joint property of the members of PFE.

In contrast to shared property, in the case of joint ownership, some signs of property isolation are still manifested. In particular, there is a division of property into several pools of assets for different creditors: personal creditors first foreclose on the personal property of the spouses, and general creditors first foreclose on the common property of the spouses. This is already more like a division of assets, but it does not in itself establish a priority for any of the types of creditors, so we need to understand whether it will arise when such claims collide.

4.1. Liability of Spouses Under Russian Law

Signs of the isolation of joint property can be found at the normative level, as the law distinguishes two groups of creditors: personal creditors and general creditors. In accordance with Article 45 of the Family Code of the Russian Federation, personal creditors first foreclose on the personal property of the spouse, while general creditors first foreclose on the common property of the spouses. In case of insufficiency of one or another property mass, personal creditors are also entitled to claim for the spouse's share in the joint property, and in case of insufficiency of the common property the spouses are jointly and severally liable with their personal property for the common debts.

Conceptually, the same procedure, but with some differences, remains in the case of bankruptcy of one of the spouses. According to paragraph 6 of the Decree of the Plenum of the Supreme Court of the Russian Federation of 25.12.2018 № 48, first personal and general claims are satisfied at the expense of the personal property of the bankrupt spouse in the part due to him in the common property proportionally, and then the remaining common debts are satisfied at the expense of the part due to the second spouse. Under this approach, it cannot be said that any type of creditor has priority in satisfying claims out of any pool of assets.

This position of the joint property raises doubts as to whether the joint property is in fact separate for the following reasons: firstly, in the event of a confluence of general and personal creditors' claims, neither of these two groups of creditors has priority over any part of the assets, and the more favorable position of the general creditors is only due to the fact that a larger pool of assets is, in principle, available

[385] This paragraph contains materials published in the article: Ibragimov K.Y. Asset Partitioning in Roman law // Russian Journal of Legal Studies. 2023. Vol. 10. No.2. P. 74-88.

to them because of the joint liability of both spouses; secondly, the bankruptcy of a spouse implies the bankruptcy of the joint estate, while the bankruptcy of truly separate estates implies their separate bankruptcy[386]. For these reasons, we disagree with the position that joint property is indeed separate[387] .

At the same time, we agree with the statement of A.V. Egorov that a spouse may have personal property and may have common property, which causes the separation of the two property masses of a person[388], but it does not lead to the emergence of affirmative asset partitioning and defensive asset partitioning, as from the point of view of positive law both of these masses are fully or partially available to all groups of creditors without any priorities. Moreover, as will be shown below, some separation of "common" and "personal property" may be necessary not for the purposes of legal asset partitioning, i.e. to give it a specific legal regime, but to keep internal records of the obligatory relations between spouses (technical partitioning).

Thus, the only manifestation of the property separateness of matrimonial property under Russian law is that personal creditors do not have access to the entire joint property, but only to the share due to the debtor in it. Despite the fact that in the final result it is similar to the regime of shared ownership, but because in shared ownership the shares of co-owners in principle do not belong to the debtor, affirmative asset partitioning can be seen here, as the spouse owns all the joint property as a whole, but not everything is available to his personal creditors. There is obviously no defensive asset partitioning, as the spouses are jointly and severally liable for their common debts and their personal creditors have no advantage.

There is also some uncertainty surrounding the definition of common debts. Since when entering into a relationship with creditors one spouse is not obliged to indicate in any way that he or she is acting in the common interest, the moment of determining whether a debt is common or personal is postponed until a dispute arises. A common debt will be recognized if the community of economic interests of the spouses and the possibility of joint receipt of profits is established[389].

We agree with A.V. Egorov that the approach proposed by the Supreme Court is largely arbitrary and is not based on any specific theoretical model of joint ownership of spouses[390].

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[386] For example, bankruptcy of legal entities, inheritance estate or KFH under Russian law, or bankruptcy of an individual entrepreneur's estate in France.

[387] Shevchenko I. M. To the question of the regime of the property mass of spouses (some reflections on the example of bankruptcy cases) // Law. 2023. No. 4. P. 121.

[388] Egorov A.V. Joint property of spouses: at the crossroads.

[389] Decision of the Supreme Court of the Russian Federation of 27.07.2022 No. 305-ES20-8774(2) in case No. A40-119084/2017

[390] Egorov A.V. Joint property of spouses: at a crossroads

4.2. Alternative Approaches to Family Assets

In German law there are three regimes of matrimonial property: the commonality regime[391], the separate property regime, the legal regime[392]. The legal regime refers to the so-called deferred community regime, which presupposes separate property during the marriage, but at the time of its termination the spouses have an obligatory claim to half of the total increase in property[393]. Since the regime of separate property and the regime of deferred community in general do not presuppose the formation of common property and the formation of any third property mass, there is no property isolation there.

Let us only note that the regime of deferred community seems to us extremely attractive from the point of view of balancing the interest of the spouses and their creditors, and therefore the isolation of marital property as such is not a decision necessary for the law. The liability claims of a spouse are in fact subordinated to the claims of the creditors of the other spouse, since such liability itself arises only in the presence of positive growth.

Analyzing the problem of satisfaction of claims in bankruptcy of one of the spouses through the prism of the models of true joint ownership and deferred community, A.V. Egorov comes to the conclusion that the model of true ownership to a greater extent protects the interests of the second spouse, and the model of deferred ownership to a greater extent protects the interests of creditors[394].

The only thing we would like to draw attention to is that A.V. Egorov's statements about the attractiveness of this or that model for creditors need to be clarified that we are talking about attractiveness for **common** creditors, as for personal creditors it has the exact opposite character (therefore, attractiveness for the second spouse can be perceived as attractiveness for personal creditors of this spouse).

4.2.1. Community of Matrimonial Property Under German Law

Separateness of property arises only if the marriage contract establishes a regime of community, which is not homogeneous in itself and provides for certain variations within itself, affecting the nature of liability. The variations are determined depending on how the common property is managed: by one

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[391] Please note that the Russian translation of the German Civil Code (German Civil Code: Introductory Law to the Civil Code. - 4th ed., rev. - M.: Infotropic Media, 2015. C. VIII - XIX, 1 - 715) has the disadvantage that the same term "community regime" is used for the legal regime (Zugewinngemeinschaft) and community regime (Gütergemeinschaft), which may lead to confusion between these regimes.

[392] Shishmareva T.P. Procedure of insolvency of the common property of spouses in Russia and Germany: a comparative analysis // Family and Housing Law. 2021. No. 2. P. 34 - 37.

[393] It should be noted that in some legal orders there is a regime of absolute community of property of spouses, which does not imply the existence of personal property on an equal footing with joint property, but we will put it out of brackets, as it does not imply the division of debts into joint and personal and, as a consequence, is not of interest for our study.

[394] Egorov A.V. Joint property of spouses: at the crossroads.

of the spouses (§ 1422-1449 German Civil Code [395]) or jointly by both spouses (§ 1450-1470 German Civil Code).

Management by one spouse. If one spouse manages the common property, the common property is separated only from the property of the non-managing spouse. In the relationship with the managing spouse, there is no separation because, firstly, the managing spouse is jointly and severally liable for the common debts (Section 1437 (2) of the German Civil Code), and secondly, the common property is liable for transactions entered into by the managing partner (Section 1438 (1) of the German Civil Code). The lack of separateness of the common property from the property of the managing spouse is also confirmed by the provision of the bankruptcy code according to which, in case of bankruptcy of the managing spouse, the common property is included in the bankruptcy estate (§ 37 Insolvenzordnung[396]).

However, this is a basic approach to which there are exceptions, the most important of which relate to the existence of special property (Sondergut) and allocated property (Vorbehaltsgut), which are excluded from the common property. These assets are managed independently by the spouses, but in the case of the special assets at the expense of the common property, and in the case of the allocated assets at their personal expense.

As a general rule, the community property is not liable for debts incurred in connection with the special and separate property of the non-managing partner, thus manifesting the strong asset partitioning of the non-managing spouse's property. The property of the managing partner, on the other hand, does not possess such properties in its relationship with general creditors. Despite this, it cannot be said that the allocated and special property of the managing creditor is completely merged with the common property: firstly, it is separated from the personal property of the other spouse even if in some cases it is allowed to foreclose on the common property, and secondly, the technical separation of this property is required to determine the compensation to be made in favor of the managing spouse or the common property if one property was used for the benefit of the other (§ 1445 of the German Civil Code).

Joint management. Affirmative asset partitioning with respect to both spouses arises if a joint management of the common property is established. Pursuant to G.S. § 1462, the community property is, as a general rule, not liable for debts incurred in connection with the administration of special and separate property. The issue of defensive asset partitioning is not obvious.

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[395] Unless otherwise stated, hereinafter references to the German Civil Code are to the German Civil Code: Introductory Act to the Civil Code. - 4th ed., revised - M.: Infotropic Media, 2015. C. VIII - XIX, 1 - 715. [Electronic resource]. - Mode of access: SPS "ConsultantPlus".

[396] References to the German Bankruptcy Code are made in accordance with the text of the relevant document available on the website of the Federal Ministry of Justice of the Federal Republic of Germany URL: https://www.gesetze-im-internet.de/inso/BJNR286600994.html#BJNR286600994BJNG035401311.

Analyzing the peculiarities of bankruptcy of joint property T.P. Shishmareva uses a neat formulation that within the framework of this procedure common debts are satisfied at the expense of common property, without expressly stating whether personal property can be included in this mass in case of insufficiency of common property or whether claims of personal creditors can be brought against common property[397]. However, it notes, with reference to German researchers, that a bankruptcy procedure of one of the spouses may run parallel to the bankruptcy of the common property[398].

The wording of § 1459 (2) of the German Civil Code states that each spouse is jointly and severally liable for the common debts, which is one of the indications that there is no defensive asset partitioning. Despite the absence of defensive asset partitioning, there is still an independent procedure for bankruptcy of the spouses' jointly managed common assets (§ 333 Insolvenzordnung), albeit with the possibility of holding the spouses personally liable (§ 334 Insolvenzordnung). In this regard, researchers have noted that this nature of separateness puts general creditors in a privileged position vis-à-vis personal creditors, as the latter have access only to personal property and on an equal footing with general creditors[399].

It seems that such a bankruptcy estate regime, lacking defensive asset partitioning, puts personal creditors of spouses in a less favorable position not only because they have a smaller estate available to them in general, but also because they lack priority over personal property. Under German law, this problem is not so critical for the reason that this regime is not popular and is largely obsolete[400] .

4.2.2. Community of Matrimonial Property Under French Law

The regime of joint property in France is generally similar to the regime of marital property under Russian law.

French law differs with regard to the treatment of personal debts of spouses incurred before and during the marriage. In Russian law, personal debts have the same treatment – they can be foreclosed on personal property and on the share due to the spouse in the division of common property. The French legal order assumes a more complicated scheme: (1) personal debts incurred before marriage are satisfied only at the expense of personal property, and the common property is not available on them, only if there is no mixing of personal and common property (Art. 1411 French Civil Code[401]), (2) personal debts incurred during the marriage may be enforced "on account of this community, unless there has been

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[397] Shishmareva T.P. Procedure of insolvency of the common property of spouses in Russia and Germany: a comparative analysis P. 34 - 37.
[398] Shishmareva T.P. Procedure of insolvency of the common property of spouses in Russia and Germany: a comparative analysis P. 34 - 37.
[399] Brinkmann M. Die Bedeutung der §§ 92, 93 InsO für den Umfang der Insolvenz- und Sanierungsmasse / Köln; Berlin; Bonn; München: Heymanns, 2001, P. 173
[400] Schwab D. Familienrecht / Grundrisse des Rechts. Verlag C.H.BECK Recht - Wirtschaft - Steuern. 2019. P. 278
[401] Hereinafter references to the French Civil Code (CCF) are given in accordance with the Legal Information Service of the Government of the French Republic [Electronic resource]. - Access mode: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/

fraud on the part of the debtor spouse and bad faith on the part of the creditor, and subject to indemnification on account of the community of property, if there are grounds to do so" (Art. 1413 French Civil Code).

The above fragment also contains another difference from Russian law, which is that personal creditors have access to the entire community property and not just the part of it due upon division of the joint property. It is also an important condition that if a personal obligation has been discharged at the expense of the common property, compensation from the respective spouse is due in favor of the common property (Art. 1416 French Civil Code).

Also, the regime of community of property in the French legal order has similarities with the German law, in the aspect of the presence of the obligation to make compensation in favor of the community or, on the contrary, at the expense of the community: the obligation to pay compensation in favor of the community for the use of its funds for personal purposes (Art. 1437 French Civil Code); payment of compensation to the spouse whose personal property fell into the community (Art. 1436 French Civil Code).

Textually, it may appear that the community has its own debts and claims, which, however, apply only to the spouses and do not affect third parties in any way. When dividing the property, each spouse calculates the amounts due in favor of the community and due to the spouses from the community (Art. 1468 French Civil Code), if the balance in favor of the community, he contributes his property to the community, and if the balance in favor of the spouse, he receives compensation from the property of the community (Art. 1470 French Civil Code). In case of insufficiency of the community property, the claims are generally satisfied proportionally (1472 French Civil Code), and in case of a positive balance after deductions, the community property is divided in half between the spouses (Art. 1475 French Civil Code).

An important caveat is contained in Article 1474 of the French Civil Code: "Exemptions from the community property of the spouses constitute actions for its division. They do not confer upon the spouse making them any priority over the creditors of the spouses as owners of the community property, except, where appropriate, the advantage arising from a mortgage established by operation of law".

The interests of the creditors are safeguarded by giving them the right to participate in the process (Art. 1447 French Civil Code) and the community creditors have joint and several claims against the spouses.

In spite of the fact that such property very weakly, but shows signs of property isolation, we have not found in the French doctrine attempts to see in the community of property an independent property complex (patrimoine) or separate property (patrimoine d'affectation). In our opinion, this is quite understandable because the community as such does not enter into relations with third parties, and the constructions of compensation in favor of the community or at its expense and serve as a more

understandable description of the process of settlement between the spouses, which rather indicates the presence of only technical separation.

4.3. Legal Personality of the Family

As it was shown above, the regime of marital property, as a rule, does not provide for defensive and affirmative asset partitioning, and in those rare cases when it is established, it is not so strongly pronounced as to raise the question of legal personality of the family. At the same time, doctrine quite often raises the question of the legal personality of the family, including civil legal personality. It seems that the prerequisites for this may be different.

The first direction[402], in which we can see the prerequisites for the legal personality of the family – the regime of common (joint) ownership, which implies the emergence of a certain collective on the side of the owner and, as a consequence, the emergence of a specific order of possession, use and disposal of property. Our earlier conclusions about the lack of real signs of legal personality of the community of shared co-owners are generally applicable to joint property, but with one significant reservation. Since the regime of joint ownership also implies community of obligations, it is of fundamental importance for the creditors of spouses in what status the spouse concludes the contract, as this determines the range of property available to them (whether they are entitled to claim the "share" of the other spouse or not).

The problem of bankruptcy of joint property of spouses, as S.B. Polich notes, is related to the understanding of the legal regime of joint property, but not to the problem of legal personality of the family[403].

The only way to secure this interest is to specify the treatment of such an obligation in the contract. For example, if an obligation is a personal obligation of a married person, the creditors should be informed about it. Since this situation is more akin to an ordinary plural obligation, it is also not a basis for concluding that the family has legal personality.

Another direction is represented by rather abstract arguments about the general legal personality of the family[404], in which social, economic and cultural functions of the family are described without reference to any branch of law. However, within this direction we can also trace the influence of the family as a legal value on the question of its civil legal personality.

The idea that the family itself has legal personality is not new: "The Roman family was a fully autonomous legal entity with no external owners, let alone owners with their own personal creditors

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[402] See, for example, Shevchenko I.M. Op. cit. P. 119-122.; Egorov A.V. Joint property of spouses: at the crossroads.

[403] Polich S.B. Some procedural problems of application of the legislation on bankruptcy of citizens (individuals) // Commentary on the practice of consideration of economic disputes (judicial and arbitration practice) / ed. by V. F. Yakovlev. M., 2019. Vol. 25. P. 190-199.

[404] See, for example, Mokhov A. A., Svirin Y. A. New Approach to Understanding the Institution of Family // Modern Law. 2024. No. 1. P. 5-11; Rabets A.M. Place of the family in the legal space: legal characterization of the family in the Russian Federation and in some foreign countries (normative experience and problems). Lex Russica. 2022. No. 75(11). P. 100-111.

with contingent claims on the family's assets[405]". The authors based this conclusion on an economic argument related to the fact that a society built predominantly on subsistence farming is characterized by the fact that the "basic" economic units are the large households of extended families. As a confirmation that it was the extended family that was an effective economic unit, we can cite the practice of sons-heirs preserving the community of their property after the death of their father[406].

In our opinion, a more important argument in favor of the perception of the family as a subject is the evidence of socio-cultural character, which D.V. Dozhdev cites in explaining the predominant role of the family father: a man thought of himself as part of a genealogically defined group, in which the father of the family, as the closest member of the family to the forebears, was responsible for the entire family[407]. There was probably a presumption that the will of the father of the family always corresponded to the interests of the family in the broadest sense. Therefore, it was at the level of the family that asset partitioning took place – the property of the Roman family formed the exhaustive amount of property available to creditors.

It is important to note that there is no doubt that Roman jurisprudence formally considered the father of the family as a subject of property legal relations or at least through him personified the family for the latter's participation in civil turnover. Especially in the absence of a full-fledged doctrine of abstract/legal persons, the jurisprudence of that time could choose such an approach in order to simplify regulation. In this sense, one can also notice a divergence between the subject in the broad and narrow utilitarian sense: in fact, the legal order in the early stages proceeded from the legal personality of the family, but de jure gave legal personality only to the father of the family to act in the interests of the whole family.

The main argument in favor of the civil legal personality of the family in this context is the property isolation at the family level. However, as Roman law evolved, it began to develop institutions that actually ensured the property isolation of family members, for example, in the form of peculium. Peculium was a separate property, which was transferred to the management of a slave or a subordinate son. Despite the fact that both are called peculium, the prerequisites for their emergence were probably different, as well as the needs they satisfied: if the slave's peculium had a commercial nature and in its archaic form allowed to achieve limited responsibility of the master[408], the son's peculium was not

[405] Hansmann H., Kraakman R. H., Squire R. C. Incomplete Organizations: Legal Entities and Asset Partitioning in Roman Commerce. P. 15.
[406] Franciosi C. Op. cit. P. 116.
[407] D.V. Dozhdhev, op. cit. p. 245-246.
[408] See Rudokvas A.D. Peculium and the problem of legal person in Roman law / Posebna sveska IX Kolokvijum romanista Centralne i Istočne Europe i Azije. Novi Sad, 24 - 26 October 2002. Zbornik radov Radov Pravnog fakultet u Novi Sad. Godina XXXVIII, br.1, vol. I. Novi Sad. 2004. P. 73-78.

directly related to the possibility of entrepreneurial activity, but rather allowed to some extent to realize the son's property independence (to achieve autonomy of small family groups, as J. Franch defines it[409]).

In our opinion, the non-entrepreneurial nature of the son's peculium is confirmed by the fact that in its most developed form it was represented in the form of peculium castrense or quasi castrense, which implied that the son received his own property as a result of service (military or civilian)[410], and not entrepreneurial activity, and also by the fact that according to the testimonies of many authors entrepreneurial activity was not prestigious[411]. The son's peculium probably also included the dowry that he, as a subject son, received upon marriage (D. 24.3.25, D. 24.3.53)[412] .

In this sense, the move to protect the interests of the family by giving it legal personality is inappropriate, since such legal personality is archaic and the logic of the development of law shows that the interests of family members are best protected by recognizing the legal personality of individual family members.

§ 5. Inheritance Property[413]

Despite the large number of publications devoted to the issue of liability of heirs for the debts of the testator, its theoretical substantiation cannot be called satisfactory. The issue of liability of heirs is also complicated by the current regulation of bankruptcy of a deceased person. The most significant contribution on this issue so far has been made by E.Y. Petrov[414], who, having conducted a rather detailed historical and comparative-legal research, proposed possible ways to improve the current regulation, which, among other things, are proposed to be critically analyzed within the framework of this paper.

The use of terminology indicating the isolation/separation/separation of property in relation to inherited property is not something new. The term "separation", which was probably first introduced into domestic civilistics by K.I. Malyshev[415] and was consonant with the Roman institution of

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[409] Franciosi G. op. cit. p. 186.
[410] For more details on this type of peculium and the evolution of its legal regime, see: Garcido Garrido M.J. Roman private law: casuses, suits, institutes. Moscow, Statut. 2005. P. 259 - 260.
[411] Foldi A. Remarks of the legal structure of enterprises in Roman law // Revue internationale des. droits de l'antiquite. 1996. No. 46. P. 184
[412] Hereinafter references to the Digesta Justiniana will be given by pointing to the corresponding fragment in the edition Digesta Justiniana / edited by L.L. Kofanov - vol. 1-8.-M.: Statute, 2004.
[413] This paragraph contains materials published in the article: Ibragimov K.Yu. Asset partitioning on the example of liability of heirs // Actual problems of Russian law. 2024. No. 8 (19). P. 85-99.
[414] See, for example, Petrov E.Y. Inheritance law of Russia: the state of development prospects (comparative legal study) / E.Y. Petrov. Petrov. M.: OOO "M-LOGOS", 2017. P. 125-139
[415] Malyshev K.I. Historical sketch of the competitive process. St. Petersburg: Tip. comradeship "Public Utility", 1871. P. 57.

beneficium separationis[416] . However, it is important to note that the term separation is used not in some specific legal meaning as an independent legal institution having a universal character, but simply as a characteristic of the actual state of affairs.

5.1. Asset Partitioning and Models of Heir Liability

The problem of heirs' liability for the debts of the testator can be solved through three basic options (or their combinations): full community of assets and liabilities of the heir and the testator; liability of the heir within the value of the inherited property; liability within the limits of the inherited property. Since the option with full community of assets and liabilities does not presuppose any asset partitioning and is not applicable to the current Russian regulation, we will not consider it further.

The two remaining options (liability within the value of inheritance, liability with inherited property) imply limited liability, which is a manifestation of defensive asset partitioning. At the same time, as we will prove below, limited liability itself may not be related to asset partitioning and may have a fundamentally different character from the limitation of liability of legal entities.

5.1.1. Liability up to the Value of the Property

Liability up to the value of the estate implies that the debts of the testator are to be satisfied by the heirs in an amount limited to the value of the assets they received. This construction is similar to the Roman institution of beneficium inventarii, which allows the heir to make an inventory of the inheritance with the participation of witnesses and a notary in order to limit his liability for the debts of the testator to the size of the inheritance described[417]. Such a construction allows balancing the interests of all participants: (1) the position of the heir, as a rule, does not worsen, but can only improve; (2) the position of personal creditors also does not worsen, as the heir does not receive debts more than he receives assets; (3) the position of the testator's creditors, at first glance, also does not worsen in principle, as the amount of assets available to them does not change, in other words, if the testator had not died, his property would still be insufficient to repay all debts.

This model of heir liability assumes limited liability of heirs for the debts of the testator, but does not involve asset partitioning of any kind. All assets and liabilities are blended into a single estate of the heir: (1) the property is not divided into different pools; (2) no type of creditor receives priority with respect to the separate property; (3) the inherited property does not manifest any properties of a subject of law.

The lack of asset partitioning in such a situation introduces some adjustments to the distribution of risks that existed prior to the death of the testator. First, the risk of accidental loss of inherited property

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[416] For more details on the isolation of inherited property in Roman law see Ibragimov K. Y. Asset Partitioning in Roman law // Russian Journal of Legal Studies. 2023. Vol. 10. No. 2. P. 74-88.

[417] Pokrovsky I.A. History of Roman law [electronic resource]. - Mode of access: https://civil.consultant.ru/elib/books/25/ (date of reference: 19.10.2023).

is imposed on the heirs in the sense that they will be liable to the extent of the value of the lost property, including that of which they were not aware. The argument that imposing the risk on the owner is a normal state of affairs does not quite work in this situation, as the owner, as a rule, is always aware of the composition of his property, which cannot be said about the heir. This also leads to the removal of the corresponding risk from the creditors of the heir, for whom the new property becomes available.

Secondly, the position of the testator's creditors may worsen, since in the absence of property segregation and insufficiency of the heir's property they will be forced to compete with the heir's creditors and depend on the behavior of a person (the heir) whom they did not choose as a counterparty. All the negative consequences of such a state of affairs for the creditors of the testator are described in detail in the work of L.D. Zazulina[418].

Thus, liability up to the value of the estate does not create a defensive asset partitioning, but by limiting liability it achieves almost the same result in terms of personal creditor protection as defensive asset partitioning (subject to the risk-shifting clauses noted above). There is nothing like affirmative asset partitioning in such a liability model, and the interests of the testator's creditors suffer.

5.1.2. Liability with inherited Property

Liability by inherited property implies that liability to the testator's creditors is structured as if the inherited property itself were the bearer of obligations to creditors. This results in the formation of two separate estates, each of which has its own pool of creditors. This approach has its prototype in the ancient Roman institute of allocation of inherited property beneficium separationis, but has principal features in its perception by domestic law.

Liability with inherited property should not be understood in a way that would lead to the inability of the heir to direct his own money to pay the debts of the inheritance, because this would still be possible as an execution by a third party in order to retain possession of the individual things included in the inheritance. Let us elaborate on the elements of asset partitioning that are manifested in such a model of heirs' liability:

Defensive asset partitioning. In the case of inherited property, it consists in the fact that the creditors of the testator do not claim the personal property of the heir, which can be considered a classic limited liability, which should lead to the same results as in the case of liability to the extent of the value of the inherited property. However, such limited liability has a fundamental difference with regard to the allocation of the risk of accidental loss of inherited property. As such, the risk of accidental death naturally lies with the heir, but its reflected effect will have a different impact on different groups of creditors.

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[418] Zazulina L.D. Protection of creditors' rights in case of debtor's death under the legislation of Russia and France // Notary. 2020. No. 2. P. 46.

Under the "to the extent of the value of the estate" model of liability, which assumes the commonality of inherited and personal property, the accidental loss of inherited property will result in an equal distribution of its consequences to all creditors and in any case will have negative consequences for the heir. Under the inherited property model of liability, the loss of inherited property should logically have a negative impact only on the testator's creditors and the heir himself to the extent that the inheritance received exceeded the debts.

Applied to the estate, this would mean the following: (1) strong defensive asset partitioning, where foreclosure on personal property for the testator's debts cannot be enforced against the testator's debts, (2) weak asset partitioning, where claims for the testator's debts can be satisfied from the personal property, but only after all claims of personal creditors have been satisfied. As we see, in the second case, no limited liability is established for the heir.

Thus, two conclusions can be drawn: (1) limited liability may be achieved with or without asset partitioning; (2) defensive asset partitioning may be unrelated to limited liability.

An example of strong defensive asset partitioning, for example, is the situation where an administration of an inherited estate is introduced or bankruptcy is initiated in Germany (1975 German Civil Code). The personal liability of the heir for the debts of the testator in such a case may arise only on quasi-contractual grounds related to the management of the estate before the appointment of the administrator (Art. 1978 (1) of the German Civil Code) and this claim itself "shall be deemed to belong to the hereditary estate" (Art. 1978 (2) of the German Civil Code). The peculiarity of the German version of the isolation is also the fact that in fact the emergence of obligations between the heir and the inherited property is expressly authorized, which is evidenced, in particular, by Art. 1976 of the German Civil Code, which states that with the introduction of administration the rights and obligations terminated by the coincidence of the creditor and debtor are restored. Rights and obligations that were set off by creditors of another pool of assets prior to the introduction of the administration regime are also restored with retroactive effect (Art. 1977 German Civil Code).

In many ways, the same strong compartmentalization arises under the French legal order, but with some features that, in our view, make the French Civil Code approach more attractive and flexible without prejudice to the interests of creditors. First, there is no mandatory involvement of a receiver, which significantly simplifies the procedure. Secondly, the heirs get the opportunity to keep or sell certain objects from the inherited property, assuming the obligation to be liable for personal property within the value of such property (Articles 793 and 794 of the French Civil Code).

An example of weak asset partitioning is the Roman institution of beneficium separationis. Additional clarification is required with regard to beneficium separationis, as some domestic authors made and repeated the same mistake, concerning the fact that this institution led to limited liability of

the heir[419]. At the same time, K.I. Malyshev, to whom some authors refer, does not write about limited liability: "due to such division of masses, the creditors of the testator lost the right to participate in the mass of the heir's own property until the full satisfaction of the latter's creditors"[420]. Other authoritative researchers of Roman law also write about the priority, not limitation of liability[421], which is quite logical, since this institution served the purpose of protection not of the heir, but of the testator's creditors – the heirs were protected by the construction of beneficium inventarii.

A modern example of weak defensive asset partitioning is the situation of unconditional acceptance of the inheritance in accordance with paragraph 1 of Article 768 of the French Civil Code. The wording of the French Civil Code and some domestic researchers[422] may give the impression that under such acceptance the inherited property is completely mixed with the heir's property and no isolation occurs, but in reality this is not the case. Despite the unlimited liability of the heir, his personal creditors have priority in satisfying claims at the expense of personal property (paragraph 2 of Article 878 of the French Civil Code), which is a weak form of defensive asset partitioning.

Affirmative asset partitioning is that the inherited property becomes unavailable to personal creditors (strong partitioning) or, at any rate, is to be used only after the full satisfaction of the testator's creditors (weak partitioning).

An example of weak affirmative asset partitioning is beneficium separis and in this aspect also multiplies the error[423], made by A.V. Permyakov, who writes with reference to K.I. Malyshev that "allocation of the inheritance mass from the heir's own property and using it exclusively (*emphasis ours – K.I.*) to satisfy the claims of the testator's creditors"[424] , which means a strong form of partitioning, while K.I. Malyshev writes the following: "the inheritance mass was separated from the heir's own property and was assigned for the exclusive satisfaction of their [*the testator's creditors – K.I.*], predominantly before the creditors of the heir", which is a weak form of asset partitioning.

Similar to defensive asset partitioning, a weak form of affirmative asset partitioning exists in modern French law in unconditional acceptance of the inheritance, as the testator's creditors have priority to satisfy their claims on account of the testator's estate (Art. 878(1) French Civil Code).

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[419] See, for example, Permyakov A.V. On liability for the debts of the testator // Notary. 2016. No. 5. P. 33.; Mozhilyan S.A. Challenging transactions in the bankruptcy of a deceased citizen: topical issues of judicial practice // Information and analytical journal "Arbitration disputes". 2020. No. 4. P. 111.; Mechanisms of bankruptcy and their role in ensuring human welfare: a monograph / A.Z. Bobyleva, D.E. Gorev, Y.A. Zaitseva et al.; ed. by S.A. Karelina, I.V. Frolov. Moscow: Justitsinform, 2022. 312 p.; Petrov E.A. Op. cit. P. 126.

[420] Malyshev K.I. Op. cit. P. 57.

[421] Roman private law: textbook / team of authors; ed. by I.B. Novitsky, I.S. Peretersky. M.: KNORUS, 2014. P. 275; Pokrovsky I.A. Op. cit. P.

[422] Fundamentals of inheritance law of Russia, Germany, France / Y.B. Gongalo, K.A. Mikhalev, E.Yu. Petrov et al.; ed. by E.Yu. Petrov. Moscow: Statut. 2015. P. 225.

[423] Mozhilyan S.A. Op. cit. P. 111.

[424] Permyakov A.V. Op. cit. P. 32.

Strong affirmative asset partitioning is a much more complicated issue, as it would effectively result in permanent immunity for inherited property. Unlike the property of a legal person, inherited property is not used for any separate independent activity, but is generally mixed with all other property. Whereas the property of a legal entity is generally designed to exist autonomously within an indefinite period of time, inherited property tends to enter into and blend with the heir's estate. Therefore, it is obvious that the strong isolation of property must be limited to some period of time.

This is generally the case wherever there is strong asset partitioning: after 15 months in France (Art. 792, Art. 798 French Civil Code); in Germany, after all creditors' claims have been satisfied or the heir has provided security for disputed debts (1986 German Civil Code); after liquidation of inherited assets through a trust in the USA[425] .

Thus, comparative legal analysis shows that developed legal orders, as a rule, imperatively or dispositively allow for asset partitioning of inheritance property. The greatest protection of the interests of all parties is provided by such models of isolation, which assume a strong form of defensive asset partitioning and a strong form of affirmative asset partitioning, but the latter should be limited in time.

5.2. Model Adopted by Russian Law

5.2.1. General Rules of Liability of Heirs

Despite the fact that the topic of heirs' liability is quite popular, the question of the model of heirs' liability is not fully disclosed. Some authors only draw attention to the contradictory wording of the law[426], others without any argumentation point to the liability within the value[427], apparently guided by the literal test of Article 1175 of the Civil Code of the RF. E.Y. Petrov[428], and we agree with his conclusion that the Russian legal order has historically proceeded and continues to adhere to the fact that such liability occurs within the value of the property.

At the same time, it seems that neither the Civil Code, nor the relevant explanations of the Supreme Court allow to make an unambiguous conclusion about the model of liability embedded in the domestic civil legislation. The actual existence of liability within the framework of the value of property is predetermined by the current regulation of enforcement proceedings. The absence of a special procedure for enforcement proceedings, rather than the provisions of the Civil Code, was also pointed

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[425] See, for example, Panichkin V.B. Creditors' claims to inheritance and release of inherited property from encumbrances in US law // Inheritance Law. 2010. No. 3. P. 32-34.

[426] Sintsov G.V., Feoktistov D.E. Liability of heirs for the debts of the testator: some issues of legal regulation and law enforcement // Inheritance Law. 2019. No. 2. P. 34 - 37.

[427] Vnukov N.A. Liability of heirs on the affairs of the testator: topical issues of theory and practice // Modern Law. Moscow: Novy Index. 2009. No. 1. P. 75; Folgerova Y. N. Civil-law liability of heirs for the debts of the testator // Inheritance Law. 2010. No. 3. P. 16-19; Manukyan D.G. Liability of heirs for the debts of the testator // Problems of Russian legislation. 2017. No. 4. P. 200.

[428] Petrov E.Yu. Op. cit. P. 131-133.

out by the Constitutional Court when considering a case on the constitutionality of foreclosure on the personal property of an heir[429].

Indeed, both Art. 1175 of the Civil Code of the RF and p. 61 of the Resolution of the Plenum of the Supreme Court of the RF of 29.05.2012 No. 9 (hereinafter – "**Resolution of the Plenum of** the **Supreme Court No. 9**") say that the liability is limited precisely by the value of the property: "the value of the property transferred to the heirs, the limits of which limit their liability for the debts of the testator, is determined by its market value at the time of opening the inheritance, regardless of its subsequent changes by the time of consideration of the case by the court"[430] . This explanation should convince us that in reality there is no separate property, but only a predetermined amount at the time of the opening of the inheritance, which limits the maximum number of claims that can be brought against the heirs.

However, subparagraph 4 of paragraph 60 of the same Resolution of the Plenum No. 9 contains evidence of the opposite approach: "in the absence or insufficiency of inherited property, the claims of creditors for the obligations of the testator shall not be satisfied at the expense of the property of heirs". This paragraph would seem to unambiguously indicate liability within the inherited estate, suggests a division into two estates, and provides a strong form of defensive asset partitioning. Some researchers, without any explanation, still interpret it as limiting liability to the value of the inheritance[431].

The ground for different interpretations is provided not only by the explanations of the Supreme Court, but also by the text of the Civil Code: internal contradiction is observed, for example, in paragraph 2 of Art. 1175 of the Civil Code, first it is said about liability within the limits of "the value of this inherited property", and then about "is responsible for this property".

We are not ready to state that these paragraphs of the Resolution of the Plenum No. 9 led to a direct and irresolvable contradiction, as they can be interpreted inconsistently, but, in our opinion, they can be interpreted inconsistently both in favor of one model and the other.

Option of interpretation in favor of liability within the limits of the value: Paragraph 4 of clause 60 of the Resolution of the Plenum of the Supreme Court No. 9 should be interpreted taking into account clause. 61 and speaks only about the grounds for termination of obligations that go beyond the value of inherited property at the time of its discovery. The division into inherited property and property of heirs takes place only at the time of opening of the inheritance to determine the number of debts and has no significance later after the acceptance of the inheritance.

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[429] Decision of the Constitutional Court of the Russian Federation of 18.07.2017 No. 1696-O "On refusal to accept for consideration the complaint of citizen Mokina Vera Petrovna about violation of her constitutional rights by paragraph 1 of Article 1175 of the Civil Code of the Russian Federation and part 1 of Article 80 of the Federal Law "On Enforcement Proceedings".

[430] P. 61 Resolution of the Plenum of the Supreme Court of the Russian Federation of 29.05.2012 No. 9.

[431] Petrov E.Y. Op. cit. P. 131.

Option of interpretation in favor of liability with property: the reference to the value in Article 1175 and paragraph 61 of the Resolution of the Plenum No. 9 is necessary to determine the monetary expression of the inherited property, the provision of which, made by the heir, should remove any claims of the testator's creditors from the inherited property. The determination of the monetary expression comes to the fore, not because there is no connection between the debt and the inherited property, but because, in the ordinal order, the creditors' claims will be satisfied by the heirs' money and not by the specific inherited property. Paragraph 4, point 60 of the Resolution of the Plenum No. 9 states that in case of foreclosure, it can be applied only to separate inherited property.

Despite the fact that none of the above positions in terms of its justification does not look fully flawless, it can be concluded that the contradictions contained in them can be attributed to the shortcomings of legal technique, and not to any essential contradiction or a conscious position of the legislator.

5.2.2. Hereditary Transmission

In a simplified form, hereditary transfer is commonly understood as the transfer of the right to receive inheritance from a person who has not had time to accept it (the transferor) to his heirs. Since each of the testators has its own set of creditors and the rule on the limits of liability of heirs for the debts of the testator applies, a different final result may be obtained depending on the model by which the liability of heirs should be built.

In accordance with Art. 1156 of the Civil Code of the RF the right to accept the inheritance by way of transmission is not included in the inheritance, this rule means the possibility to accept the inheritance by way of transmission without accepting the inheritance from the transferor and in itself does not characterize the regime of inherited property in any way. The provisions of Art. 1156 of the Civil Code of the Russian Federation give grounds to speak only about a specific regime and in a sense the isolation of the right to accept the inheritance itself, as from the literal text of the article it follows that the right to accept the inheritance is transferred to the heir, but it is not included in the inheritance.

П. 2 of Article 1175 of the Civil Code of the Russian Federation contains a contradiction that has already been touched upon above, namely the indication that the heir is liable for the debts of the first testator "to the extent of the value" of the transferred property and is not liable "with this property" for the debts of the heir from whom he received the right to accept the original inheritance. By themselves, these contradictory provisions cannot allow a conclusion to be drawn as to the model of liability used, but can only unambiguously indicate that a positive difference between the assets and liabilities of the original testator does not increase the limits of liability to the creditors of the transferor.

From the point of view of asset partitioning, this means that the lying inheritance has the features of a strong form of affirmative asset partitioning from the property of the transferor, i.e. we see that in

the case of an inheritance transfer, the estate exhibits properties that it did not possess in the situation of ordinary acceptance of the inheritance by the first heir.

After the acceptance of one or two estates, the general rules begin to apply, and therefore any manifestation of affirmative asset partitioning disappears. At the same time, the acceptance of one or two estates does not directly affect the interests of creditors of the original testator and the transferee, as the debts are transferred only in the part "covered" by the assets, but they bear the risks associated with the fact that the heir has a large number of personal creditors who will also claim the inherited property. They also equally bear the risks of the loss of any property if we assume that the liability is to the extent of the value and not the property.

5.2.3. Peculiarities of Bankruptcy of the Inheritance Estate

The doctrine has already drawn attention to the problem of the divergence of approaches on the ordinary procedure for satisfying the claims of the testator's creditors and the procedure laid down in the bankruptcy law[432], the content of which gives more reasons to consider inherited property as separate property and, as a consequence, pushes to the conclusion about the change of the model of liability within the framework of the value of the property to the model of liability by property.

Paragraph 4 of Chapter X of the Law "On Bankruptcy" establishes such a procedure for satisfaction of claims, in which in fact the debtor is a non-legal entity estate, because for the bankruptcy law itself this is not the only example of bankruptcy of a non-legal entity (for example, bankruptcy of a private farm that is not a legal entity) and because the doctrine has generally consolidated the understanding of this institution as the bankruptcy of inherited property, not heirs[433]. Examples of such understanding are also found in court practice: "bankruptcy of a deceased citizen, in fact, consists in conducting bankruptcy procedures in respect of separate property"[434], also the courts point to "separation of the inheritance mass"[435].

Therefore, we cannot agree with those authors who believe that the law as a debtor in bankruptcy "unambiguously designated the heir (paragraph 1, item 4, article 223.1 of the Law)"[436], because this is what the legislator, in our opinion, tried to avoid, indicating that the heirs only exercise the rights and obligations of the deceased person (probably, they mean procedural rights and obligations). All the more

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[432] Inheritance law: article-by-article commentary to Articles 1110-1185, 1224 of the Civil Code of the Russian Federation / Ed. by E.Y. Petrov. Moscow: M-Logos. 2018. P. 388.
[433] See Ostanina E.A. Bankruptcy of inheritance mass: analysis of changes in legislation // Inheritance Law. 2015. No. 4. P. 33-38.
[434] Ruling of the Seventh Arbitration Court of Appeal of February 26, 2021, No. 07AP-7747/2018(16) in case No. A03-7638/2018. Similar practice: Ruling of the Arbitration Court of the Far Eastern District of 16.09.2022 No. F03-4590/2022 in case No. A51-16425/2021.
[435] Definition of the Supreme Court of the Russian Federation of 18.12.2019 No. 308-ES19-23234(1,2) in case No. A53-29984/2018; Resolution of the Arbitration Court of the Volgo-Vyatsky District of 29.06.2023 No. F01-2709/2023 in case No. A82-15948/2018.
[436] Shishmareva T.P. Problems of insolvency of isolated property masses // Entrepreneurial Law. Annex "Law and Business". 2016. No. 3. P. 50-54.

so that subparagraph 2 of paragraph 4 of Article 223.1 of the Law "On Bankruptcy" says that until the expiration of the period allowed for the acceptance of the inheritance, these functions are performed by the notary, in respect of which, perhaps, even less reason to consider it a debtor in a civil law obligation. The courts also point to procedural succession: "the mere fact of procedural succession in the case of debt collection and replacement of the defendant with the testator does not indicate that the debtor under the obligation is now the successor within the meaning of the bankruptcy law"[437].

An "estate" bankruptcy can occur in two scenarios: in the first case, it occurs when a person dies during the course of his or her bankruptcy; in the second case, the estate bankruptcy process is initiated after a person's death.

The first situation looks more understandable and para. 48 of the Resolution of the Plenum of the Supreme Court[438] unambiguously indicates that heirs do not become debtors, but are involved as third parties, the property of heirs is not included in the bankruptcy estate, and personal creditors of the heir do not participate in the bankruptcy of the deceased person. That is, there is clearly strong defensive asset partitioning and there is actually strong affirmative asset partitioning. The situation in general would not be much different from that which would arise if the testator's only assets were 100% of the membership interests in an LLC in bankruptcy. The heirs, on the other hand, are entitled to claim only what remains of the inherited property after creditors' claims have been satisfied. In the same way, claims are satisfied through the trust structure in the USA[439].

Since the bankruptcy procedure started while the citizen was still alive, there is no more and no less certainty about the composition of the inheritance estate and the claims of creditors than if the bankrupt citizen had not died. It is likely that the heirs will also be informed about this, and all tools are available to ensure the safety of the inherited property and prevent it from being mixed with the property of the heirs.

The issue is more complicated in the case of bankruptcy, which is initiated after the death of the debtor. We should immediately mention that despite all the difficulties associated with this option, it certainly has a large number of advantages for all interested parties; we will not dwell on them in detail, as we fully agree with the conclusions drawn in this part by E.A. Ostanina[440].

The fundamental difference from the situation of continuing bankruptcy after death is that at the time of the opening of the inheritance and for some time thereafter, the question of the extent of the testator's assets and liabilities and, as a consequence, of their correlation remains unclear. Since it does

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[437] Resolution of the Moscow District Arbitration Court of 13.04.2023 No. F05-977/2021 in case No. A40-300549/2019 .
[438] Resolution of the Plenum of the Supreme Court of the Russian Federation of 13.10.2015 No. 45 "On Certain Issues Related to the Enactment of Procedures Applied in Cases of Insolvency (Bankruptcy) of Citizens".
[439] Panichkin V.B. Creditors' claims to inheritance and release of inherited property from encumbrances in US law // Inheritance Law. 2010. No. 3. P. 32-34.
[440] Ostanina E.A. Op. cit. P. 33-38.

not follow from the law to the contrary, in the case of initiation of bankruptcy after death, the inherited property should also be segregated and liability should be based on the extent of the inherited property and not on its value. This means that when bankruptcy is initiated, the ordinal model of liability within the value of the estate is replaced by liability with inherited property, and this in turn may result in a redistribution of the negative consequences of the loss of inherited property with retroactive effect. To give an example.

The inheritance property consisted of one expensive piece of real estate, the value of which covered all of the testator's debts, but after the opening of the inheritance, the property was destroyed by an earthquake, a meteorite or some other random event. Can the heir now initiate bankruptcy and limit his liability to the land and the remains of the building? If he can, to what point or within what time period? After all, if he fails to do so, he will be liable under the general rules to the extent of the value of the real estate, which was determined at the time of the opening of the inheritance.

Thus, the current regulation can be perceived as allowing for the segregation of inherited property with retroactive effect, with a corresponding redistribution of the risks of property loss.

The issue is related to the problem of limiting the time limit within which bankruptcy can be initiated, which has already been discussed in science. E.A. Ostanina rightly notes that the issue of the term should establish a balance between the time required to clarify the composition of assets and liabilities, and the time during which all the property of the testator is not mixed with the property of the heir[441]. In our opinion, the problem of mixing and sale of property is less acute than the problem of accidental death, since in the latter case we cannot even theoretically use any other mechanisms of balancing interests (extending the regime of inherited property to the property that was acquired at the expense of the original property inheritance, etc.).

E.A. Ostanina notes that the institute of bankruptcy of the inheritance mass is attractive for heirs because it allows "to limit his own property more effectively"[442]. At the same time in judicial practice there is observed the formation of the position according to which "the application of special rules of paragraph 4 of Chapter X of the Bankruptcy Law is conditioned, first of all, by the preservation of the possibility of differentiation of the property included in the inheritance and the property of the heir, i.e. the separation of the inheritance mass"[443], i.e. the condition of legal asset partitioning is the possibility of actual differentiation. Despite this, we have not found any cases in which the commingling of property would lead to a refusal to initiate bankruptcy proceedings in respect of inherited property, on the

[441] Ostanina E.A. Op. cit. P. 33-38.
[442] Ostanina E.A. Op. cit. P. 33-38.
[443] Resolution of the Arbitration Court of the East Siberian District dated 10.06.2022 No. F02-2537/2022 in case No. A69-1793/2021, Resolution of the Arbitration Court of the Far Eastern District dated 13.07.2020 No. F03-2569/2020 in case No. A51-4037/2019; Resolution of the Arbitration Court of the Moscow District dated 13.04.2023 No. F05-977/2021 in case No. A40-300549/2019.

contrary, even the inclusion of inherited property in the bankruptcy estate of the heir was not an obstacle to the bankruptcy of inherited property[444] .

Technical isolation in such a case, for example, is achieved by the fact that after contesting transactions within the framework of bankruptcy the title is registered for the deceased testator[445] , without being able to theoretically and normatively justify such a situation, the courts allow rather controversial statements: "the conclusion that with the death of a natural person (debtor) the legal capacity of a citizen ceases, and, therefore, the possibility of state registration of the title to real estate objects is contrary to the law"[446].

Thus, the current institute of bankruptcy of the inheritance mass, unlike the ordinary order of liability of heirs, provides for asset partitioning in a strong form, but due to the insufficient regulation of the procedure itself leads to many problematic issues. Also the appearance of the strong form of asset partitioning manifests general doctrinal problems concerning the legal capacity of estates.

5.3. Selection of Asset Partitioning Model

The model of liability within the value of the inherited estate, which actually exists now, is associated with the imposition of additional risks on the creditors of the testator and the heir himself and is therefore not satisfactory. From the point of view of balancing the interests of the creditors of the testator, the heir and the creditors of the heir, a model with strong defensive asset partitioning and affirmative asset partitioning seems optimal.

In this case, the regime of strong affirmative asset partitioning by virtue of the specifics of the emerging relations cannot continue indefinitely, as the property of the testator and the heir are mixed both legally and physically, and begin to be used for the same purposes. In our opinion, the optimal approach to regulation is to maintain such a regime from the moment of opening the inheritance until the expiration of the term for its acceptance (6 months), after which the isolation of property should cease and the commonality of debts of the heir and the testator should arise.

After the commons, the testator's debts also remain limited to the value of the inherited property, determined at the time of the acceptance of the inheritance and the cessation of the commons, it seems that this is a more balanced solution, since the risk of a decrease in its value from the time of discovery to the time of acceptance is borne by the testator's creditors.

Under this approach, during the period of asset partitioning, the risks of reduction in the value of the inheritance and its destruction are borne by the testator's creditors, which is logical for two reasons:

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[444] Resolution of the Arbitration Court of the North Caucasus District of 20.09.2019 No. F08-7485/2019 in case No. A53-29984/2018.

[445] Resolution of the Arbitration Court of the West Siberian District dated 10.08.2023 No. F04-2741/2023 in case No. A70-19346/2022, Resolution of the Arbitration Court of the Moscow District dated 20.01.2021 No. F05-22136/2020 in case No. A41-13695/2020.

[446] The decision of the Arbitration Court of the Tyumen region from 02.02.2023 in case No. A70-19346/2022.

(1) firstly, they would have borne these risks if the testator had been alive, i.e., nothing changes for them in this part, (2) secondly, since we assume that when they entered into the obligatory relationship with the testator, they had some knowledge of his financial condition and probably had an idea of what property they would be entitled to, heirs do not necessarily have knowledge of the testator's financial condition. Among other things, such a construction would relieve heirs of the present risk of losing inherited property of which they are unaware.

During this time, all creditors claiming priority satisfaction of their claims at the expense of the inherited property must have their claims filed (including those for which the due date has not come) and only during this time can bankruptcy of the segregated inheritance estate be initiated.

If creditors/notary/heirs realize that the property of the testator may not be enough for everyone, they initiate bankruptcy, in the framework of which the inherited property is distributed fairly. In this part, we support the position that the grounds for bankruptcy of the inheritance estate should be different from the general ones – the basis should be the very fact of insufficiency of the inheritance estate[447], which brings the procedure closer to the liquidation of the inheritance.

All creditors who did not file their claims during the period of property isolation find themselves in a less favorable position, which in general does not differ from the one that exists now. Since they will be entitled to claim satisfaction of their claims at the expense of the heir's estate, but within the value of the inherited property, on a par with the heir's personal creditors, and will also bear the risk that by the time they make their claims, the heir will have already exhausted his limit of liability.

Transferring to the heir the risk of loss of inherited property after its acceptance also seems fair, since by accepting the inheritance, he accepts the risks of its loss and is incentivized to establish all inherited property as soon as possible, having a "grace" period of 6 months when the risk of loss does not rest on him.

It seems that the prerequisites for the transition to such regulation are already laid down in the Civil Code, for example, according to paragraph 3 of Article 1174 of the Civil Code, the creditors of the testator make claims against the heirs who have accepted the inheritance, and before the acceptance of the inheritance, the claims are made "to the inherited property", so it seems that the transition to the above model of liability of heirs for the debts of the testator is possible without radical changes in the legislation or even through clarification by the Supreme Court.

5.4. Legal Personality

Since only inherited property in bankruptcy currently possesses property isolation, the question of legal personality of inherited property can be raised only in relation to it. In the case of ordinary heirs'

[447] Shishmareva T.P. Legal regulation of the liability of heirs for the obligations of the testator in case of insufficiency of the inheritance mass // Laws of Russia: experience, analysis, practice. 2018. No. 10. P. 41 - 45.

liability, asset partitioning has not actually been established at the moment, so further conclusions on legal personality can be applied to such inherited property only after the relevant approach has been changed and asset partitioning has been established.

The current model of bankruptcy of inherited property assumes its isolation in a sufficiently strong form, then we believe that it is advisable to recognize such property as a legal entity, since it is this property that becomes the point of attachment of rights and obligations, which, as noted above, among other things, is manifested in the lexical constructions "bankruptcy of the inherited mass" used in the doctrine and judicial practice. The inherited property is recognized as a legal personality in the broad sense, because in order to protect the legitimate interest (the interest of heirs, creditors of the testator and heirs) the legal order has already created at the normative level such regulation, which endows the inherited property with the properties of legal personality: a separate property complex and the order of formation and expression of the will outwardly. In order to eliminate the discrepancy between actual and formal legal personality, it seems desirable to recognize inherited property as a subject of law.

In this sense, the position of T.P. Shishmareva that bankruptcy occurs in relation to inheritance as a separate property, but since it "cannot be personalized" the debtors are still the heirs themselves[448]. Clarification is required in the part that inheritance cannot be fully personified only from the point of view of the current positive law, and not because it has some properties and characteristics that do not allow it to be "personified" and recognized as a legal entity.

K.A. Mikhalev and E.Y. Petrov also argue in favor of the fact that in these conditions it is better to recognize inherited property as a legal entity. Petrov, justifying it by the fact that for the Russian legal order more familiar is the construction of a legal entity, rather than the construction of separate property (split property mass of a person)[449]. We would only add that the application of the legal entity construction to inherited property is a more usual solution not only for Russian law, but in general has a continental tradition, at least at the level of doctrine.

Ch. Sanfilippo points out that Roman jurisprudence for the theoretical justification of the possibility of increment and diminution of the lying inheritance, resorted to various fictions: to giving retroactive effect to the acceptance of inheritance or discretion in the lying inheritance of the continuation of the personality of the deceased[450]. The latter, in our opinion, is not different from the situation where we would recognize the inheritance as an independent personality, since for the purposes of endowing a separate property with a fictitious personality, it does not matter in which materially non-

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[448] Shishmareva T.P. Legal regulation of the liability of heirs for the obligations of the testator in case of insufficiency of the inheritance mass // Laws of Russia: experience, analysis, practice. 2018. No. 10. P. 41-45.
[449] Mikhalev K.A., Petrov E.Y. Personification of the inheritance mass // Law. 2023. No. 6. P. 25-39.
[450] Sanfilippo C. Course of Roman Private Law: Textbook / per. from Italian. ed. by D.V.Dozhdev. Moscow, Izd. 2000. P. 361.

existent person it would be personified. In the context of legal persons, the problem of lying inheritance was also considered by pre-revolutionary authors[451].

Thus, we believe that at this point there are already all grounds for recognizing the independent legal personality of inherited property in bankruptcy proceedings, as it has already been actually given a regime characteristic of a subject of law. Also, if the legal order will move to the model of liability of heirs by inherited property, which will lead to the isolation of inherited property, it will be logical to recognize the legal personality of inherited property as a whole.

§ 6. Other Cases of Asset Partitioning

The cases of asset partitioning considered above in the framework of this study are, in our opinion, the most significant cases of asset partitioning in terms of the problems of their legal regulation and perception by judicial practice. It also seems that they are of the greatest theoretical value for understanding asset partitioning as an independent phenomenon of private law, as well as their example clearly demonstrates the prospects of analyzing legal phenomena through the application of the categories of defensive asset partitioning and affirmative asset partitioning.

At the same time, Russian law certainly contains a greater number of cases of asset partitioning in all its diversity, so it is proposed to briefly highlight such cases of asset partitioning in this paragraph.

6.1. Islamic Banking

Islamic banking is commonly understood as a financial system that operates on the basis of principles and restrictions established by the religious norms of the Shariah. Such a system, despite the great similarities with classical banking systems, has a large number of specific features, primarily related to the inaccessibility (due to religious restrictions) of classical financial instruments: charging and collecting interest, use of derivatives, etc.

The presence of such restrictions, from which conventional financial systems are free, on the one hand, certainly makes Islamic banking more limited in its toolkit and, probably, less effective, but, on the other hand, as convincingly substantiated by A.D. Rudokvas and I. Tenberg, gives such systems greater internal stability, and reduces their dependence on macroeconomic shocks[452]. In this sense, the implementation of Islamic banking instruments without their confessional attachment may indeed be a

[451] Suvorov N.S. About legal entities under Roman law. M., Statute. Series "Classics of Russian Civilistics". 2000. P. 218-219, P. 263-266; Elyashevich V.B. Op. cit. P. 435; Muromtsev S. Civil Law of Ancient Rome. Moscow. 1883. P. 652.
[452] Rudokvas A.D., Tenberga I. On the Model Law of the Commonwealth of Independent States "On investment and trust banking activities" and its doctrinal grounds // Arbitration disputes. 2023. No. 3. P. 28-50.

promising direction. The first step towards such implementation is the adoption of the law on partnership financing[453].

In the context we are considering, the greatest interest is not the problem of sustainability and efficiency of such a banking system, but its ability to satisfy the need of potential bank customers to comply with their own religious and ethical norms and restrictions.

The main restrictions in this regard are set out in Article 2(2) and (3) of the Law on Partnership Financing: (1) when carrying out partnership financing activities, no interest rate remuneration may be established, (2) when carrying out partnership financing activities, no activities related to the production of tobacco and alcoholic beverages, weapons, ammunition, trade in such goods, as well as gambling may be financed. In this regard, it is important to note the legislator's reservation that such prohibitions apply only "when carrying out partnership financing activities", which means that the financing organization may otherwise carry out such activities. At the same time, the law establishes requirements under which such a combination of activities is allowed (part 5 of Article 2 of the Law "On Partnership Financing"), the main of which is to keep separate accounting records for operations related to partnership financing and operations not related to it.

At the same time, the degree of isolation of such property is significantly less than that of an investment partnership or a unit investment fund, since the law does not even provide for the opening of a separate bank account; all isolation is limited only to technical isolation for accounting purposes. In the absence of separate accounts and cashier's office, the raised funds will inevitably be mixed and may well be used for interest-bearing loans and financing of activities prohibited for such operations.

Moreover, in the absence of affirmative asset partitioning and defensive asset partitioning, any property, even if not subject to commingling, may go to satisfy such undesirable liabilities incurred by organizations outside of the partnership finance business. We do not undertake to answer the question of whether the current, purely formal, segregation of such property achieves Shari'ah compliance, but we can still state that there is almost no legal segregation.

6.2. Deposited Property

In the full sense, property transferred for escrow to an escrow agent under an escrow agreement (Article 926.4 of the Civil Code of the Russian Federation) can be considered separate. At the same time, the legal asset partitioning of this property is established by Article 926.7 of the Civil Code of the Russian Federation, while Article 926.4 of the Civil Code of the Russian Federation establishes only the

[453] Federal Law No. 417-FZ dated 04.08.2023 "On Conducting an Experiment to Establish Special Regulation for the Purpose of Creating the Necessary Conditions for Partnership Financing Activities in Certain Constituent Entities of the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation" (hereinafter - the **"Partnership Financing Law"**)

obligation on technical partitioning of this property, which is of an auxiliary nature (the need to prevent mixing of property and the obligation to keep separate records).

The nature of property partitioning in this case turns out to be similar to that of pledged property, but with the strongest possible degree of affirmative asset partitioning – the beneficiary receives an exclusive right of claim in respect of the deposited property, rather than the preferential right that the pledgee has in respect of the pledged property. Despite the fact that the depositor continues to be the owner of the deposited property, the deposited property completely leaves his property sphere, as, firstly, it becomes completely inaccessible to his other creditors (Clause 1 of Article 926.7 of the Civil Code of the Russian Federation), and secondly, he, as a general rule, loses any right to dispose of this property (Clause 4 of Article 926.1 of the Civil Code of the Russian Federation). Such position of the property is fully preserved in case of bankruptcy of the depositor.

Separation of property in this case performs an explicit security function and provides a guarantee to the beneficiary in receiving certain property / fulfillment of obligations. Other authors also speak about the escrow agreement as a method of security[454]. Despite the fact that in this case the asset partitioning is to a large extent isolated, the question of legal personality of such property does not arise, primarily because the structure of relations is characterized by extreme simplicity. Separate property is not actively involved in turnover, no new claims arise in relation to it, as a rule, nothing happens to it at all – it is simply reserved in the interests of the beneficiary.

Perhaps the only theoretical issue related to the isolation of deposited property is the theoretical justification of the inaccessibility of a person's property to his creditors. It can be justified either through the emergence of some in rem right (encumbrance) or the emergence of sui generis property immunity, which arises by virtue of an express indication of the law.

In the context of property deposited under the rules of an escrow agreement, it is also necessary to refer to the problem posed by E.I. Chervets in the context of property isolation – the failure to regulate issues related to the isolation of other property performing a similar function, such as a letter of credit, a notary's deposit and an escrow account[455].

In accordance with the meaning of the regulation and the direct indication of the law[456] the property deposited with the notary is completely separate from the property of the notary. Since the deposited property does not come into his possession, no further justification for the segregation of such property from the property of the notary is required. The legislator says nothing about the isolation of such property and its inaccessibility to other creditors of the owner. Similarly, the legislator says nothing about the isolation of funds on a letter of credit.

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[454] Efimova L.G. Contracts of bank deposit and bank account. Moscow: Prospect. 2018. 432 p.
[455] Chervets, E. I. Trust as one of the ways of isolation of property ... P. 212-215.
[456] Article 23 of the "Fundamentals of Legislation on Notariate of the Russian Federation".

The absence of property isolation of the property deposited with a notary seems to us quite reasonable, since the fulfillment of the obligation by depositing the debt does not and should not perform any security function. Moreover, such fulfillment takes place, as a rule, for reasons arising on the creditor's side, so it is unreasonable to give him priority over other creditors of the debtor.

In the case of a letter of credit, however, the situation is quite different, since, although a letter of credit is a method of settlement, it is actually used for security purposes, and some researchers explicitly refer to it as a personal security[457]. At the same time, attributing a letter of credit to security methods is not so obvious, because in the absence of immunity in respect of funds credited to the letter of credit, the creditor does not receive any priority, but only receives a simpler procedure of access to them.

It seems that taking into account the introduction of the escrow account, the funds on which are fully segregated and foreclosure on them under the obligations of third parties is not allowed (paragraph 4 of Art. 860.8 of the Civil Code of the Russian Federation), the lack of full-fledged segregation of funds credited to the letter of credit cannot be perceived as a shortcoming of the regulation, because if the parties want to establish a valid security, it is necessary to use an escrow account.

6.3. Prize Fund of the Lottery

The property constituting the prize fund of a lottery is also fully segregated, as this property is available only to the participants of the respective lottery. In addition to the separate accounting for this property, which performs the function of technical isolation, it has a strong form of affirmative asset partitioning by virtue of the direct instruction of the law that the prize fund of the lottery may not be foreclosed for other obligations of the lottery organizer (part 2 of article 17 of the Federal Law of 11.11.2003 No. 138-FZ "On Lotteries"). Similarly, there is a prohibition to dispose of this property in a manner other than for the payment of winnings from the respective lottery.

Aspects of defensive asset partitioning, which manifests itself in whether the claims of lottery winners can be satisfied at the expense of other assets of the lottery organizer, are not directly regulated by the legislation, but can be established from general rules. It is clear that in a normal situation the lottery fund is compiled in such a way that it is sufficient to satisfy all claims of the winners, but the issue of defensive asset partitioning may arise in case of accidental loss of the property that constitutes the lottery fund.

Since the obligation to pay the winnings is an obligation of the lottery organizer, there are no obstacles to foreclosure on its property (except for the funds of other lotteries, as they are also segregated and are not available to other creditors). Thus, defensive asset partitioning is completely absent.

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[457] Efimova L. G. Op. cit.

The segregation of property in this case also has a securing function, and we see no basis for the legal personality of such funds for the reasons stated above with respect to escrowed property.

A similar legal regime to the lottery fund is also established for quite a large number of non-subordinate funds, the creation of which is prescribed at the legislative level. To cite just a few examples: (1) compensation fund of the notary chamber[458], (2) mandatory deposit insurance fund[459], (3) compensation fund of the self-regulatory organization of arbitration managers[460], (4) reserve fund of the association of tour operators[461]. The formation of the above funds leads to full asset partitioning, as such asset partitioning leads to reservation of property for certain creditors/liabilities and prohibits foreclosure on such asset partitioning for other obligations, thus fulfilling a securing function.

At the same time, the legislation prescribes the creation of no less number of funds, the property of which does not have such properties of property isolation. Thus, for example, the fund of personal liability of a tour operator or the fund of social support of the federal chamber of notaries are in fact only technically separate and do not establish any restrictions on the foreclosure of this property. In this sense, we do not fully agree with those researchers who refer such funds to methods of securing an obligation[462] , as their real securing function is not more significant than that of a penalty.

6.4. Testamentary Refusal

In a joint article by M. Puder and A.D. Rudokvas, the idea is expressed that some traces of a trust-like structure can be seen in the rules on testamentary disclaimers[463]. It seems that the similarity to a trust in this case is only visual, since the obligation to provide some property in favor of a third party, including in the future and under certain conditions, does not in itself create a trust-like construction. The main specific characteristic of a trust, as discussed in detail in section 4.2 of this paper, is the priority of the beneficiary's claims against the trust property over other creditors of the trustee. Such a property is not manifested in the establishment of a legatee.

In the doctrine there is a discussion as to whether there is a legate in rem in the current law[464]. With regard to the right to use residential premises established by Article 33 of the Housing and

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[458] Article 18.1 of the "Fundamentals of Legislation of the Russian Federation on Notariate" (approved by the Supreme Soviet of the Russian Federation on 11.02.1993 No. 4462-1).
[459] Par. 5 Art. 33 of the Federal Law No. 177-FZ dated 23.12.2003 "On Insurance of Deposits in Banks of the Russian Federation".
[460] Par. 12 Art. 25.1 of the Federal Law of 26.10.2002 No. 127-FZ "On Insolvency (Bankruptcy)".
[461] Article 11.4 Federal Law of 24.11.1996 No. 132-FZ "On the Fundamentals of Tourist Activity in the Russian Federation".
[462] Sitdikova L. B. Fund of personal liability of the tour operator as a new way to ensure the fulfillment of obligations in the field of tourism // Tourism: Law and Economics. 2016. No. 3. P. 6-8.; Sirik N. V. Fund of personal liability of the tour operator as one of the ways to ensure the fulfillment of obligations // Law and Economics. 2017. No. 3(349). P. 55-59.
[463] Puder M. G., Rudokvas A. How Trust-Like Is Russia's Fiduciary Management? Answers from Louisiana // Louisiana Law Review. Loyola University New Orleans College of Law Research Paper. 2019. No. 2019-16. P. 1101.
[464] For more details on legates in rem and legates in obligation in Roman law, see. Kopylov A. V. Peculiarities of action defense of legate in Roman private and modern Russian civil law // Vestnik Civil Process. 2016. No. 5. P. 152-163.

Communal Housing Code of the Russian Federation, the doctrine[465] and judicial practice[466] incline to the fact that such a right is in rem and arises by virtue of the very fact of acceptance of the inheritance by the heir without an additional will, however, with regard to other property, the question of the need for an additional will of the heir to provide in favor of the legatee[467].

The doctrinal discussion essentially boils down to the interpretation of the provisions of paragraph 3 of Article 1137 of the Civil Code of the Russian Federation: "to the relations between the testator (creditor) and the heir to whom the bequest is vested (debtor), the provisions of this Code on obligations shall apply, unless otherwise follows from the rules of this section and the substance of the bequest". Supporters of the legatee in rem read these provisions as allowing the existence of legal relations other than obligatory ones[468], while opponents read them as indicating that in addition to the general rules on obligations, special rules are also to be applied to relations related to testamentary disclaimer[469]. In our opinion, the latter approach to interpretation is more consistent with the meaning of the law, but if we recognize that testamentary disclaimer entails the emergence of limited proprietary rights in respect of property ipso iure, then the asset partitioning in this case will be exhausted by the partitioning that gives proprietary rights as such.

At the same time, the subject of a testamentary disposition may be obligations that clearly do not imply the emergence of any rights with respect to the inherited property, but imply fulfillment at the expense of the inherited property or income derived from it. The specifics of liability under such obligations directly depend on the resolution of the issue of the nature of property isolation.

With regard to asset partitioning, it is worth noting the textual uncertainty that generally characterizes the regulation of heirs' liability, as discussed above in section 5.2 of the present work, and is fully preserved in relation to the relations related to testamentary refusal: clause 1 of Art. 1137 of the Civil Code of the RF says that the obligation to provide legatee is fulfilled "at the expense of the inheritance", while clause 1 of Art. 1 of Art. 1138 of the Civil Code of the Russian Federation says that the obligation is to be fulfilled "within the value of the inheritance transferred to him".

Since, based on the text and the logic of the regulation, the obligation related to testamentary disclaimer is of an obligatory nature and does not have any formal attachment to a specific property, from the point of view of positive law, it is likely to be a liability in value. This is indirectly confirmed

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[465] Nizamova E. A. To the question of the rights of the owner and the testator on the use of residential premises encumbered by testamentary disclaimer // Leningrad Law Journal. 2016. No. 4(46). P. 138; Conclusion of the Department of Civil Law of St. Petersburg State University on the draft amendments to the section on proprietary rights of the Civil Code of the Russian Federation / Alexandrova M.A., Gromov S.A., Krasnova et al. // Bulletin of Economic Justice of the Russian Federation. 2020. No. 7. P. 62-111.

[466] Determination of the Ninth Cassation Court of General Jurisdiction of 31.08.2023 No. 88-8062/2023 in case No. 2-3802/2022, Determination of the Eighth Cassation Court of General Jurisdiction of 11.05.2021 No. 88-7380/2021.

[467] Cassation definition of the Eighth Cassation Court of General Jurisdiction of 21.02.2024 No. 88a-3516/2024 in case No. 2a-1766/2023,

[468] Kopylov A. V. Op. cit. P. 161.; Nestoliy V.G. Vestnyi legat on real estate // Notary. 2020. No. 6. P. 33 - 37.

[469] Nizamova E. A. Op. cit.

by the wording of para. 26 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 9 of 29.05.2012. This approach, among other things, indicates that the accidental destruction of inherited property will not in itself lead to a reduction in the amount of liability in favor of the assignee.

Positive law also does not have any provisions that would indicate the isolation of this property in aspects related to the existence of legatees' preferential claims in respect of certain inherited property, or would impose on heirs any restrictions of in rem nature in terms of freedom of disposal of such property. This also confirms the absence of any isolation of such property.

However, the establishment of such isolation could be desirable from the point of view of the needs of the participants of the turnover. Since positive law does not provide any grounds for the isolation of such property, the doctrine discusses the possibility of achieving such a result through existing instruments, primarily pledge[470]. Establishment of a pledge, as it was mentioned above, would lead to the establishment of full-fledged isolation of the property at the expense of which the claims of the legatee are satisfied, as it would, firstly, receive priority claims in respect of inherited property over personal creditors of the heir (creditors of the testator by virtue of a direct indication of the law have priority over the claims of the legatee), and secondly, a special order of disposal and encumbrance peculiar to pledged property would be established in respect of such property. It should also be noted that in court practice there is a negative assessment of the possibility of registration of testamentary pledge to protect the interests of testamentary beneficiaries[471].

Thus, hereditary property under the current Russian regulation does not receive any properties of asset partitioning in the case of establishing a testamentary waiver, but to protect the interests of waiver recipients, the construction of testamentary pledge can theoretically be used, which, like any other pledge, leads to asset partitioning.

6.5. Donations

The property donated as a donation may seem to be segregated, as the law prescribes to keep separate records of all transactions in respect of such property (clause 3 of Article 582 of the Civil Code of the Russian Federation). At the same time, the isolation of this property is limited only by the technical aspect, which is necessary for the application of the rules on the cancellation of donation (Article 578 of the Civil Code of the Russian Federation), as it allows the donor to monitor compliance with the intended use of the donation. Separateness of the donated property does not manifest itself in any way in relations

[470] For more details on the problem of testamentary pledge, see Bevzenko R.S. Pledge from the will // Vestnik of Civil Law. 2020. No. 4. P. 220-241.
[471] Cassation definition of the Eighth Cassation Court of General Jurisdiction of 21.02.2024 No. 88a-3516/2024 in case No. 2a-1766/2023.

with creditors, such property is fully available to all creditors of the person in favor of whom it was donated, and the restriction on the intended use is of an obligatory nature.

Thus, the requirements for technical separateness of the donation are established solely for the purpose of achieving greater certainty as to the nature of the obligatory relations between the parties to the donation agreement and do not lead to the appearance of any signs of legal separateness of the subject of the donation.

The situation is very similar with respect to special-purpose loans and credits, but the law in this case does not make a mandatory prescription on the need for separate accounting, but only speaks of the obligation to ensure that the lender can control the intended use of the loan.

CONCLUSION

In the course of the study, doctrinal approaches to the problem of asset partitioning were examined, from which it was concluded that the theory of affirmative asset partitioning of H. Hansman and R. Kraakman provides a rather limited understanding of asset partitioning, which is due to the primary goal of these authors – to justify affirmative asset partitioning as a key property of organizational law. Despite the attempts of other foreign authors to go beyond organizational law and to justify the asset partition as a property inherent also in security constructions, the theory of separate property formulated within the framework of the common law system does not allow to realize its full potential within the framework of the continental legal system and to provide answers to the questions arising within the framework of the Russian law.

However, it can be concluded that the categories of defensive and affirmative asset partitioning developed by H. Hansman and R. Kraakman are very effective tools of legal analysis, which help to identify regulatory deficiencies and allow to evaluate future legislative solutions.

It also established the relationship between the theory of separate property and the French theory of patrimony (patrimoine), developed by Sh. Aubry and Sh. Rau, which allowed to complete the theoretical basis for the construction of a broader theory of separate property.

A broader understanding of the phenomenon of asset partitioning has been proposed, according to which any technically separate property with a specific legal regime is recognized as asset partitioning. Despite the fact that such a broad understanding of asset partitioning covers a very large number of heterogeneous legal phenomena, including those to which the application of the theory of separate property does not in reality provide any theoretical or practical value, the broad approach allows to see in problematic institutions of civil law similarities and regularities inherent in other, more studied institutions, which has a positive effect that justifies such a broad approach.

The study found that asset partitioning in Russian law is manifested in the following cases: (1) when using the construction of a legal entity, (2) when creating common property and limited proprietary rights, as well as obligatory rights having properties characteristic of proprietary rights, (3) when establishing property immunities, (4) as an independent technique of legal technique.

The last of the above-mentioned cases of asset partitioning is of the greatest interest for the purposes of the study, since it is connected with the greatest number of legal problems of a theoretical and practical nature. The peculiarity of the legal status of such property, as a rule, consists in the fact that the legal system endows it with the characteristics of a legal entity without formally recognizing its legal personality. The existence of such separate property is not an exclusive peculiarity of Russian law, but also has many examples in foreign legal systems (various fiduciary constructions, co-ownership, hereditary property, constructions of an individual entrepreneur with limited liability, etc.).

In the course of the research it was found out that in the majority of cases, when the asset partitioning acts as an independent phenomenon, there are no theoretical obstacles to the granting of legal personality to such separate property masses, since the legal system has already provided them with such characteristics, which are characteristic and sufficient for the subject of law (has provided them with the characteristics of defensive asset partition and affirmative asset partition to a significant degree; has seen an independent interest to be protected; has established the order of creation and revocation of the asset partition; has established the order of creation and revocation of the asset partition). In such cases, the formation of an independent patrimony (property complex of rights and obligations attached to the isolated property) takes place. Recognition of formal legal personality in such conditions is not only possible, but also very desirable, as it allows to subordinate such relations to the general logic of regulation and to better fit them into the generally accepted idea of the structure of legal relations, which allows to eliminate many practical and theoretical problems.

In addition, using the example of the creation of legal entities, which own property not by the right of ownership, but by the right of operational or economic management, it was proved that the simultaneous legal division of the same property by the creation of a legal entity and a limited right of ownership does not make sense. The general conclusion was drawn that the use of several instruments of property division is justified only if it is necessary to separate a part of the property within another separate property.

The theory of separate property has also been used to identify a fundamental difference between the classical English trust and its counterparts in mixed and continental jurisdictions, which lies in the nature of the separate property. This difference explains why the classical trust has no legal personality and does not form a separate estate, while the nature of the separate property in trusts of mixed jurisdictions indicates the legal personality of such entities, despite the fact that they are not formally recognized as such.

The study also noted the imperfection of the tools of economic analysis of law at the current stage of their development, because when making logical and reasonable inferences one can come to opposite conclusions. This problem is noted in connection with the problem of limited liability of involuntary creditors, in this regard the need for independent research in this direction is emphasized.

In the second part of the research, which was devoted to the analysis of individual cases of property division, as a rule, where there is no formation of the subject of the right, the following main conclusions were drawn:

1. Trust management, leads to asset partitioning, a characteristic subject of law and the formation of a separate patrimony. The lack of legal personality in this case is a defect of legal technique, which probably arose due to historical background and attempts to perceive the trust as a non-juridical entity. The lack of legal personality leads to uncertainty as to the ownership of rights and obligations

arising from the trust management of property, especially in situations where the trust management of a unit trust is carried out, since such separate property is most actively involved in the turnover.

2. The main problem of asset partitioning in business partnerships under Russian law is the absence of weak defensive asset partitioning in the presence of affirmative asset partitioning, as this unreasonably puts the personal creditors of the partnership in a less protected position than the creditors of the partnership. The absence of legal personality of a simple partnership in Russian law is quite justified, as such property is not isolated for the purposes of liability to creditors, which distinguishes the Russian legal order for the better in comparison with foreign legal systems, where the gap between the degree of isolation and formal legal personality has either been eliminated relatively recently, or still persists.

3. Investment partnership has such a nature of asset partitioning, which requires not only the recognition of legal personality of the investment partnership itself, but also the separate legal personality of each of the separate property masses formed in the case of creation of an investment partnership with separate property. The lack of legal personality in this case is a clear defect of legal technique, which arose due to the ill-conceived legislative decision and the use of clearly untenable arguments in its adoption.

4. A non-legally subject peasant farm enterprise at the level of law has a greater degree of property isolation than its legally subject counterpart, however, such differences are actually leveled at the level of judicial practice. The presence of rules on bankruptcy of the isolated property mass of a non-subjective farm also indicates the desirability of giving it legal personality and preserving only one structure of the farm as a legal entity.

5. The creation of the construction of an individual entrepreneur with limited liability, if such a decision is taken in the Russian legal order, may require the recognition of an independent legal personality of an individual entrepreneur. The emergence of a new subject will be required if the limitation of liability is constructed in the same way as it is now in France – through the isolation of property. The absence of independent legal personality of an individual entrepreneur in France is also regarded as a defect of legal technique, since in fact he has his own patrimony and possesses the signs of legal personality.

6. Joint marital property in Russian law, although it has a specific legal regime, does not possess the features of affirmative asset partitioning and defensive asset partitioning, which could lead to its independent legal personality. In foreign legal orders, matrimonial property sometimes obtains such properties that are characteristic of an independent subject. However, more widespread and fairer, from the point of view of risk distribution, seem to be such constructions, in which the isolation has a purely technical (accounting) character, which affects only the internal relations of the spouses.

7. Despite ambiguous wording at the legislative level, the Russian legal system assumes that the liability of heirs is limited to the value of the inherited property and not to the inherited property itself, i.e. the limitation of liability is carried out without isolation of the property. It seems that such an approach is less attractive than the liability of the inherited property itself, since it implies a suboptimal distribution of the risks of loss of the inherited property, which unduly puts the creditors of the heir in a less protected position than the creditors of the testator. At the same time, in case of bankruptcy of the inherited property, the liability model changes and creditors are satisfied precisely at the expense of the inherited property. In this regard, it is proposed to completely switch to the model of liability by separate inheritance, for the implementation of which it is advisable to recognize the legal personality of the inherited mass.

8. Analysis of other cases of asset partitioning shows that not all cases in which the law literally or in the sense of the law speaks about asset partitioning lead to its real legal asset partitioning. In some cases, property isolation has a purely technical (accounting) character and is necessary to clarify/determine the internal relations between the parties to the obligation.

Thus, we believe that the set goals and objectives of the study have been achieved. This study can become a theoretical basis for further development of the theory of asset partitioning. The use of methods, means and approaches proposed in this paper should have a positive impact on the process of further study of issues related to asset partitioning, both those private issues that were explicitly considered in this paper, and those that were not considered in it or were only outlined. The implementation of specific approaches proposed in this paper at the level of positive law and law enforcement should also increase the consistency, balance and predictability of regulation of the relevant relationships.

Some published results of the study[472], concerning legal asset partitioning in Roman law, attracted the attention of researchers, who borrowed these developments in their article[473]. Despite the incorrectness of such borrowing without indicating the source of information, we believe that this may be evidence of the value of the results of the study.

[472] Ibragimov K. Yu. Asset Partitioning in Roman law.
[473] Sigacheva E.L., Borisova O.P. Inheritance and heirs in Roman law: influence on modernity. Law and Management. XXI century. 2024; Vol. 20 No. 1. P. 136-146.

References

Sources in Russian

Regulatory and legal acts[474]:

1. Constitution of the Russian Federation of December 12, 1993.
2. Civil Code of the Russian Federation (Part One) of 30.11.1994 No. 51FZ.
3. Civil Code of the Russian Federation (Part Two) of January 26, 1996, No. 14FZ.
4. Civil Procedure Code of the Russian Federation of 14.11.2002 No. 138-FZ.
5. Family Code of the Russian Federation of 29.12.1995 No. 223-FZ.
6. Federal Law No. 138-FZ "On Lotteries" dated 11.11.2003.
7. Fundamentals of Legislation of the Russian Federation on Notariate (approved by the Supreme Soviet of the Russian Federation on 11.02.1993 No. 4462).
8. Federal Law No. 417-FZ dated 04.08.2023 "On Conducting an Experiment to Establish Special Regulation for the Purpose of Creating the Necessary Conditions for Partnership Financing Activities in Certain Constituent Entities of the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation".
9. Federal Law No. 68-FZ of 13.05.2008 "On the centers of historical heritage of the presidents of the Russian Federation who have ceased to exercise their powers".
10. Federal Law of 23.12.2003 No. 177-FZ "On Insurance of Deposits in Banks of the Russian Federation".
11. Federal Law of 26.09.1997 No. 125-FZ "On Freedom of Conscience and Religious Associations".
12. Federal Law of 29.11.2001 No. 156-FZ (ed. of 19.12.2023) "On Investment Funds".
13. Federal Law No. 335-FZ dated 28.11.2011 (ed. 02.07.2021) "On Investment Partnership".
14. Federal Law of 11.06.2003 No. 74-FZ (ed. 06.12.2021) "On Peasant (farming) economy".
15. Federal Law No. 161-FZ dated 14.11.2002 (ed. 30.12.2021) "On State and Municipal Unitary Enterprises".
16. Federal Law No. 485-FZ dated 27.12.2019 "On Amendments to the Federal Law 'On State and Municipal Unitary Enterprises' and the Federal Law 'On Protection of Competition'".
17. Federal Law No. 417-FZ dated 04.08.2023 "On Conducting an Experiment to Establish Special Regulation for the Purpose of Creating the Necessary Conditions for Partnership Financing Activities in Certain Constituent Entities of the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation".
18. Federal Law of 03.12.2011 No. 380-FZ (ed. of 23.07.2013) "On Economic Partnerships".

[474] Normative-legal acts are given in accordance with SPS "ConsultantPlus". [Electronic resource]. - Mode of access: SPS "ConsultantPlus".

19. Federal Law of 26.10.2002 No. 127-FZ (ed. of 25.12.2023, amended on 19.03.2024) "On Insolvency (Bankruptcy)".
20. Federal Law of 02.10.2007 No. 229-FZ (ed. of 06.04.2024) "On Enforcement Proceedings".
21. Resolution of the Government of the Russian Federation of 01.12.2018 No. 1456 "On Approval of the Rules for the Submission by Foreign Legal Entities, Foreign Organizations that are Not Legal Entities and Organizations Under Their Control to the Federal Executive Body Authorized to Perform Functions to Control Foreign Investments in the Russian Federation of Information on Their Beneficiaries, Beneficial Owners and Controlling Persons".
22. FCSM Resolution No. 37/ps dated 11.09.2002 "On Approval of the Regulations on the Procedure for Transfer by a Management Company of its Rights and Obligations under a Unit Investment Fund Trust Management Agreement to Another Management Company".
23. British Virgin Islands Business Companies Act, 2004.
24. OK 028-2012. All-Russian Classifier of Organizational and Legal Forms (approved by Order of Rosstandart of 16.10.2012 No. 505-st).

Judicial practice[475]:

25. Resolution of the Constitutional Court of the Russian Federation of 14.05.2012 № 11-P "On the case of verification of the constitutionality of the provision of the second paragraph of part two of the first part of Article 446 of the Code of Civil Procedure of the Russian Federation in connection with the complaints of citizens F.H. Gumerova and Y.A. Shikunov".
26. Definition of the Constitutional Court of the Russian Federation from 15.05.2001 № 88-O.
27. Definition of the Constitutional Court of the Russian Federation of 18.07.2017 No. 1696-O.
28. Resolution of the Plenum of the Supreme Court of the Russian Federation of 13.10.2015 No. 45 "On Certain Issues Related to the Enactment of Procedures Applied in Cases of Insolvency (Bankruptcy) of Citizens".
29. Decisions of the Plenum of the Supreme Court of the Russian Federation of 25.12.2018 No. 48.
30. Resolution of the Plenum of the Supreme Court of the Russian Federation of 17.11.2015 No. 50.
31. Resolution of the Plenum of the Supreme Court of the Russian Federation of 29.05.2012 No. 9.
32. Definition of the Supreme Court of the Russian Federation of 18.12.2019 No. 308-ES19-23234(1,2) in case No. A53-29984/2018.
33. Definition of the Supreme Court of the Russian Federation of 18.12.2019 No. 308-ES19-23234(1,2) in case No. A53-29984/2018.
34. Resolution of the Arbitration Court of the Volgo-Vyatsky District of 29.06.2023 № F01-2709/2023 in case № A82-15948/2018.

[475] Judicial acts are given according to JSS "ConsultantPlus" [Electronic resource]. - Mode of access: SPS "ConsultantPlus"

35. Definition of the Supreme Court of the Russian Federation of 21.02.2022 № 305-ES21-28867 in case № A40-181026/2020.
36. Resolution of the Arbitration Court of the Central District of 16.02.2023 № F10-5775/2022 in case № A36-4354/2021.
37. Determination of the Supreme Court of the Russian Federation of 27.07.2022 No. 305-ES20-8774(2) in case No. A40-119084/2017.
38. Determination of the First Cassation Court of General Jurisdiction of 23.06.2022 No. 88-15569/2022 in case No. 2-1196/2021.
39. Resolution of the Arbitration Court of the East Siberian District of 10.06.2022 № F02-2537/2022 in case № A69-1793/2021.
40. Resolution of the Arbitration Court of the Far Eastern District of 13.07.2020 No. F03-2569/2020 in case No. A51-4037/2019.
41. Resolution of the Moscow District Arbitration Court of 13.04.2023 No. F05-977/2021 in case No. A40-300549/2019.
42. Resolution of the Arbitration Court of the West Siberian District of 10.08.2023 № F04-2741/2023 in case № A70-19346/2022.
43. Resolution of the Arbitration Court of the Moscow District of 20.01.2021 № F05-22136/2020 in case № A41-13695/2020.
44. Resolution of the Arbitration Court of the West Siberian District of 20.01.2017 No. F04-6447/2016 in case No. A70-2766/2015.
45. Resolution of the Moscow District Arbitration Court of 13.04.2023 No. F05-977/2021 in case No. A40-300549/2019.
46. Resolution of the Arbitration Court of the Moscow District of 29.09.2022 № F05-18102/2022 in case № A40-1322/2022.
47. Resolution of the Arbitration Court of the North Caucasus District of 05.07.2022 № F08-5965/2022 in case № A32-24184/2021.
48. Ruling of the Arbitration Court of the North Caucasus District of 20.09.2019 № F08-7485/2019 in case № A53-29984/2018.
49. Resolution of the Arbitration Court of the Central District of 18.12.2018 № F10-5335/2018 in case № A23-3420/2014.
50. Resolution of the Ninth Arbitration Appeal Court of 01.11.2022 № 09AP-64515/2022 in case № A40-116787/2022.
51. Resolution of the Tenth Arbitration Court of Appeal of 14.09.2023 № 10AP-15915/2023 in case № A41-5516/2023.

52. Resolution of the Tenth Arbitration Court of Appeal of 15.12.2021 No. 10AP-23573/2021 in case No. A41-96344/2019.
53. Ruling of the Seventh Arbitration Court of Appeal of February 26, 2021 No. 07AP-7747/2018(16) in case No. A03-7638/2018.
54. Resolution of the Arbitration Court of the Far Eastern District of 16.09.2022 № F03-4590/2022 in case № A51-16425/2021.
55. Resolution of FAS Far Eastern District of 21.01.2003 № F03-A73/02-1/2903.
56. Resolution of the Arbitration Court of the Volgo-Vyatsky District of 29.06.2023 № F01-2709/2023 in case № A82-15948/2018.
57. Determination of the Ninth Cassation Court of General Jurisdiction of 31.08.2023 No. 88-8062/2023 in case No. 2-3802/2022.
58. Determination of the Eighth Cassation Court of General Jurisdiction of 11.05.2021 No. 88-7380/2021.
59. Resolution of the Moscow District Arbitration Court of 13.04.2023 No. F05-977/2021 in case No. A40-300549/2019.
60. Resolution of the Seventh Arbitration Appeal Court of February 26, 2021, No. 07AP-7747/2018(16) in case No. A03-7638/2018.
61. Resolution of the Arbitration Court of the Far Eastern District of 16.09.2022 № F03-4590/2022 in case № A51-16425/2021.
62. Cassation definition of the Eighth Cassation Court of General Jurisdiction of 21.02.2024 No. 88a-3516/2024 in case No. 2a-1766/2023.
63. Appellate determination of the Supreme Court of the Republic of Altai from 03.04.2019 in case No. 33-209/2019.
64. Decision of the Arbitration Court of Moscow dated 26.10.2023 in case No. A40-139347/23-117-874.
65. The decision of the Arbitration Court of the Tyumen region from 02.02.2023 in case No. A70-19346/2022.
66. Resolution of the Arbitration Court of the Central District of 25.12.2023 № F10-6277/2023 in case № A48-11123/2021.

Specialty literature:

Monographs and educational literature

67. Alekseev, N.N. Fundamentals of Philosophy of Law: Classics of History and Philosophy of Law / N.N. Alekseev - St. Petersburg: S.-Peterb. un-unit. - 1999. - 252 p.

68. Amelin, R.V. Evolution of law under the influence of digital technologies / R.V. Amelina, S.E. Channov. - Moscow: NORMA, 2023. - 280 p.
69. Bankruptcy of economic entities: a textbook for bachelors / J.O. Alimova, N.N. Viktorova, S.S. Galkin et al; ed. by I.V. Ershova, E.E. Enkova. - Moscow: Prospect, 2016. - 336 p.
70. Belov V.A. Belov, V.A. Veshnye civil-law forms: textbook for universities / V.A. Belov. - Moscow: Yurait Publishing House, 2024. - 307 p.
71. Belykh, V.S. Contract law of England: a comparative legal study / V.S. Belykh. - 2nd ed., pererab. and ext., nauch. - Moscow: Prospect, 2022. - 328 p.
72. Benevolenskaya, Z.E. Trust management of property in the sphere of entrepreneurship. / Z.E. Benevolenskaya - M., 2018. - 303 p.
73. Boldyrev, V.A. Legal entities - non-owners in the system of subjects of civil law: a monograph / V.A. Boldyrev; ed. by V.A. Sysoev. - Omsk: Omsk Academy of the Ministry of Internal Affairs of Russia, 2010. - 340 p.
74. Borisov, A.N. Commentary to the Federal Law of November 28, 2011 № 335-FZ "On Investment Partnership" (article-by-article) / A.N. Borisov - Moscow: Delovoy Dvor, 2012. - 120 p.
75. Venediktov, A.V. State socialist property: Monograph / A.V. Venediktov - Moscow; Leningrad: Izd-voor AS USSR. - 840 p.
76. Windscheid, B. Textbook of pandect law. / B. Windscheid - St. Petersburg, 1874. - VOL. I. - 370 p.
77. Gerasimova, L.P. Commercial law: textbook / Gerasimova L.P., Sunyaev Y.V. - Saratov: Corporation "Dipol", IPR Media, 2013. - 164 p.
78. Gureev, V.A. Property immunities in enforcement proceedings: a scientific and practical guide / V.A. Gureev, I.V. Selionov. - Moscow: Delovoy Style, 2019. - 127 p.
79. Justinian's Digests / edited by L.L. Kofanov - vols. 1-8.-M.: Statute, 2004.
80. Dozhdev, D.V. Roman private law. Textbook for universities. / D.V. Dozhdhev; ed. by Corr. Member of the Russian Academy of Sciences, Professor V.S. Nersesyants. - Moscow: Publishing Grappa INFRA M - NORMA, 1996. - 704 p.
81. Elyashevich, V.B. Legal entity, its origin and functions in the Roman private law. / V.B. Elyashevich - St. Petersburg: typo-lit. Shreder, 1910. - 480 p.
82. Efimova, L.G. Contracts of bank deposit and bank account / L.G. Efimova. - Moscow: Limited Liability Company "Prospect", 2018. - 432 p.
83. Zaitsev, O.R. Contract of trust management of unit investment fund / O.R. Zaitsev - M.: Statut, 2007. - 507 p.
84. Zakhvataev, V.N. FGC "Civil Code of France (Napoleon Code) / V.N. Zakhvataev - M.: Infotropic Media, 2012. - 592 p.

85. Ilyushenko, A.A. Contract of trust management of the ward's property / A.A. Ilyushenko; under. Ed. Y.V. Truntsevsky. - Moscow: Jurist, 2007. - 192 p.
86. Ioffe, O.S. Selected works on civil law: from the history of civilistic thought. Civil legal relation. Critique of the theory of "economic law" / O.S. Ioffe. - 4th ed. - Moscow: Statute, 2020. - 782 p.
87. Kelsen, G. The Pure Doctrine of Law. 2nd ed. / G. Kelsen; translated from German. M.V. Antonov and S.V. Lyozov. - SPb.: LLC Publishing House "Aleph-Press", 2015. - 542 p.
88. Kozlova, N.V. The concept and essence of a legal entity. Sketch of history and theory: textbook. / N.V. Kozlova - M.: Statute, 2003. - 318 p.
89. Korkunov, N.M. Lectures on the general theory of law / N.M. Korkunov - M.: ROSSPEN, 2010. - 520 p.
90. Laptev, V.V. Subjects of entrepreneurial law: Study guide / V.V. Laptev. Laptev - M.: Yurist, 2003. -236 p.
91. Malyshev, K.I. Historical sketch of the competitive process. / K.I. Malyshev - St. Petersburg: Tip. comradeship "Public Utility", 1871. - 460 p.
92. Meyer, D.I. Russian civil law: a course of lectures / D.I. Meyer. - 4th ed., revised. and ext. - Moscow: Statut, 2021. - 846 p.
93. Bankruptcy mechanisms and their role in ensuring human welfare: a monograph / A.Z. Bobyleva, D.E. Gorev, Y.A. Zaitseva et al; ed. by S.A. Karelina, I.V. Frolov. Moscow: Justitsinform, 2022. - 312 p.
94. Muromtsev, S. Civil law of Ancient Rome / S. Muromtsev - Moscow, 1883. - 697 p.
95. Inheritance law: article-by-article commentary on Articles 1110-1185, 1224 of the Civil Code of the Russian Federation [Electronic edition. Revision 1.0] / Edited by E.Yu. Petrov. - Moscow: M-Logos, 2018. - 656 p.
96. Fundamentals of inheritance law of Russia, Germany, France / Y.B. Gongalo, K.A. Mikhalev, E.Yu. Petrov et al.; ed. by E.Yu. Petrov. Moscow: Statute, 2015. - 271 p.
97. Petrov, E.Y. Inheritance law of Russia: the state of development prospects (comparative legal study) / E.Y. Petrov. Petrov. - M.: OOO "M-LOGOS", 2017. - 152 p.
98. Posner, R. Economic Analysis of Law (in 2 vols.) / R. Posner; translated from English by A.A. Fofanov; ed. by V.L. Tambovtsev. - SPb.: Economic School, 2004. VOL. 2 - 464 p.
99. Pokrovsky, I.A. History of Roman law / I.A. Pokrovsky [electronic resource]. - Mode of access: https://civil.consultant.ru/elib/books/25/ (date of reference: 19.10.2023).
100. Pokrovsky, I.A. Basic problems of civil law: a monograph / I.A. Pokrovsky. - 8th ed. - Moscow: Statut. 2020. - 351 p.
101. Principles of civil executive law [Text]: problems, concepts and systems / K.A. Malyushin ; scientific ed. V.V. Yarkov. Yarkov. M. Infotropic Media; 2011. - 238 p.

102. Radbruch, G. Philosophy of Law / G. Radbruch - M.: Mezhdunarodnar. relations, 2004. - 240 p.
103. Roman private law: textbook / team of authors; ed. by I.B. Novitsky, I.S. Peretersky. M.: KNORUS, 2014. - 591 p.
104. Roman Private Law: Cases, Claims, Institutes. Translation from Spanish / Garcia Garrido M.J.; Editor-in-Chief: Kofanov L.L. - M.: Statute, 2005. - 812 p.
105. Sanfilippo, C. Course of Roman Private Law: Textbook / C. Sanfilippo; per. with Italian. ed. by D.V. Dozhdev. - Moscow, Izd-vo BEC. 2000. - 464 p.
106. Sarbash, S.V. Execution of contractual obligation / S.V. Sarbash - M.: Statute, 2005. - 636 p.
107. Soviet civil law. Subjects of civil law / Braginsky M.I., Bratus S.N., Dozortsev V.A., Kazmin I.F., and others; Edited by: Bratus S.N. - M.: Yurid. lit., 1984. - 288 p.
108. Suvorov, N.S. On legal entities under Roman law. / N.S. Suvorov M., Statute. Series "Classics of Russian Civilistics". 2000. - 299 p.
109. Sukhanov, E.A. Russian civil law - private law / E.A. Sukhanov; ed. by V.S. Em. Editor V.S. Em. - Moscow: Statute, 2008. - 586 p.
110. Sukhanov, E.A. Comparative corporate law. / E.A. Sukhanov - M.: Statute, 2014. - 456 p.
111. Franchosi, J. Institutional course of Roman law / J. Franchosi; ed. by L.L. Kofanov. Moscow: Statute, 2004. - 428 p.
112. Shershenevich, G.F. General Theory of Law. Issue 1. / G.F. Shershenevich - Izd. Br. Bashmakov, 1910. - 839 p.
113. Shitkina, I.S. Executive bodies of the economic society: a monograph. / I.S. Shitkina - Moscow: Statut, 2022. - 316 p.
114. Shishmareva, T.P. Institute of insolvency in Russia and Germany / T.P. Shishmareva - M.: Statut, 2015. -332 p.
115. Shishmareva, T.P. Federal Law "On insolvency (bankruptcy)" and the practice of its application: textbook for the exam on the Unified Program of training of bankruptcy trustees / T.P. Shishmareva - M.: Statut, 2015. - 416 p.
116. Ennekzerus, L. Course of German Civil Law / L. Ennekzerus, T. Kipp, M. Wolf; translated from the 13th German edition by Prof. K.A. Grave [et al]; edited, with a foreword and introductory remarks by D.M. Genkin and I.B. Novitsky. Volume 1. Introduction and general part. Moscow: Izd-vo foreign literature, 1949. - 432 p.

Articles in scientific journals and collections of articles

117. Agibalova, E.N. Property liability of peasant (private) farms / E.N. Agibalova // Laws of Russia: experience, analysis, practice. - 2023. - № 9. - P. 48-55.

118. Alekseenko, A.P. Characteristic features of the Civil Code of the PRC / A.P. Alekseenko // Actual problems of the Russian law. - 2021. - № 12. - P. 199-211.
119. Anashkin, S.P. Theory of personalized bankruptcy estate / S.P. Anashkin // Vestnik of economic justice of the Russian Federation. - 2022. - № 10. - P. 191-208.
120. Anikina, M.S. Problems arising in the consideration of civil action in a criminal case / M.S. Anikina // Russian Law Journal. - 2021. - № 3. - P. 179-187.
121. Bagaev, V.A. Functional method and comparison of English and Russian proprietary law / V.A. Bagaev // Law. - 2021. - № 1. - P. 71-83.
122. Bevzenko, R.S. Pledge from the will / R.S. Bevzenko // Vestnik of Civil Law. - 2020. - № 4. - P. 220 - 241.
123. Bevzenko, R.S. Justifiability of the priority given to the creditor by in rem security: Sketch of dogma, theory and policy of law / R.S. Bevzenko // Vestnik of Civil Law. - 2017. - VOL. 17. - № 4. - P. 10-44.
124. Belov, V.A. Belov, K.A. Blinkovsky // Corporate Law: topical problems of theory and practice / edited by V.A. Belov. Moscow: Yurait. - 2024. - 552 P.
125. Bogatkov, S.A. Distinction of the right of economic management from the right of operational management / S.A. Bogatkov // SPS ConsultantPlus. - 2023.
126. Bondarenko, V.V. Some features of the legal status of economic partnership and investment partnership / V.V. Bondarenko // Legal Science: History and Modernity. Bondarenko // Legal Science: History and Modernity. - 2012. - № 11. - P. 59-66.
127. Wang Haijun. The Law "General Part of the Civil Law of the PRC" and the development of Chinese civil law / Wang Haijun // Vestnik of St. Petersburg University. Law. - 2018. - № 3. - P. 413-421.
128. Vnukov, N.A. Liability of heirs on the affairs of the testator: topical issues of theory and practice / N.A. Vnukov // Modern Law. - Moscow: Novy Index. - 2009. - № 1. - P. 74-76.
129. Golovina, A.A. Quasi-subjects of law in the modern theory of legal relations: the concept and prospects of development in the XXI century / A.A. Golovina // Bulletin of O.E. Kutafin University (Moscow State Law Academy). - 2023. - № 4. - P. 149-157.
130. Gorbashev, I.V. Critique of the economic theory of legal entities / I.V. Gorbashev // Entrepreneurial Law. - 2021. - № 4. - P. 18-29.
131. Goreva, A.A. Contract of simple partnership and its types: Russian law in comparative legal aspect / A.A. Goreva // Vestnik of Civil Law. - 2020. - № 6. - P. 30-66.
132. Goreva, A.A. Reform of the legislation on civil partnerships in Germany: translation of Section 16 "Partnership" of the German Civil Code / A.A. Goreva, D.A. Zhestovskaya // Vestnik of Economic Justice of the Russian Federation. - 2022. - №. 6. - P. 122-153.

133. Grigoriev, V.I. Involuntary creditors: is there a place for them in Russian legislation and doctrine? / V.I. Grigoriev // Bulletin of Economic Justice of the Russian Federation. - 2022. - № 12. - P. 162-199.

134. Gruzdev, V. V. Civil-law communities: concept and types / V.V. Gruzdev. Gruzdev // Journal of Russian Law. - 2021. - VOL. 25. - № 10. - P. 61-71.

135. Gruzdev, V.V. On the essence of civil legal personality / V.V. Gruzdev. Gruzdev // Actual problems of Russian law. - 2018. - № 2. - P. 113-121.

136. Dozortsev, V.A. Trust management of property (Ch. 53) / V.A. Dozortsev // Civil Code of the Russian Federation. Part Two: text, comments, alphabetical-subject index / ed. by O. M. Kozyr, A. L. Makovsky, S. A. Khokhlov. M., - 1996. - 532 P.

137. Dolinskaya, V.V. To the question of the development of the system of participants of civil turnover / V.V. Dolinskaya. Dolinskaya // Bulletin of South Ural State University. Series: Law. - 2015. - P. 76-83.

138. Domshenko (Chervets), E.I. Personal funds: opportunities and risks of property isolation / E.I. Domshenko (Chervets) // Bulletin of Economic Justice of the Russian Federation. - 2022. - № 3. - P. 115-136.

139. Domshenko (Chervets), E.I. About business preservation and property shielding. Comparison of some tools of asset partitioning / E.I. Domshenko (Chervets) // Juridicheskiy Mir. - 2021. - №9. - P. 27-39.

140. Domshenko (Chervets), E.I. Separation of property without creating a legal entity. Simple partnership and investment partnership / E.I. Domshenko (Chervets) // Vestnik of Civil Law. - 2021. - № 6. - P. 30-58.

141. Doroshenko, L.A. Security fiducia in the French Civil Code / L.A. Doroshenko // Vestnik of Economic Justice of the Russian Federation. - 2020. - № 2. - P. 104-117.

142. Egorov, A.V. K question about the concept of an intermediary in interested party transactions / A.V. Egorov // Vestnik VAS RF. - 2002. - № 5. - P. 120-131.

143. Egorov, A.V. Joint property of spouses: at the crossroads / A.V. Egorov // Civil law of the social state: Collection of articles dedicated to the 90th anniversary of the birth of Professor A.L. Makovsky (1930 - 2020) / Ed. by V.V. Vitryansky, E.A. Sukhanov. Vitryansky, E.A. Sukhanov. Moscow: Statute. - 2020.

144. Zazulina, L.D. Protection of creditors' rights in case of debtor's death under the legislation of Russia and France / L.D. Zazulina // Notary. Zazulina // Notary. - 2020. - № 2. - P. 45-48.

145. Zaitsev, O.R. About the party in the contracts concluded by the trustee / O.R. Zaitsev // Legislation and Economics. - 2005. - № 10. - P. 41-42.

146. Conclusion of the Department of Civil Law of St. Petersburg State University on the draft amendments to the section on proprietary rights of the Civil Code of the Russian Federation / M.A. Aleksandrova, S.A. Gromov, T.S. Krasnova, N.Y. Rasskazova, A.D. Rudokvas, A.O. Rybalov, Y.K. Tolstoy // Bulletin of Economic Justice of the Russian Federation. - 2020. - № 7. - P. 62-111.
147. Zikun, I.I. Genesis of the category "fiduciary property" in the European civil law / I.I. Zikun // Herald of Civil Law. - 2018. - № 6. - P. 192-219.
148. Zikun, I.I. Civil-law title of investors to the property of investment funds SICAV and SICAF / I.I. Zikun // Vestnik of Civil Law. - 2020. - № 6. - P. 255-301.
149. Ibragimov, K.Y. Asset partitioning on the example of liability of heirs / K.Y. Ibragimov // Actual problems of Russian law. - 2024. - T. 19. - № 8. - P. 85-99.
150. Ibragimov, K.Y. Asset partitioning and legal personality / K.Y. Ibragimov // Leningrad Law Journal. - 2024. - № 1 (75). - P. 28-48.
151. Ibragimov, K.Y. Legal asset partitioning in partnerships / K.Y. Ibragimov // Legal Science. - 2024. - № 7. - P. 356-362.
152. Ibragimov, K.Y. The problem of belonging rights and obligations arising in the implementation of trust management / K.Y. Ibragimov // Law and Politics. - 2024. - № 8. - P. 57-67.
153. Ibragimov, K.Y. The problem of legal entities of non-owners in the light of the theory of separate property / K.Y. Ibragimov // Legal Studies. - 2024. - № 7. - P. 29-41.
154. Ibragimov, K.Y. Asset Partitioning in Roman law / K.Y. Ibragimov // Russian Journal of Legal Studies. - 2023. - Vol. 10. - №2. - P. 74-88.
155. Karelina, S.A. Signs of a group of companies in the legislation on insolvency (bankruptcy): problems of legal regulation / S.A. Karelina // Business, Management and Law. - 2022. - № 4(56). - P. 10-18.
156. Kozlova, N. V. Legal status of an individual entrepreneur / N. V. Kozlova, S. Y. Filippova // Nalogoved. - 2019. - № 7. - P. 73-76.
157. Kozlova, N. V. Features of the civil legal status of an individual entrepreneur under the legislation of the Russian Federation / N. V. Kozlova, S. Y. Filippova // Khozyaistvo i pravo. - 2019. - № 9(512). - P. 31-40.
158. Kolesnikova, S.G. On the penetration of the institute of trust property (trust) in the system of Romano-Germanic law / S.G. Kolesnikova // Izvestiya vysokikh uchebnykh uchebnykh obrazovaniya. Jurisprudence. - 2007. - № 5(274). - P. 29-40.
159. Kopylov, A.V. Peculiarities of action defense of legate in the Roman private and modern Russian civil law / A.V. Kopylov // Vestnik Civil Process. - 2016. - № 5. - P. 152-163.

160. Kuznetsov, N.V. Artificial intelligence in entrepreneurial activity: problems of legal regulation / N.V. Kuznetsov // LegalTech in the sphere of entrepreneurial activity: a monograph / R.N. Adelshin, E.I. Andreeva, L.V. Andreeva et al; ed. by I.V. Ershova, O.V. Sushkova. Moscow: Prospect. - 2023. - 200 P.
161. Le Corr-Broli, E. Individuals and French law of enterprises in difficulty / E. Le Corr-Broli // Legal regulation of insolvency in Russia and France: Collection of articles / National Research University Higher School of Economics and University of Nice - Sophia Antipolis. Moscow: Justitsinform. - 2016. - P. 31-43.
162. Mamageishvili, V.Z. On the importance of theories of legal entity in modern corporate law / V.Z. Mamageishvili // Vestnik of Economic Justice of the Russian Federation. - 2021. - № 3. - P. 36-73.
163. Manukyan, D.G. Liability of heirs for the debts of the testator / D.G. Manukyan // Problems of Russian legislation. - 2017. - № 4. - P. 199-203.
164. Mareev, Y.L. Investment partnership: an attempt of resuscitation / Y.L. Mareev // Bulletin of Nizhny Novgorod University named after N.I. Lobachevsky. - 2023. - № 6. - P. 82-92.
165. Myoung, S. Characteristics of the institution of common property in the Republic of Korea / S. Myoung // Jurisprudence. - 2022. – Vol. 66. - № 3. - P. 264-275.
166. Mikhalev, K.A. Personification of the inheritance mass / K.A. Mikhalev, E.Yu. Petrov // Law. - 2023. - № 6. - P. 25-39.
167. Mozhilyan, S.A. Challenging transactions in bankruptcy of a deceased citizen: topical issues of judicial practice / S.A. Mozhilyan // Information and analytical journal "Arbitration disputes". - 2020. - № 4. - P. 107-116.
168. Mokhov, A.A. A new approach to understanding the institution of family / A.A. Mokhov, Y.A. Svirin // Modern Law. - 2024. - № 1. - P. 5-11.
169. Myskin, A.V. Branch of a legal entity as a quasi-subject of civil law / A.V. Myskin // Civil Law. - 2014. - № 1. - P. 6-9.
170. Naletov, K.I. Economic partnerships and investment partnerships - new institutes of civil legislation / K.I. Naletov // Civil and Law. - 2012. - № 9. - P. 68-83.
171. Napolskaya, P.V. Bankruptcy of a group of companies: future is coming / P.V. Napolskaya // Vestnik of Economic Justice of the Russian Federation. - 2023. - № 10. - P. 132-157.
172. Nestoliy, V.G. Vestnyi legat on real estate / V.G. Nestoliy // Notary. - 2020. - № 6. - P. 33-37.
173. Nizamova, E.A. To the question of the rights of the owner and the transferee on the use of residential premises encumbered by testamentary refusal / E.A. Nizamova // Leningrad Law Journal. - 2016. - № 4(46). - P. 137-145.

174. Osmanova, D.O. Legal personality of separate legal entities / D.O. Osmanova // Khozyaistvo i pravo. - 2022. - № 12. - P. 3-26.

175. Ostanina, E.A. Bankruptcy of the inheritance mass: analysis of legislative changes / E.A. Ostanina // Inheritance Law. - 2015. - № 4. - P. 33-38.

176. Panichkin, V.B. Creditors' claims to inheritance and release of inherited property from encumbrances in US law / V.B. Panichkin // Inheritance Law. - 2010. - № 3. - P. 32-34.

177. Permyakov, A.V. On liability for the debts of the testator / A.V. Permyakov // Notary. - 2016. - № 5. - P. 31-34.

178. Pestov, M.M. Prerequisites for the emergence and significance of the concept of the person in the Roman jurisprudence of the classical period / M.M. Pestov // Vestnik of Civil Law. - 2023. - Vol. 23. - № 3. - P. 258-286.

179. Podsosonnaya, V.V. Legal asset partitioning of property / V.V. Podsosonnaya // Objects of civil turnover: a collection of articles. Moscow: Statute. - 2007. - P. 260-275.

180. Polich, S.B. Some procedural problems of application of the legislation on bankruptcy of citizens (individuals) / S.B. Polich // Commentary on the practice of consideration of economic disputes (judicial and arbitration practice) / G.G. Astakhov, O.A. Belyaeva, E.Y. Borzilo et al. / ed. by V. F. Yakovlev. F. Yakovlev. M. - 2019. - Vyp. 25. - 240 P.

181. Pyanikh, E.S. Place of the contract of trust management of property in the system of civil-law obligations / E.S. Pyanikh // Jurist. - 2004. - № 12. - P. 24-29.

182. Rabets, A.M. The place of the family in the legal space: legal characteristics of the family in the Russian Federation and in some foreign countries (normative experience and problems) / A.M. Rabets // Lex russica. - 2022. - Vol. 75. - № 11. - P. 100-111.

183. Rudokvas, A.D. Continental trusts" and conceptualization of "fiduciary obligations" in the civilistic tradition Issues of private law: collection of articles for the 50th anniversary of A.A. Pavlov / A.D. Rudokvas // compilers and responsible editors: A.G. Karapetov, T.A. Sargsyan. - Moscow: Statut. - 2023. - P. 284-306.

184. Rudokvas, A.D. Peculium and the problem of legal person in Roman law / A.D. Rudokvas // Posebna sveska IX Kolokvijum romanista Centralne i Istočne Europe i Azije. Novi Sad, 24-26 October 2002. Zbornik radov Radov Pravnog fakultet u Novi Sad. Godina XXXVIII, br.1, vol. I. Novi Sad. - 2004. - P. 73-78.

185. Rudokvas, A.D. Item 4 of Article 209 of the Civil Code of the Russian Federation: the future of one illusion / A.D. Rudokvas // Proprietary Law: yesterday, today, tomorrow: a collection of articles for the 50th anniversary of A.O. Rybalov / ed. by K.I. Karachkova; scientific ed. by A.D. Rudokvas. Moscow: Statut. - 2023. - 220 P.

186. Rudokvas, A.D. Private servitudes in the civil law of Russia / A.D. Rudokvas // Vestnik VAS RF. - 2009. - № 4 - P. 186-205.

187. Rudokvas, A.D. On the Model Law of the Commonwealth of Independent States "On investment and trust banking activities" and its doctrinal grounds / A.D. Rudokvas, I. Tenberga // Arbitration disputes. - 2023. - № 3. - P. 28-50.

188. Rybalov, A.O. Iura in re: numerus clausus vs numerus apertus / A.O. Ryblov // Vestnik of Economic Justice of the Russian Federation. - 2018. - № 7. - P. 144-162.

189. Semilyutina, N.G. The problem of correlation of civil legislation and special legislation on the market of financial services (on the example of the Federal Law "On Investment Partnership") / N.G. Semilyutina // Journal of Russian Law. - 2012. - № 7 (187). - P. 116-124.

190. Sintsov, G.V. Liability of heirs for the debts of the testator: some issues of legal regulation and law enforcement / G.V. Sintsov, D.E. Feoktistov // Inheritance Law. - 2019. - № 2. - P. 34-37.

191. Sirik, N.V. Fund of personal liability of a tour operator as one of the ways to ensure the fulfillment of obligations / N.V. Sirik // Law and Economics. - 2017. - № 3(349). - P. 55-59.

192. Sitdikova, L.B. Fund of personal liability of the tour operator as a new way to ensure the fulfillment of obligations in the field of tourism / L.B. Sitdikova // Tourism: Law and Economics. - 2016. - № 3. - P. 6-8.

193. Smertin, A.N. Legal analysis of the right of economic management and the right of operational management / A.N. Smertin, A.A. Greshnykh // Scientific and analytical journal "Bulletin of St. Petersburg University of the State Fire Fighting Service of the Ministry of Emergency Situations of Russia". - 2012. - №2. - P. 103-108.

194. Sukhanov, E.A. Comments on Articles 48, 50 of the Civil Code of the Russian Federation / E.A. Sukhanov // Vestnik of Civil Law. - 2022. - № 1. - P. 136-166.

195. Sukhanov, E.A. On the trust management of property as an obligatory-legal way of exercising the right of ownership / E.A. Sukhanov // Vestnik of Economic Justice of the Russian Federation. - 2017. - № 11. - P. 44-56.

196. Sukhanov, E.A. Legal forms of realization of civil legal personality of the state / E.A. Sukhanov // Journal of Russian Law. - 2024. - Vol. 28. - № 1. - P. 5-17.

197. Uzdimaeva, N.I. Subject of law: main approaches to understanding / N.I. Uzdimaeva, A.S. Kozurov // Kontentus. - 2020. - № 4. - P. 135-142.

198. Filatova, U.B. Civil-law community of co-owners: a comparative legal study / U.B. Filatova // Russian Justice. - 2015. - № 2. - P. 18-20.

199. Filipenko, N.V. On the legal personality of citizens' associations on the example of the practice of the Constitutional Court of the Russian Federation / N.V. Filipenko // Law. - 2017. - № 4. - P. 141-150.

200. Filippova, S. Yu. Plurality of persons and civil-law community: similarities and differences / S. Yu. Filippova // Law. - 2022. - № 6. - P. 30-41.
201. Folgerova, Y.N. Civil-law liability of heirs for the debts of the testator / Y.N. Folgerova // Inheritance Law. - 2010. - № 3. - P. 16-19.
202. Ha Shujiu On the normative content of the term "subject of civil law of the third category" in China / Ha Shujiu, Nyu Dantong // Law. - 2022. - № 9. - P. 74-85.
203. Tsepov, G.V. Problem of homonyms, or Is unification of legal regulation of assemblies permissible? / G.V. Tsepov // Law. - 2016. - № 12. - P. 139-148.
204. Channov, S.E. Robot (artificial intelligence system) as a subject (quasi-subject) of law / S.E. Channov // Actual problems of Russian law. - 2022. - № 12. - P. 94-109.
205. Chervets, E.I. Trust as one of the ways of property isolation: use in mandatory relations, analogies with the constructions of domestic law / E.I. Chervets // Vestnik of International Commercial Arbitration. - 2016. - №2 (13). - P. 200-222.
206. Shevchenko, I.M. On the issue of the regime of the property mass of spouses (some reflections on the example of bankruptcy cases) / I.M. Shevchenko // Law. - 2023. - № 4. - P. 118-127.
207. Shishmareva, T.P. Legal regulation of liability of heirs for the testator's obligations in case of insufficiency of the inheritance mass / T.P. Shishmareva // Laws of Russia: experience, analysis, practice. - 2018. - № 10. - P. 41-45.
208. Shishmareva, T.P. Problems of insolvency of isolated property masses / T.P. Shishmareva // Entrepreneurial Law. Appendix "Law and Business". - 2016. - № 3. - P. 50-54.
209. Shishmareva, T.P. Procedure of insolvency of the common property of spouses in Russia and Germany: a comparative analysis / T.P. Shishmareva // Family and Housing Law. - 2021. - № 2. - P. 34-37.
210. Shushlebin, V.V. Legal status of the investment partnership / V.V. Shushlebin. Shushlebin // Economics. Law. Print. Vestnik KSEI. - 2013. - № 3(59). - P. 231-236.
211. Yakimova, E.S. Prospects for the development of legislation on investment partnerships / E.S. Yakimova // Modern Lawyer. - 2014. - № 2(7). - P. 106-112.
212. Yamova, Yu.I. Status of an individual entrepreneur with limited liability in French law / Yu.I. Yamova // Law and Politics. - 2013. - № 8. - P. 980-993.
213. Yarkov, V.V. Property immunities from recovery in entrepreneurial relations / V.V. Yarkov. Yarkov // Arbitration and civil process. - 2003. - № 10. - P. 9-12.

Dissertations and abstracts

214. Gridchin, A.G. Legal regulation of the activities of the unit investment fund as a form of collective investment: thesis. ... kand. jurid. nauk. / Gridchin Alexei Genadievich. - M., 2011. - 226 p.
215. Zabazhanova, O.V. Contract of trust management of the unit investment fund: theory and practice of legal regulation: thesis. ... candidate of juridical sciences. / Zabazhanova Olesya Viktorovna. - M., 2014. - 217 p.
216. Zakharova, E.I. Property isolation of commercial organizations as a sign of a legal entity: autoref. diss. ... cand. jurid. nauk. / Zakharova Ekaterina Igorevna. - Krasnodar., 2013. - 28 p.
217. Lukyanchenko, D.V. Unit investment funds in civil legal relations: thesis. ... kand. jurid. nauk. /Lukyanchenko Dmitry Vladimirovich. - M., 2014. - 170 p.
218. Medvedev, D.A. Problems of realization of civil legal personality of the state enterprise: Cand. Cand. jurid. nauk. / Medvedev Dmitry Anatolievich. - Л., 1990. 215 p.
219. Nozhkin, S.A. Legal nature of the unit investment fund: diss. .... Cand. jurid. sciences. / Nozhkin Sergey Aleksandrovich. - Vladikavkaz, 2012. - 159 p.
220. Oksyuk, T.T. Civil-legal regulation of trust management of unit investment funds: thesis. ... cand. jurid. sciences. / Oksyuk Taras Tarasovich. - M., 2005. - 212 p.
221. Ostashevich, I.O. Civil-legal regulation of the activity of management companies, carrying out trust management of closed unit investment funds: thesis. ... cand. jurid. sciences. / Ostashevich Igor Olegovich. - M., 2013. - 209 p.
222. Ponomareva, E.V. Subjects and quasi-subjects of law: theoretical and legal problems of delimitation: thesis .... Cand. jurid. nauk. / Ponomareva Edena Vladimirovna. - Yekaterinburg, 2019. 208 p.
223. Rumyantsev, F.A. Organizational unity as a feature of a legal entity: abstract of the disc. .... Cand. jurid. nauk. / Rumyantsev Philip Andreevich. - Moscow, 2012. - 28 p.
224. Stroikina, Yu.V. Property isolation as a constructive feature of a commercial organization: diss. .... Cand. jurid. nauk. / Stroikina Yulia Viktorovna. - Orenburg, 2002. - 175 p.

Sources in foreign languages

225. Bailly-Masson, C. L'intérêt de la personnalité morale / C. Bailly-Masson // La revue des sciences de gestion. - 2008. - No. 230. - p. 99.
226. Barrière, F. La fiducie-sûreté en droit français / F. Barrière // McGill Law Journal. - 2013. - Vol. 58. - No. 4. - pp. 869-904. URL: https://doi.org/10.7202/1019048ar.
227. Brinkmann, M. Die Bedeutung der §§ 92, 93 InsO für den Umfang der Insolvenzund Sanierungsmasse / M. Brinkmann // Köln; Berlin; Bonn; München: Heymanns. - 2001. - p. 213.

228. Brinz, A. Lehrbuch der Pandekten. 2,1: Erbrecht URL: https://mdz-nbn-resolving.de/urn:nbn:de:bvb:12-bsb10565236-6

229. Cours de droit civil français: d'après la méthode de Zachariae. Tome 9 / par MM. Aubry et Rau.

230. Courtier, A. L'entreprise individuelle sans risque et le patrimoine d'affectation: le miroir aux alouettes? / A. Courtier // Management & Avenir. - 2014. - Vol. 74. - pp. 145-158. URL: https://doi.org/10.3917/mav.074.0145.

231. Crusto, M.F. Extending the Veil to Solo Entreprenuers: A Limited Liability Sole Proprietorship Act (LLSP) / M.F. Crusto. Crusto // Columbia Business Law Review. - 2001. - Vol. 2. - No. 381. URL: https://ssrn.com/abstract=1546547.

232. Easterbrook, F. H., Fischel, D. R. Limited Liability and the Corporation / F. H. Easterbrook, D.R. Fischel // The University of Chicago Law Review. - 1985. - Vol. 52(1). - P. 89-117. URL: https://doi.org/10.2307/1599572;

233. Eldar, O. The Enduring Distinction Between Business Entities and Security Interests / O. Eldar, A. Verstein // Southern California Law Review. Eldar, A. Verstein // Southern California Law Review. - 2018. - Vol. 92. - No. 2. pp. 213-272. URL: https://ssrn.com/abstract=3239969.

234. Gretton, G. Trusts Without Equity / G. Gretton // International and Comparative Law Quarterly. - 2000. - Vol. 49(3) - pp. 599-620. URL: https://doi:10.1017/S0020589300064381.

235. Chiron, G. La personnalité morale des sociétés depuis le XIXe siècle en France, en Allemagne et en Angleterre / G. Chiron // Droit. Chiron // Droit. Université 2 Panthéon-Assas. - 2008. - p. 558.

236. Halpern, P. An Economic Analysis of Limited Liability in Corporation Law / P. Halpern, M. Trebilcock, S. Turnbull // University of Toronto Law Journal. - 1980. - Vol. 30. - No. 2. pp. 117-150.

237. Hansmann, H. The Essential Role of Organizational Law / H. Hansmann, R.H. Kraakman // The Yale Law Journal. Kraakman // The Yale Law Journal. - 2000. - Vol. 110. - No. 3. - P. 390-440.

238. Hansmann, H. Organizational law as asset partitioning. / H. Hansmann, R.H. Kraakman // European Economic Review. Kraakman // European Economic Review. - 2000. - Vol. 44. - pp. 807-817.

239. Hansmann, H. Legal Entities, Asset Partitioning, and the Evolution of Organizations. / H. Hansmann, R.H. Kraakman, R. Squire // Newly Revised Draft for NBER Conference. Kraakman, R. Squire // Newly Revised Draft for NBER Conference. - 2002.
URL: https://pcg.law.harvard.edu/wp-content/uploads/papers/Hansmann_Paper.pdf.

240. Hansmann, H. Incomplete Organizations: Legal Entities and Asset Partitioning in Roman Commerce / H. Hansmann, R.H. Kraakman, R. Squir // European Corporate Governance Institute (ECGI - Law Working Paper. Kraakman, R. Squir // European Corporate Governance Institute

(ECGI) - Law Working Paper. - 2014. - No. 271/2014. - 30 p. URL: http://dx.doi.org/10.2139/ssrn.2506334.

241. Hansmann, H. Law and the Rise of the Firm / H. Hansmann, R.H. Kraakman, R. Squir // Harvard Law Review. Kraakman, R. Squir // Harvard Law Review. - 2006. - Vol. 119. - No. 5. pp. 1333-1403 URL: http://dx.doi.org/10.2139/ssrn.873507.
242. Hansmann, H. The New Business Entities in Evolutionary Perspective / H. Hansmann, R.H. Kraakman, R. Squir // European Business Organization Law Review. Kraakman, R. Squir // European Business Organization Law Review. - 2007. - Vol. 8. URL: https://ssrn.com/abstract=985527.
243. Hansmann, H. Toward Unlimited Shareholder Liability for Corporate Torts / H. Hansmann, R.H. Kraakman // The Yale Law Journal. Kraakman // The Yale Law Journal. - 1991. - Vol. 100. - pp. 1879-1934.
244. Hughes, H. Blockchain and the Future of Secured Transactions Law / H. Hughes // Stanford Journal of Blockchain Law & Policy. American University. - 2020. - p. 40. URL: https://ssrn.com/abstract=3345717.
245. Kasirer, N. Translating Part of France's Legal Heritage: Aubry and Rau on the Patrimoine / N. Kasirer // Revue générale de droit. Kasirer // Revue générale de droit. - 2008. - Vol. 38(2). - pp. 453-493 . URL: https://doi.org/10.7202/1027043ar.
246. Kuntz, T. Asset Partitioning, Limited Liability and Veil Piercing - Review Essay on Bainbridge/Henderson, Limited Liability / T. Kuntz // European Business Organization Law Review, Forthcoming. Kuntz // European Business Organization Law Review, Forthcoming. - 2017. URL: https://ssrn.com/abstract=2949685.
247. Kurki, V.AJ. A Theory of Legal Personhood / V.AJ. Kurki // Oxford Legal Philosophy. - Oxford. - 2019. URL: https://doi.org/10.1093/oso/9780198844037.001.0001.
248. Lepaulle, P. Traité théorique et pratique des trusts
249. Lepaulle, P. La Notion de 'trust' et ses applications dans les divers systemses juridiques", in Unidroit, Actes du congras international de droit prive (1951), vol. 2, 206.
250. Lupoi, M. Trusts in mixed jurisdictions / M. Lupoi // Pravovedenie. - 2023. - Vol. 67. - No. 1. - pp. 21-55. URL: https://doi.org/10.21638/spbu25.2023.102
251. Ollikainen, A. Asset partitioning in the trust [PhD thesis] // University of Oxford. - 2018.
252. Pargendler, M. The New Corporate Law of Corporate Groups / M. Pargendler // European Corporate Governance Institute - Law Working Paper. Pargendler // European Corporate Governance Institute - Law Working Paper. - 2023. - No. 702/2023. - p. 67. URL: http://dx.doi.org/10.2139/ssrn.4412997.
253. Pettit, Ph.H. Equity and the Law of Trusts / Ph.H. Pettit // 12th ed. Oxford. - 2012.

254. Picker, R.C. Pulling a Rabbi Out of His Hat: The Bankruptcy Magic of Dick Posner / R.C. Picker // University of Chicago Law Review. University of Chicago Law & Economics. - 2007. - Vol. 74. URL: https://ssrn.com/abstract=965574.

255. Popovici, A. Quebec's Partnership: une société distincte. / A. Popovici // Journal of Civil Law Studies. - 2013. - Vol. 6 - pp. 339-372.

256. Popovici, A. Lepaulle Appropriated / A. Popovici, L.D. Smith // Trusts and Patrimonies. Edinburgh University Press. - 2015, - pp. 13-41. URL: https://doi.org/10.1515/9780748697755-006

257. Posner, R.A. The Rights of Creditors of Affiliated Corporations / R.A. Posner // University of Chicago Law Review. - 1975. - Vol. 43.

258. Puder, M.G. How Trust-Like Is Russia's Fiduciary Management? Answers from Louisiana / M.G. Puder, A.D. Rudokvas // Louisiana Law Review. Loyola University New Orleans College of Law Research Paper. - 2019. - No. 2019-16. URL: https://ssrn.com/abstract=3498507.

259. Squire, R. The Case for Symmetry in Creditors' Rights / R. Squire. Squire // Yale Law Journal. - 2009. - Vol. 118. - pp. 808-867. URL: https://ir.lawnet.fordham.edu/faculty_scholarship/65.

260. Morgan, R. Organizational Law as Commitment Device / R. Morgan // Vanderbilt Law Review. - 2017. - P. 1303-1352. URL: https://ssrn.com/abstract=2849541.

261. Schwab, D. Familienrecht / D. Schwab // Grundrisse des Rechts. Verlag C.H.BECK Recht - Wirtschaft - Steuern. - 2019. URL: https://doi.org/10.17104/9783406746451.

262. Smith, L.D. Trust and Patrimony / L.D. Smith // Revue générale de droit. - 2008. - Vol. 38(2). - pp. 397-403. URL: https://id.erudit.org/iderudit/1027041ar.

263. Sukhninder, P. Equity & Trusts / P. Sukhinder // 4th Edition. Pearson Education Limited. - 2020.

264. Caron, Y. The Trust in Québec / Y. Caron // McGill Law Journal. - 1980. - Vol. 25. - No. 4. P. 421-444.

265. Foldi, A. Remarks of the legal structure of enterprises in Roman law / A. Foldi. Foldi // Revue internationale des. droits de l'antiquite. - 1996. - №. 46.

266. Reid, K. Patrimony not Equity: The Trust in Scotland / K. Reid. Reid // Valsan, Remus. Trusts and Patrimonies. Edinburgh University Press. - 2015. URL: https://doi.org/10.3366/edinburgh/9780748697748.003.0006.

267. Verhagen, H. Trusts in the Civil Law: Making Use of the Experience of "Mixed" Jurisdictions / H. Verhagen // European Review of Private Law. - 2000. - Vol. 8. - No. 3. - pp. 477-498. URL: https://doi.org/10.54648/273253.