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ENTROPY OF PROPERTY IN WESTERN AND RUSSIAN LEGAL DOCTRINE AND PRACTICE

Mikhail N. Semyakin[1], Anna V. Gubareva[1], Stanislav P. Stepkin[2]
[1] *Ural State Law University, Yekaterinburg, Russia*
[2] *Russian State Social University, Moscow, Russia*

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The subject of the study is a phenomenon of an "entropy" of property, its interpretation, socio-economic conditionality, genesis of its development in European and Russian doctrine, reflection of a construct of "separated" property in the legislation. "Entropy" of property is a situation when both entities are owners, but in different areas of relations: the first person is the owner in relation to third parties, and the second-in relation to the first
The goal of this scientific research is to find out reasons of the existence of phenomenon of "entropy of property" in European and Russian legal doctrines, to identify common and specific features of this phenomenon.
Methodology. The authors use the general scientific method, including dialectics, comparative analysis, formal logic, historical method. A number of specific methods pertaining to the legal science were used as well: the formal dogmatic method was applied for analysis of ownership within the institute of property rights; the logical legal method was applied to study general tendencies of development of the institute of property rights; the legal comparative method was used to study European and Russian legislation on ownership and other property rights.

The main scientific results. The Western legal doctrine of "entropy of property" has quite a long history of development, unlike the Russian. Specific features of the Russian doctrine are result of its historical, political and cultural characteristics. The phenomenon of "entropy of property" has both positive and negative consequences, which requires pluralistic approach to its assessment. "Reunification" of ownership rights on the land plot and other objects located on it, is a result of socio-economic and legal factors and deserves positive assessment. Property rights as elements of titular possession are not based only on law, but may be created by contract as well.
Conclusions. The European and Russian legal doctrines on the "entropy of property" have both common and specific features. The common features are: existence of "absolute" ownership, limited property rights, trends of reunification of "separated" property etc. The specific features are: absence of "trust" in the Russian legal system; excessive fragmentation of right of ownership as a large "bundle" of rights; absence of situations when one person may simultaneously hold statuses of owner and holder of a limited property right in the Russian legislation.

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1. Introduction.

In the Western literature, the problem of the "fragmentation" of property, which is usually referred to as the "entropy of property", is actively discussed, and it is noted that this phenomenon will increase on a global scale [1; 2; 3]. "In the case of property," says F. Parazi, - entropy causes a unidirectional bias that leads to an increase in property fragmentation. The laws of entropy also state that only in the purely abstract and exceptional case (both internally and externally) of reversible transformations will the total net change towards entropy be zero. As applied to ... property, this also means that only in a world of zero operating expenses will there be no such tendency to split up" [4, p. 188].

It is also noted that entropy creates unidirectional transactional obstacles, which explain some obvious anomalies in legal protection. The formula of the theory of property efficiency is expressed in the following statement: "... due to the great difficulty of restoring property if it is allowed to split up, law and order apply legal mechanisms to combat entropy. Moreover, they provide less real protection (according to Calabresi) to atypical real constructions (arrangements)" [4, p. 189].

In connection with the above, it seems necessary to pay attention to the following.

First, to talk about cases where the total value of the " net "change in the direction of the entropy of ownership will be zero, and that only with zero operating costs there will not be such a tendency to "split", can only be purely theoretical with a very high degree of abstraction, since in reality there are no transactions with zero transaction costs (expenses), because it simply becomes meaningless.

Secondly, the entropy of property, as a rule, is due to economic laws, the needs of civil turnover in order to use possible different ways (forms) of the appropriate use of the use value (utility) of the corresponding object of property, and, therefore, this phenomenon, as such, does not deserve an exclusively negative assessment, the need for a total fight against it, as is often noted in Western literature. Another thing is when the rights and legitimate interests (private, public) of third parties are violated as a result of the "fragmentation" of property, then in such situations, of course, the relevant transaction can be declared invalid by the court at the request of the interested person and the former situation, that is, that existed before the offense, is restored.

Third, with regard to the trend of the so – called "reunification of property" – the reverse concentration of all property rights in one person (the owner) - this trend does not always turn into a real necessity. Thus, several related persons may own, for example, an apartment in a residential building on the right of common shared ownership, and such a legal state may continue indefinitely without the need to change it; the law does not limit this to any time frame (limits).

2. The problem of "fragmentation" (entropy) of property.

In the Russian literature, the problem of "fragmentation" (entropy) of property is also quite relevant in connection with the modern reform of civil legislation and has received a certain reflection in the scientific discourse. The specified problem, designated as "split" ("split») In the late 1940s of the Soviet period, Academician A.V. Venediktov paid considerable attention to property, and interpreted it based on the model of state property management that existed at that time. In particular, he noted: "In the case of divided property, the division of power and interest between several individuals and collectives, or between a collective and an individual, does not occur "horizontally", as is the case with common shared or joint ownership, but" vertically", i.e., when each of the property holders is recognized not as a part (definite or indefinite) of the same property right, but as different in nature and scope of powers " [5, p. 65].

Much earlier, in the late 20s of this period, in relation to the relationship between the state and the state enterprise, the author wrote: "The division of property between the supreme and subordinate owners marked the recognition of a special property right for each of them, which assigns to its bearer a certain participation in the economic benefits of the object of divided property" [6, p. 123]. In the case of "dual" ownership, both subjects are owners, but in

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different areas of relations: the first person is the owner in relation to third parties, and the second- in relation to the first [6, p. 122].

Many years later, in the conditions of the established market system of management in Russia, the idea of "divided" property as a complex-structural phenomenon in one form or another was recognized in the statements of a number of authors. Thus, Yu. K. Tolstoy, speaking about the legal regime of the property of a state corporation, concluded that in this case the model of "divided" property is used [7, p. 87].

V. K. Andreev, describing the relations developing in the joint-stock company, noted: "In essence, we can talk about split ownership in joint-stock companies, in which their participants do not always have a unidirectional interest, having different shares of property, shares" [8].

The construction of "split" property in the interpretation of M. I. Kulagin in relation to the capital of a legal entity looks like this: a legal entity has turned from a means of concentrating the capital of individual individuals into a means of minimizing risks by "dividing" the "single property fund" into the capital of several legal entities. This is due to the fact that it is economically feasible and necessary to use as the functioning of capital not all the capital belonging to a particular owner, but only a part of it [9, p. 224].

From the point of view of the complex structural structure of property, E. E. Bogdanova comes to the conclusion that in the relations that develop during the transportation of cargo (when it is forwarded), the legislator allows the situation of the existence of two property rights to the thing: the property rights of the alienator of the thing and the property rights of the acquirer. Moreover, the moment of occurrence of the "split" ownership right will be the moment of delivery of the goods to the carrier. In this situation, the right of the alienator will be "supreme", and the right of the acquirer will be "subordinate, dependent" [10, p. 96].

Similarly, from the position of "divided" ownership, E. V. Bogdanov analyzes the legal regime of funds held in bank accounts opened to legal entities, citizens, as well as loan transactions between entities made through the bank, and justifies the position that in these cases, both the bank's client (the account holder), who is the "supreme" owner, and the bank "subordinate" act as owners of funds in the bank account [11, p. 81-83].

At the same time, opposite positions are also expressed in the literature on the problem under discussion. So, from the point of view of L. A. Novoselova, E. A. Sukhanov, after crediting funds to the current account, the client loses ownership of them; the client's right is transformed from a real one into a binding one and "is part of his property as a right of claim of a property nature, based on the bank's obligation arising from the contract" [12, p. 37]; "in a bank account agreement, as in other banking transactions, the object is usually the rights of claim, ... with respect to which no real rights can arise" [13, p. 21-22].

3. The idea of "split" property.

In connection with the above-mentioned discourse, it seems necessary to pay attention to the following.

First, the authors, who reject the idea of "split" ownership in relation to the funds held in the bank's client account, and point out that after the funds are credited to the bank account, the client loses ownership of them – the client's right is "transformed" from a real one into a binding one and is included in the client's property as a right of claim to the bank arising from the contract, do not take into account some important circumstances.

first of all, it does not follow from the content of the relevant agreement between the client and the bank (this is not indicated in the agreement) that the client loses ownership of the funds credited to his bank account as a result of this transaction, and that, accordingly, the client's right is thus transformed from "real" to "binding". Thus, in accordance with the provision of paragraph 1 of Article 845 of the Civil Code of the Russian Federation, under the bank account agreement, the bank undertakes to accept and credit funds received to the account opened to the client (account holder), to fulfill the client's orders to transfer and issue the corresponding amounts from the account and conduct other operations on the account. Moreover, paragraph 4 of article 845 of the Code

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contains a general direct indication that the rights to the funds held in the account are considered to belong to the client within the limits of the balance amounts, and paragraphs 2 and 3 of this article provide for a guarantee of the client's right to freely dispose of the specified funds, as well as that, that the bank does not have the right to determine and control the use of the client's funds and to establish other restrictions on the client's right to dispose of the funds at its own discretion that are not provided for by law or the bank account agreement. Moreover, here, the object of the client's administrative powers is, as it seems, not the mandatory property right of the client's claim to the bank, but money as an object of real right-property rights. Otherwise, it would be difficult to imagine the construction of a number of bank agreements, in particular, a loan agreement (paragraph 1 of Article 807 of the Civil Code of the Russian Federation) with settlements through the bank, when the lender, not being the owner of the funds in his bank account, transfers or undertakes to transfer them to another party – the borrower in the property on the terms of return.

Secondly, in the Russian civil law and order, there is traditionally a monistic view of the phenomenon of property as an "elementary" legal model in the field of property law, which is of an "absolute" nature, which is usually opposed to the binding rights of the claim, referred to as "relative", arising from the corresponding obligations. This view is quite widely extrapolated, including the legal regime of the objects of binding legal relations arising from the bank account agreement, as well as from other banking transactions.

Meanwhile, many phenomena of legal reality are complex and structural in nature, which makes it necessary to use an integrated (pluralistic) approach to identify their essence. This applies to a number of legal results arising from contracts(legal relations), which include various elements built on the model of both the "absolute" and "relative" type. In particular, this applies to the characterization of a set of rights arising from a bank account agreement and some other banking transactions, which includes both elements of a legally binding nature (rights of claim) and other types of rights – regarding the property of the relevant entities in relation to money, which in a certain sense can be considered as the phenomenon of "split" property.

Third, during the Soviet period, the doctrine of "split" property was viewed with skepticism for reasons of a different nature. Thus, in the work entitled "Soviet and foreign civil law" it was noted: "The tendency to "split" property rights, which makes itself felt in the countries of continental Western Europe and Japan, is regarded by bourgeois researchers as a triumph of the concept of split property of common law over the continental concept of property rights… Split property construction, allowing for the existence of several different titles of ownership of the same property, it turned out to be very convenient in modern conditions for the design and theoretical justification of the growing restrictions on property rights, as well as for the process of separating the function of the productive use of capital from the ownership of capital, which is characteristic of a developed capitalist economy" [14, p. 203].

Such a characterization of the construction of "split" property as a whole seems reasonable, if, of course, we abstract from some of its ideological connotations.

Fourth, opponents of the use of the construction of "divided" property as an argument also refer to the fact that such a construction is not known to the Russian legal order; it is implicitly connected with the Anglo-Saxon legal system and cannot be organically integrated into a qualitatively different system – the system of Russian law related to the Romano-German legal family. Such an unsuccessful attempt to implement the construction of "divided" property in the domestic legal order was made in the early 90s of the last century, when the famous Decree of the President of the Russian Federation of December 24, 1993 "On Trust property (Trust)" was issued, which began with the words: "To introduce the institution of trust property into the civil legislation of the Russian Federation..." . However, in the form that the model of" trust property " was presented in the above-mentioned Decree of the President of the Russian Federation, it really looked like an alien element, contradicting the fundamental concepts of the

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theory of "real law", civilistic mental concepts that have developed in science and practice throughout the history of civil law in Russia, and therefore was quite justifiably rejected in the scientific community and in practice.

To date, the construction of "divided" ("split") property is not legally used anywhere in Russian legislation; the traditional view here can be briefly expressed by the formula: "In relation to the same object (thing), there cannot be two or more independent (separate) owners, each of whom would have independent administrative powers of the owner."

However, as evidenced by the legal reality, the legislator in some cases establishes such models of the legal regime of the same property, in respect of which several entities (persons) are given relatively independent powers, including administrative ones. Thus, in respect of property under the economic management of a state or municipal unitary enterprise, the rights of the owner are enshrined in Article 295 of the Civil Code of the Russian Federation, and the powers of the person who has this property under the right of economic management, for the possession, use and disposal of this property, are regulated in Article 294 of the said Code.

A rather specific construction of the legal regime is fixed in the legislation in relation to the property of private, autonomous and budgetary institutions – their founder owns the ownership right to all the property in general of such an institution; however, as for the income received from the statutory activities, as well as from the property acquired at the expense of these incomes, all this goes to the independent disposal of each of these institutions (Article 298 of the Civil Code of the Russian Federation). This power – "independent disposal" - is, in essence, nothing more than an element of the right of ownership, although the legislator does not directly call the institution "owner" in relation to the above-mentioned income and property acquired at the expense of it.

In pledge legal relations arising on the basis of the relevant contract, various administrative powers regarding the subject of pledge are distributed in accordance with the requirements of the law, as well as by agreement of the parties. Thus, the pledgor, if the subject of the pledge remains with him, has the right, as a general rule, to use the subject of the pledge, including to extract fruits and income from it, to transfer, and without the consent of the pledgee, (administrative action) the pledged property to other persons for temporary possession and use. In addition, it should be borne in mind that the real right (property right) as a whole in relation to the subject of the pledge is reserved for the pledgor.

In turn, the pledgee, when the pledged property is in his possession, has the right to use and dispose of the subject of the pledge in accordance with the rules of Article 346 of the Civil Code of the Russian Federation, to foreclose on the pledged property, to recover it from someone else's illegal possession, including from the possession of the pledger, etc.

Thus, in the above situations, the legal norms regulate the " division "of administrative powers, which are of a separate, relatively independent nature, between the relevant entities in relation to the same object of legal relations, recognizing, in fact, the construction of" divided " property in Russian legislation.

In the Russian scientific community, the phenomenon of "divided" ("split") property is usually identified with the problem of property rights, which, however, does not change the essence of the case. In this regard, for an adequate understanding of the problem of property entropy, it is important to have at least a brief idea of the genesis of the concept of property: from the "functional" to the "spatial" model and then to the "absolute" property.

4**. The genesis of the concept of property.**

In the process of economic and social development of societies, three types of ideas about property and its "entropy" were formed – "functional" property, "spatial" model of property, and "absolute" form of property.

Historically, the idea of "functional" property as the ordinary right of people to use land, depending on their functional ability to meet certain needs – for cattle breeding, hunting, fishing, etc. - arose at the early stages of the development of

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societies.

Thus, here the concept of "property" was derived from the limited, "functional" use of a land plot by several persons, which gave rise to an understanding, in modern terms, of certain "limited property" rights associated with a particular type of land use. In relation to the same land plot, there could be several limited property rights of different persons (cattle breeders, hunters, etc.). Such a "functional ""fragmentation" of property (entropy of property), when production, as such, was not yet available, was appropriate, since it helped to increase the efficiency of using the same land plot to meet the different needs of several people.

However, in the future, in connection with the transition to the agrarian method of farming, "functional" property, due to various circumstances, began to lose its former effectiveness, which led to the emergence of a new idea - about "spatial" property, when the external boundaries (limits) properties began to be designated using certain signs, boundaries, etc., some elements of which are also used in modern practice.

In contrast to" functional "property, the model of" spatial " property usually concentrates in one person – the owner – all the rights of the owner to the corresponding object. "Such a single property," notes F. Parazi, - can better serve the needs of a changing economy. The division of property according to the functional criterion, although it allows for the optimization of property in relation to all possible types of its use, does not provide sufficient flexibility to take into account structural changes over time" [4, p. 191].

"Spatial" property, in essence, was a prototype of "absolute" property as an absolute property right, granting the owner full "power" over the object of his property, including transferring "full" property, the right to build a land plot to other persons under a contract or on the basis of a testamentary disposition.

However, the historical process of "transition" from "functional" property to the legal model of "absolute" property was not simple and unambiguous. With the advent of new economic conditions, a new system of management, "functional" property could no longer be relevant in the changing legal order.

To a certain extent, the formation of the model of "absolute" property was facilitated by the philosophical ideas about law expressed by well-known representatives of classical German philosophy. Thus, G. V. F. Hegel linked the "standardization" of property rights with the development, the difficult struggle for the liberation of property from the all-pervading feudal encumbrances and expressed the idea that the freedom of the individual directly depends on the freedom of property [15, p. 78]. According to Kant's definition, universal norms should be negative in content, that is, they "should not prescribe persons to do anything" and "the correlate of property law cannot require active action" [16, p. 14].

The ideas of "absolute" property significantly contradicted the ideas of "functional" property as a "bundle" of rights, which allowed for a mixture of absolute and relative rights of subjects not only in private law, but also in the public sphere. At the same time, it should be noted that the new model – "absolute" ("single") ownership-did not "discard" the fully existing previously "functional" ownership; it was to "successfully combine the concept of functional unity with the revived concept of 'absolute' property, and the new legal concept was to propose basic rules for promoting the functional, physical, and legal unity of property " [4, p. 196]. This approach is embodied in the provisions of modern codifications of property law in European countries, as well as in Russia.

The modern model of this legal "unity of property" is based on the well-known Roman construction of property rights as an absolute category, when the owner has full power over the property object and the creation of legal restrictions on property was possible only if the constant need for such a settlement was proved (for example, the impossibility of passing to one's land plot except through a neighboring one). The Civil Codes currently in force in a number of European countries limit the permissible possibility of" functional fragmentation "of property, providing real-legal protection, as a rule, only to certain socially significant real rights, which is known as the principle of numerus clausus – the fundamental

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principle of unity, which expresses the" strength " of modern real law [17, p. 69-70]. The purpose of this principle is to prevent individuals from creating property rights that are not authorized by the legal system.

However, the implementation of the principle of numerus clausus in practice and in theory creates a contradiction between it and another principle – freedom of contract, when the parties have the right to conclude not only the types of contract provided for by law, but also the so-called atypical contracts (officially unrecognized) that establish "non-standard" property rights and obligations.

Modern European civil codifications, as well as Russian civil doctrine and practice, adhere mainly to the position that, while recognizing the principle of freedom of contract, at the same time, in relation to relations related to real estate, restricts the ability of the parties to establish "atypical" (not provided for by law) real rights and obligations and protects only officially recognized real rights and legitimate interests of subjects, that is, does not allow the legal possibility of "deviation" of individuals from standard real-law models.

However, this general trend is objected to by some Western researchers. Thus, B. Rudden, criticizing the principle of numerus clausus, opposes the reduction of the types of real interests recognized by law to a small number of standardized forms [18]. A. Gambaro provides a justification when the parties are allowed to conclude contracts that give rise to atypical real rights, but the parties cannot enjoy any advantages arising from such agreements [19, p. 67].

The above-mentioned dichotomy of property and contract law has not remained unnoticed by other foreign authors. Thus, Merrill Th. W., Smith H. E. note in this regard that, although personal rights arising from contracts can be easily adapted to the requirements of the parties (customize), real rights are limited to a closed list of standardized forms [17, p. 1, 69].

A rather tough position in this regard is also taken by B. Rudden: "... all systems limit or at least set limits to the creation of real rights: "whims" are possible in a contract, and not in real law" [18, p. 243].

In fact, such positions are supported by the majority of Russian legal scholars. However, some researchers have expressed opposite ideas. Thus, according to M. I. Braginsky and V. V. Vitryansky, any title ownership is a real right, and the parties to the contract can create new real rights that are not known to the law [20, p. 501 et seq.].

Attention is also drawn to the fact that in Federal Law No. 218-FZ of July 13, 2015 (as amended on 02.08.2019) "On State Registration of Real Estate", this idea does not seem to have received a clear resolution. According to paragraph 6 of Article 1 of the said Law, in the cases specified by the federal law, registration is subject to restrictions on the rights and encumbrances of immovable property that arise, including on the basis of a contract or an act of a state authority or local self-government, in particular, an easement, mortgage, trust management, rent, or rental of residential premises. Here, unfortunately, there is no differentiation of the rights that encumber real estate, some of which are real, and others are of a legally binding nature.

It is noteworthy that the construction of the "real contract" (Einigung) is also known to the German legal order, where one of the forms of implementation of the principle of publicity of real law is, according to article 929 of the BGB, "real contract" for the alienation of movable things. Such a real-law construction of a contract in the German legal order is based on the principle of "abstraction" or the principle of "separation" of a real and binding legal transaction; in particular, when a person, upon alienation of a movable thing, acquires a property right to it, which does not depend on the validity of the transaction underlying the "real contract".

The principle of numerus clausus, when legal systems give preference to "standardized" property rights in the exercise of protection, or restrict the legal possibility of creating property rights in a contractual manner to individuals, has been embodied in one form or another in a number of modern European civil codes. For example, articles 544-546 of the French Civil Code (FGC) define property as the right to use and dispose of things in the most absolute manner, unless its use is prohibited by laws or regulations; the inadmissibility

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of forcing the alienation of one's property, unless this is required by virtue of the public benefit and subject to fair and early compensation [21, p. 252-255]. Article 526 of the Code provides for such recognized limited property rights as usufruct, easements and land duties. In particular, usufruct as a limited property right implies the separation of two powers from the right of ownership: it allows the right holder to use and extract income from any property belonging to another person, with the assignment of the obligation to maintain it [21, p. 248].

In Germany, the regulation of property rights is devoted to the third book of the German Civil Code (BGB), which mainly regulates property rights to land plots. In this regard, attention is drawn to rather specific legal constructions of real rights to land plots when combining (reuniting) elements of "fragmented" property. Thus, in accordance with Section 889 BGB, the right to a single land plot (for example, an easement or a building right) does not terminate as a result of its acquisition by the owner of the land plot or as a result of the acquisition by the owner of this property right to this land plot – that is, if the owner of the land plot and the owner of a limited real right to the same property object coincide in one person.

Approximately, a similar approach is enshrined in Article 735 of the Swiss Civil Code (SHGK), according to which if the subject of a limited real right becomes the owner of the land plot encumbered by it, he has the right to terminate ("extinguish") this right; but, if this does not follow, the real right remains (its subject becomes the new owner of the land plot) [22, p. 23-24].

At the same time, in the above-mentioned situations, protection is provided, first of all, for the interests of persons in whose favor an encumbrance property right has been established (in particular, the right to build), when, for example, the owner of a land plot and the owner of the right to build this plot become one person. At the same time, under certain conditions, the interests of the owner of the land plot are also subject to protection, who, as a subject of a limited real right to his thing, can, for example, participate in public auctions in the order of priority in the forced alienation of his own land plot [23, p. 25; 22, p. 24].

It is noteworthy that in the Russian legal order, the legislator, unfortunately, does not regulate these property-legal features in any way. In this regard, it can be assumed that the domestic legislator at the same time, obviously, proceeds from the well-known Roman principle of consolidation, according to which no one can have a limited real right to his own thing (nulli res sua servit), since the owner, in fact, does not need such a right.

In the Russian legal order, the central and fundamental element in the system of property law – the right of ownership-is formulated as an absolute property right, which includes in its content the well-known "triad" of the rights of the owner (the right of possession, use and disposal) (Article 209 of the Civil Code of the Russian Federation). Usually, in the civil scientific community, it is considered that this set of powers provides the owner with full "power" in relation to the object of property.

Usually, the owner concentrates all three of the above-mentioned powers. However, in some cases, there may be a "fragmentation" of property, when individual rights are transferred to another person – not the owner, the rightful owner of the property. For example, the owner may transfer to the lessee the rights to own and use the property. Moreover, the lessee may also have some elements of the right to dispose of the property – to sublet it. In some cases, the owner may transfer all three powers to the legal owner, for example, to a trustee.

At the same time, in the Russian legal literature, some authors have made attempts to state that in real legal reality, these "standard" powers do not fully reflect all the legal capabilities of the owner. Thus, according to the theory expressed in the late 40s of the last century by Academician A.V. Venediktov, "the right of ownership is not composed of three separate powers: possession, use and disposal" [5, p. 15]. Later, in the Soviet period, some representatives of the science of land law proposed to supplement the well – known" triad "of the rights of the owner with a fourth element-the right" to manage land " [24, p.

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139; 25, p. 216].

In this connection, attention is drawn to the fact that in the pre-revolutionary Russian legal order, an attempt was made to evade in the legislation when defining the right of ownership from understanding it as a certain formally defined set of the rights of the owner. Thus, article 755 of the draft Civil Code of 1913 referred to the right of ownership as "the right of complete and exclusive domination of a person over property, insofar as this right is not limited by law and the rights of other persons".

It is noteworthy that the Anglo-American legal system has developed such a model of property rights, which is often called a "bundle of rights", a" bundle of rights " of the owner, covering, in relation to movable property, from 10 to 12 elements (powers). Thus, A. M. Honore, within the framework of the right of ownership, distinguished the totality of the rights of the owner, numbering up to 12 elements, and the latter in different combinations can be found in different persons [26, p. 107-108].

Thus, in Western legal systems, the content of property rights is not reduced to any strict, formally defined legal model, covering a pre-established "list" of the rights of the owner.

In the Russian legal order, as mentioned above, in the first half of the 90s of the last century, an unsuccessful attempt was made to introduce the construction of a trust – "divided property" – into civil law on the basis of the Decree of the President of the Russian Federation of December 24, 1993 "On Trust property (Trust)". As the very name of this Decree implies, it was aimed at giving the construction of a trust ("trust property") a real-legal character, which also determined the place of the relevant norms in the system of real law.

According to the Principles of European trust law, a trust is a relationship in which one person (manager), acting as the owner of property separated from his other property, manages it for the benefit of another person – the beneficiary or to achieve a certain goal [27].

Thus, in a trust relationship, the trustee is the nominal owner and acts, in essence, as an agent of the beneficiary, who is "justly" considered to be the "material" or beneficial owner.

Similarly, the owner is considered to be the founder of the trust (setulor, trustor), if it does not coincide with the beneficiary [22, p. 130]. Consequently, in a trust legal relationship, the founder of the trust, the manager and the beneficiary (beneficiary) act as the "owner", having, however, different powers: the manager manages the property, including the right to alienate it; the founder of the trust-the right to change or cancel the trust; beneficiary (beneficiary) as a user, in fact, is entitled to receive income (benefits) from the property transferred to the trust management. In this sense, since here several persons act as "owners" of the property transferred to the trust, the trust is often called "split" ("divided") property.

However, in the Russian legal order, the construction of a trust ("trust property") in the form it was presented in the above-mentioned Decree of the President of the Russian Federation, was not embodied in the domestic legal order. Under the conditions of the well-known dualism inherent in the Anglo-American system of law, the construction of "trust property" is quite consistent with the model of "split" property, which is quite widely used in this system of law, but the construction of "trust property" ("trust") previously proposed in Russia») "did not fit" properly into the system of Russian law and order.

At the same time, it should be noted that in the norms of the Civil Code of the Russian Federation, not the construction of "trust property" was fixed, but the model of "trust management" of property, which has a legal obligation (and not a real-legal) nature. So, for example, in accordance with the provision of paragraph 1 of paragraph 1 of Article 1012 of the Civil Code of the Russian Federation, under a contract of trust management of property, one party (the founder of the management) transfers the property to the other party (the trustee) for a certain period of time, and the other party undertakes to manage this property in the interests of the founder of the management or the person specified by him (the beneficiary). Moreover, according to the provisions of article 1020 of the said Code, the trustee exercises, within the limits established by law and the contract, the powers of the owner in respect of the property

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transferred to him for management, without becoming its owner.

Similarly, the account holder under the nominal account agreement makes transactions with funds, the rights to which belong to another person-the beneficiary (Article 8601 of the Civil Code of the Russian Federation). Also, some administrative actions with the funds held in the escrow account are carried out by the bank (escrow agent), but the ownership of these funds belongs to the depositor until the date of the grounds for transferring them to the beneficiary.

The same can be said in relation to a public deposit account, when on the basis of an order (order) of the account holder – a notary, bailiff service, court – operations can be performed to transfer or issue deposited funds to the beneficiary (Article 86012 of the Civil Code of the Russian Federation).

Thus, in contrast to the construction of a trust – "split" property - within the framework of the Russian institute of trust management of property, appropriate administrative actions are carried out with the property, but in the interest of others, and the trustee does not become its owner. Therefore, here we are talking about the exercise of certain rights of the owner on the basis of a concluded contract that generates a corresponding legal relationship of obligations, which can only be called "split" property.

Currently, one of the key problems in the reform of Russian property law is to ensure a stable and reliable regime of ownership and use of other people's property, based on a full-fledged system of rules governing limited property rights. To this end, section II of the Civil Code of the Russian Federation assumes the formation, in addition to such key subsections in the system of real law as "General provisions on real rights" and "Property rights", as well as specific structural elements – "Ownership "and "Limited real rights".

The subsection "ownership" assumes rules covering both title (having a certain title – legal basis) and actual (not having a certain legal basis) ownership. Ownership as such (the fact of ownership, not the right of ownership) means the actual domination of a person over a thing and is not subject to state registration (in relation to real estate objects) in the Unified State Register of Legal Entities. The actual possession is protected as long as there is free access to the thing. However, in the future, if such possession is violated, the person is not considered to have lost possession when he applied for the protection of his possession. Moreover, the main feature here is that the plaintiff (the actual owner) does not have to prove that he has the right of ownership or other real right to the disputed thing, as is the case when filing a vindication claim; the specified person must prove only that he owned the relevant thing for a year before the violation that served as the basis for the claim for protection of ownership. If the actual owner is in good faith, as well as in other cases where the possession is based on the law (the legal owner), such a person has the right to demand protection of his possession regardless of the time of possession of the thing (Article 217 of the Civil Code of the Russian Federation as amended by the draft law) .

Within the framework of the above model of actual ownership, a person who is not the owner of a thing actually owns and uses it in his own interest. At the same time, there is an owner of this thing who does not exercise actual possession, who, as a result of his actions (inaction), has created the possibility of free possession of this thing by another person (the actual owner). However, this circumstance in this case does not create the possibility for the emergence of a legal structure of "divided" ("split") property, because, strictly speaking, the owner here is one – the person who owns the right of ownership (legal title) in relation to this thing.

The absence of "divided" ("split") property here is also confirmed by the fact that the person to whom the claim for protection of possession is made (the defendant) cannot refer as an objection to the fact that he owns the right of ownership or other real right to the disputed thing. However, such a person has the right to make a counterclaim for the protection of the real right to this thing, provided that it is transferred to the custody of a person determined by the court (sequestration).

As grounds for the acquisition of actual possession (Article 212 of the Civil Code of the Russian Federation as amended by the draft law),

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various circumstances may act, including the delivery of a thing to the acquirer. However, the possibility of acquiring actual ownership is also not excluded through unilateral actions of the acquirer, if the previous person who transferred ownership created conditions for the acquirer's free access to the object of ownership. In cases established by law, the acquirer's access to the object of ownership may be provided on the basis of an act of a court or an authorized state body. In the exercise of actual possession, a presumption applies: it is considered lawful until the court determines otherwise.

In the Russian legal system, the construction of actual ownership cannot be considered as a certain model of "divided" ("split") property, as it can be interpreted within the framework of the relevant doctrine known in a number of Western European legal systems, since the actual owner uses the thing in his own interest, but he does not have the right to dispose of it: sell, gift, lease or otherwise dispose of the object of actual ownership.

However, in the modern reformed institution of property law, some legal constructions appear that are quite closely similar to the model of "divided" ("split") property used in Western European legal systems. One of these legal structures is the right of ownership of several persons in relation to one real estate object – the construction of common property – when the property is owned by two or more persons (paragraph 1 of Article 271 as amended by the draft law). Ownership, use and disposal of such property, which may be shared or joint legal regime, is carried out by mutual consent of all co-owners.

In the context of the reform of the legal provisions under consideration, it is provided that the products, fruits and income received from the use of property that is in common ownership are included in the common property on the same terms as the common property belongs to the owners, unless otherwise provided by an agreement between them. In cases where the ownership and use of shared property is of a separate nature, the fruits, products and income derived from the use of the corresponding part of the common property shall become the property of the co-owner who owns it, unless otherwise established by law or by agreement of the co-owners.

Participants in shared ownership, the object of which is real estate, can register in the Unified State Register of Legal Entities an agreement on the procedure for the possession and use of common real estate; the terms of such an agreement will be binding for subsequent purchasers of shares in the right of common property. A participant in shared ownership has the right to demand from other participants to provide for his possession and use a part of the common immovable property commensurate with his share in the right, and if this is not possible-appropriate compensation from other co-owners who own and use a part of the immovable property belonging to his share, unless otherwise provided by law.

Similar in form to the Western model of "divided" ("split") property is the legal structure used in the Russian legal order, reflecting the situation when the ownership of a land plot and the buildings and structures located on it are "divided" between different persons, which in practice generates a lot of disputes.

In this regard, it should be noted that the draft law quite reasonably consistently follows the principle aimed at overcoming the "splitting" of property in relation to the land plot and other real estate objects located on it, in order to ensure the formation of a single real estate object. In particular, in accordance with the provision of paragraph 4 of Article 287 of the Civil Code (as amended by the draft law), if the owner of a land plot and the owner of buildings and structures located on it coincide in one person, then further alienation of such a land plot is not allowed without simultaneously alienating the corresponding buildings and structures under the threat of invalidity of the transaction.

In cases where the alienated building (structure) is located on an indivisible land plot on which other real estate objects are located, such alienation is impossible without simultaneously alienating the corresponding share in the ownership right to this land plot, unless otherwise provided by law. The same goal is also pursued in the case when

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the ownership of the land plot and the buildings and structures located on it belong to different persons: one of these owners is granted the right of pre-emptive purchase, respectively, when the building, structure or land plot is alienated.

Earlier, the tendency to "reunite" property in the Russian civil legislation was implemented in the legal model "Single immovable complex", which is fixed in the provision of paragraph 1 of Article 1331 of the Civil Code of the Russian Federation. The above-mentioned legal model is a legal form of expression of such a phenomenon of an object of civil rights as a single immovable complex, which is a set of real estate objects and other things united by a single purpose, inextricably linked in fact or technologically, or located on a single land plot, provided that the unified state register of rights to immovable property registers the ownership of the entire set of such objects as a whole as one immovable thing.

This tendency in Russian legislation to "reunite" property in relation to real estate objects is certainly a positive phenomenon, since situations related to "split" property give rise to many rather complex issues in law enforcement practice.

Thus, in one case involving the infliction of harm resulting in the death of a teenager when a football goal fell on him at a stadium, the question arose about the owner of the specified and other property – who owns the corresponding right to this property and, consequently, who was supposed to ensure its safety, proper condition, etc. It was established that at the time of the damage, the stadium as a complex structure, including both the relevant real estate objects and movable property, was formally and legally under the right of economic management of the Yekaterinburg Municipal Unitary Enterprise - SK Uralmash. However, in fact, the specified property was transferred under the act to the operational management of the State Educational Institution School of the Olympic Reserve No. 1 (college) and was in the latter's actual possession, since the right of operational management of the above-mentioned state educational institution at the moment (causing harm) was not registered in accordance with the established procedure in the Unified State Register of Rights to immovable property.

In this regard, there are questions of both criminal and civil law, in particular, who should compensate for the material damage caused to the parents of the deceased teenager? At first glance, from a purely formal and dogmatic position, the responsibility should be assigned to the owner of the right of economic management-EMUP Uralmash – - who, by virtue of this legal title, was supposed to monitor, maintain the property belonging to him in proper condition and ensure its safety. However, this approach seems to be quite simplified and does not take into account some legally important circumstances, in particular, that the formal owner of the right of economic management in reality at this point no longer had the actual ability to perform any actions in relation to the specified property, which was transferred under the acceptance certificate and was on the balance sheet of another entity-the Olympic Reserve School No. 1 (college). Also worthy of legal attention is how long the "School" actually owned the property transferred to it without registration of the right of operational management in relation to it; whose fault was the delay in registration of this right, etc. In this set of circumstances, it should be borne in mind that despite the fact that the right of operational management was not formally registered, but it was already close to the last stage (registration) in the complex legal and factual composition that causes the emergence of this right.

At the same time, it should be noted that, unfortunately, there is no unified position on the issues under discussion in judicial practice. Of interest in this regard is the consideration of the following dispute. The Presidium of the Supreme Court of the Republic of Bashkortostan, in a Decision dated March 22, 2017 concluded that the decision of the court of first instance and appeal instances, which imposed responsibility for causing damage to a citizen's car as a result of snow and ice from the roof of a building that was on the budget account of the defendant (Federal State Budgetary Institution "Privolzhsko-Uralskoe), the right of operational management in respect of which was not registered in the unified state register of rights to immovable property, was justified. The Presidium of the Supreme Court of the Republic of Bashkortostan

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pointed out that the argument of the cassation appeal about the absence of grounds for imposing civil liability on the applicant due to the fact that the immovable property is not registered for him in the unified state register of rights to immovable property, is not a basis for the cancellation of the contested judicial acts, since the building was transferred to the possession of the defendant under the transfer act, for a long period of time the defendant did not carry out state registration of ownership rights and operational management rights. Since the results of the consideration of the case by the courts established that it is the Federal State Budgetary Institution "Privolzhsko-Uralskoe TUIO" of the Ministry of Defense of the Russian Federation is the person who caused the damage as a result of actions (inaction), the absence of a registered ownership right to an object of immovable property cannot deprive the plaintiff of the right provided for in part 1 of Article 15 of the Civil Code of the Russian Federation to claim full compensation for the losses caused to him.

However, the above legal position is rather an exception to the general rule that the owner (subjects of economic management rights, operational management rights) or other legal owner bears the burden of maintaining the costs of maintaining the relevant property in proper condition, as well as the risks associated with this property, including causing harm, etc. This legal position is reflected in the norms of a number of articles of the Civil Code of the Russian Federation (Articles 210, 211, 294, 296, paragraph 2, paragraph 1, Article 1079 of the Civil Code of the Russian Federation).

It seems that when solving the problem of compensation for damage caused by property, the legal title of which is based on the model of "split" property, it should be taken into account not only who formally and legally owns the right of ownership, other property rights in relation to this property, but also who actually owned it, on what basis, what is the duration of such ownership, whether appropriate measures were taken in a timely manner to formalize the relevant legal title, whether there is a causal relationship between the actual possession and the damage caused and other related circumstances.

In the context of the problem of "divided" property, there is also the resolution of disputes arising between the owner of a land plot and the owner of an easement in relation to the same property. Thus, a limited liability company applied to the arbitration court with a claim against a poultry farm for the establishment of a private easement on a land plot in order to ensure passage and passage to a building owned by it (the company) on the right of ownership and located on the same territory as the poultry farm.

Satisfying the claims, the courts of the first and appellate instances established the boundaries of the easement, without defining the restrictive conditions of use that the poultry farm insisted on-ensuring compliance with the sanitary control requirements by the easement-since if violations occur, the owner is not deprived of the right to file a claim for the elimination of any violations of his rights in accordance with Article 304 of the Civil Code of the Russian Federation.

The court of cassation annulled the adopted judicial acts and sent the case for a new trial, referring to the norm provided for in paragraph 1 of Article 274 of the Civil Code of the Russian Federation, from which, among other things, it follows that the easement should be the least burdensome for the defendant (highlighted by the authors), so when determining the content of this right and the conditions for its implementation, the court must proceed from a reasonable balance of interests of the parties to the dispute so that this limited property right, providing only the necessary needs of the plaintiff, does not create significant inconveniences for the owner, serving the land plot [28, p. 7-8].

Thus, when resolving a dispute on the establishment of an easement, the court should, first of all, proceed from the need to ensure a balance of the interests of the parties in order to create appropriate legal conditions for the parties to make the most effective use of their property in the future.

5. Conclusions.

As a summary of the study, the following brief conclusions can be drawn.

1. The Western doctrine of "entropy of

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property" has a fairly long history of its development, covering 3 main models-from the concept of "functional property" to "spatial property" and then to the "absolute" form of property; the latter in its structure (composition) has received an ambiguous reflection in the legal order of various legal systems due to their different historical, national-cultural and other development.

2. The phenomenon of "property entropy" is caused by economic laws, the need to reduce transaction costs, increase the efficiency of using the use value (utility) of the property object, and therefore generally does not deserve a negative legal assessment, except in cases where the rights and legitimate interests of the subjects are violated as a result.

3. When protecting the rights and legitimate interests of participants in legal relations related to the "entropy of property", first of all, the "standard" methods (measures) established by law for the protection of the injured party should be used, which, however, does not exclude, in appropriate cases, the use of other legal means ("non-standard") for the protection of the bona fide party, provided that they do not contradict the foundations of law and order, the principles of morality and morality in society, observing a reasonable balance of interests of the parties to the disputed legal relationship.

4. With regard to the trend of reverse "entropy of ownership" – "reunification of ownership" - in particular, the establishment of a single ownership right to a land plot and other real estate objects located on it, this process will contribute to improving the efficiency of their economic use, strengthening law enforcement practices in this area and corresponds to the European model of one ownership right in relation to a land plot and other immovable property located on it as a single real estate object.

5. The problem of the dichotomy of property and contract law in the context of the doctrine of "split property" requires a pluralistic approach, based on the fact that property rights as elements of title ownership can be based not only on the law, but also, in appropriate cases, created by contract, provided, of course, that in the latter case they should not contradict the foundations of the current legal order, as well as the fundamental principles of morality and morality in society.

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INFORMATION ABOUT AUTHORS

Mikhail N. Semyakin – Doctor of Law, Professor; Professor, Department of Civil Law
Ural State Law University
21, Komsomol'skaya ul., Yekaterinburg, 620137, Russia
E-mail: 9193705538@mail.ru
RSCI SPIN-code: 5193-5861; AuthorID: 433178

Anna. V. Gubareva – PhD in Law, Associate Professor; Associate Professor, Department of Business Law
Ural State Law University
21, Komsomol'skaya ul., Yekaterinburg, 620137, Russia
E-mail: ashipova@mail.ru
RSCI SPIN-code: 1210-9056; AuthorID: 549209

Stanislav P. Stepkin – PhD in Law, Associate Professor; Associate Professor, Department of Civil Law Disciplines
Russian State Social University
4/1, Vil'gel'ma Pika ul., Moscow, 129226, Russia E-mail: stepkin.sciences@gmail.com
RSCI SPIN-code: 5401-7806; AuthorID: 877047

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