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RUSSIAN INTESTACY LAW

Paul T. Swann[†]

I. INTRODUCTION

Intestacy, by its very nature, “can lead to unexpected [and unwanted] consequences.”¹ Although an admittedly uncommon word in the American lexicon, intestacy may have received the most mileage from estate planning professionals who make a living warning of the dangers of dying without a valid will. Indeed, ever since the revolution started by Norman F. Dacey’s *How To Avoid Probate*,² estate planning seminars seem to have mushroomed in this country—driven partly by the desire to avoid taxes as well as lawyers. In the end, however, the assertion by those in the trade that if you do not have a valid will, the state most assuredly does, remains and is the focus of this endeavor.

In American jurisprudence, intestacy has a long and anchored past, dating as far back as the Romans. It may be said that intestate statutes do for the deceased that which he or she would have, or perhaps should have, done themselves. The imposition of laws regarding the distribution of assets has not come without difficulties. At times, the statutes have resulted in intestate provisions which do not necessarily conform to the way society would have wanted. In Rome, for example, so great was the desire to keep ancestral property within the family that avoiding intestacy was considered “a moral, religious and political duty.”³ Although many societies have historically existed wherein heirs were determined by either the matrilineal or patrilineal bloodline, the modern trend is to favor

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1. Tom Herman, *The Big Shift*, WALL ST. J., Nov. 29, 1999, at R24.

2. See generally NORMAN F. DACEY, *HOW TO AVOID PROBATE* (1965). For a brief history of the use of the living trust, see http://www.nolo.com/Texas/Living_Trust.html.

3. Encyclopedia Britannica, *Inheritance, Intestate Succession, Historical Development, Roman Law*, at <http://www.britannica.com> (last visited Nov. 3, 2000).

bilineal succession. In ancient Rome, if no kinsmen were available to take the estate, it would eventually pass to the Gentiles.⁴ Over time, this Roman intestacy scheme, the system of the Twelve Tables, fell out of favor⁵ and was eventually replaced by the Justinian Code. Emperor Justinian attempted to simplify the complicated intestacy scheme by creating an entirely new intestate statute⁶ that divided the relatives of a decedent into classes.⁷

Modern Russian statutes, on the other hand, are relatively new although their roots stretch back to Roman law. As will be seen later, the ability to pass on property in Russia has seen a tremendous turnaround over the past century. However, intestacy and inheritance in general are quite alive in Russia today despite their tumultuous beginning.

Intestate statutes are in effect in all fifty of the states in the U.S.,⁸ as well as most developed countries, including Russia.⁹ The one commonality in almost all intestate statutes is that the "heirs"¹⁰ are almost always persons related to the deceased in one way or another, as opposed to some arbitrary selection of who should receive the decedent's property.

The question of just who should, and who actually does, receive intestate shares will be discussed below. Additionally, this paper shall examine many of the intestate provisions found within the Inheritance Code of the Russian Federation.

II. OVERVIEW OF INTESTACY

Although intestate statutes vary from state to state,¹¹ their main objective remains to distribute the estate as the decedent would have wanted if a valid will had been left. In most intestate statutes the "heirs"¹²

4. *Id.* The Gentiles were a group that had "ceased to play a significant role in Roman society." *Id.*

5. *Id.*

6. *Id.* For a full searchable text of the Justinian Code, see *Medieval Sourcebook: The Institutes, 535 CE*, at <http://www.fordham.edu/halsall/basis/535institutes.html> (last visited Nov. 3, 2000).

7. See *infra* note 13.

8. GENERAL PRACTICE SECTION, AMERICAN BAR ASSOCIATION, WILLS AND ESTATE PLANNING GUIDE: A STATE AND TERRITORIAL SUMMARY OF WILL AND INTESTACY STATUTES (1995) [hereinafter ABA WILLS & ESTATE PLANNING GUIDE].

9. See discussion *infra* Part III.

10. ABA WILLS & ESTATE PLANNING GUIDE, *supra* note 8.

11. *Id.*

12. See THOMAS E. ATKINSON, HANDBOOK OF THE LAW OF WILLS 4 (2d ed. 1994). Historically an "heir" was used to designate those who took real property, while those who took personal property were called "distributees." Today, such distinctions are blurred,

are usually persons related to the deceased in some level of kinship, as opposed to some arbitrary selection of who should receive the decedent's property. Ancient societies were especially desirous of keeping property within the family bloodline,¹³ but increasingly, modern legislative bodies are less concerned with such traditional ideas.¹⁴ The rule of "ancestral estate" developed over time in an effort to keep real property within the family.¹⁵ This doctrine developed in American jurisprudence by way of the Canons of Descent of real estate.¹⁶ The basic tenant is that if a person died intestate and without descendants, the property, which had passed to him from his ancestors, reverted to the bloodline from which it came instead of devolving to remote or distant collateral heirs.¹⁷ In 1925 the use of this doctrine ceased in England and, for the most part, has vanished in the United States as well.¹⁸ Modernly, intestate statutes focus more on making sure property passes to heirs, and are less concerned with the concept of ancestral estates.

At its most basic level, intestacy is a statutory method of distributing a decedent's estate after death. According to common law principles of

and the phrase "heir" is commonly used for takers of both real property and personal property. *Id.*

13. See Encyclopedia Britannica, *supra* note 3. For example, by AD 543 and 548 in Rome the emperor Justinian found it necessary to make . . . a new order of intestacy. . . . Relatives of a decedent were divided into four classes: (1) the descendants of the decedent; (2) the ascendants of the decedent, his brothers and sisters of the full blood, and the children of brothers and sisters of the full blood; (3) the decedent's brothers and sisters of the half blood and the children of such brothers and sisters; and (4) the other collaterals of the decedent related to him in the nearest grade of consanguinity. No person in a more remote class was to succeed as long as the decedent was survived by a member of a prior class. The surviving spouse stood outside the four classes of relatives. He or she was to succeed only if there was no relative at all. As long as any relative, no matter how remote, could be found, the family wealth was not to be diverted from the bloodline. But a widow's needs were ordinarily taken care of by the dowry, which, given to the husband, usually by her family, at the time of the marriage, was to be hers after the husband's death. For the exceptional case of a "poor widow"; i.e., a widow without dowry, a share in the estate was provided.

Id.

14. See Encyclopedia Britannica, *Inheritance, Intestate Succession, Intestacy in Present Law, Modern Tendencies*, at <http://www.britannica.com> (last visited Nov. 4, 2000).

15. *Id.*

16. *Id.*

17. See *id.*

18. *Id.*

intestacy, the method of distributing a decedent's assets may arise in several ways. The first possibility has the decedent dying without having made a will.¹⁹ Secondly, for some technical reason,²⁰ the decedent's will may be denied probate. Thirdly, the decedent's will may not adequately dispose of all the property. Finally, the decedent may have declared in his will that his property should pass according to the intestate statute.

III. OVERVIEW OF SOVIET INHERITANCE

The current Russian Constitution guarantees the right of inheritance,²¹ as did previous constitutions in one form or another.²² The years preceding the fall of communism in 1989 witnessed a substantial change in the inheritance scheme.²³ Because the very concept of inheritance is contrary to the ideas of communism, the Bolsheviks, after they took control of the Russian Empire, abolished inheritance within four months.²⁴ The decree of April 14 (New Style- April 27), 1918, promulgated by the Soviet regime in the new Russian Federated Republic, was entitled "Concerning the Abolition of Inheritance."²⁵ The article proudly declared "testate and intestate succession are repealed. Following the death of the owner, [his] property . . . becomes the property of the Russian Socialist Federated Soviet Republic."²⁶ Exceptions, however, soon followed. Under Article 9, property could pass to the control of close relatives if the "value did not exceed 10,000 rubles, or it consisted primarily of 'a farmhouse, domestic furniture and means of economic production by work, in either city or village.'"²⁷ Another exception, which was supposed to be temporary, allowed that disabled or close relatives of a deceased could inherit from an estate, for self-support, although it exceeded 10,000 rubles.²⁸ This was intended to last "until a decree for universal social insurance [could be] issued."²⁹

19. ATKINSON, *supra* note 12.

20. Such as improper execution or a successful will contest.

21. KONSTITUTSIJA RF (1993) [Constitution of the Russian Federation] art. 35(4).

22. Frances Foster-Simmons, *The Development of Inheritance Law in the Soviet Union and the People's Republic of China*, 33 AM. J. COMP. L. 33 (1985).

23. Alice Erh-Soon Tay, *The Law of Inheritance in the New Russian Civil Code of 1964*, 17 INT'L & COMP. L.Q. 472 (1968).

24. Foster-Simmons, *supra* note 22, at 36.

25. *See id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

By 1922 succession rights were officially recognized by a decree entitled "Concerning Basic Private Property Rights Admitted in the RSFSR, Safeguarded by its Laws and Protected by its Courts."³⁰ Soon thereafter, the Civil Code of the RSFSR was passed to enforce the provisions of the decree.³¹ The inheritance rights contained within the Code "were sharply curtailed both as to the size of estates available for distribution and the circle of heirs eligible for descent by intestacy or by will."³² Concurrently, "all distributions of property were made subject to a progressive inheritance tax."³³

Over the next twenty years, inheritance rights slowly became more recognized, eventually gaining constitutional acceptance.³⁴ Later amendments were added which helped solidify the role of inheritance in soviet society.³⁵ By 1945 the "Federal Presidium issued an edict calling for a comprehensive reorganization of Soviet inheritance law."³⁶ Thereafter, a more European style system of inheritance was permitted.³⁷ Three months later, a substantial amended version of the Civil Code was published.³⁸ The main heirs included "the 1922 Civil Code 'circle of heirs' (the deceased's children, surviving spouse, and actual dependents) plus disabled parents of the deceased."³⁹ The property from the estate was to be divided equally among this circle of heirs if the necessary paperwork was completed before the expiration of six months after the decedent's death.⁴⁰ "Descendants of the deceased's issue would take on a *per stirpes*, rather than *per capita* basis."⁴¹ Healthy parents of the deceased were only

30. Foster-Simmons, *supra* note 22, at 40.

31. *Id.*

32. *Id.*

33. *Id.*

34. *See id.* at 40-41.

Article 10 of the 5 December 1936 Constitution of the U.S.S.R. declared, "the personal property rights of citizens in their incomes and savings from work, in their dwelling houses and subsidiary husbandries, in articles of domestic economy and use and articles of personal use and convenience, as well as the rights of citizens to inherit personal property is protected by law."

Id. at 41.

35. *See id.* at 41.

36. Foster-Simmons, *supra* note 22, at 42.

37. *Id.*

38. *See id.*

39. *Id.*

40. *Id.*

41. *Id.*

secondary heirs and inherited only in the absence of primary heirs.⁴² "In their absence, the estate would devolve upon the tertiary heirs, the full brothers and sisters of the deceased."⁴³

The inheritance and succession rights embodied within the New Civil Code of 1964 virtually eliminated the former restraints on testation.⁴⁴ "According to Article 534, . . . individuals [could] leave by will [any] property . . . (including ordinary household furnishings and articles) to one or more persons, irrespective of whether they are heirs at law, or to the state or to . . . public organizations."⁴⁵

"[T]he new Civil Code mark[ed] the end of any specifically Marxist view of the form of inheritance law and signal[ed] the creation of a Soviet law of inheritance that in no way [stood] outside the concepts and arrangements common to 'bourgeois' inheritance law generally."⁴⁶ According to Tay, the 1964 Code was "a Soviet law of inheritance, just as there is a French and an English law; no one, reading the provisions of the Soviet Codes, would be tempted to say that there is a socialist law of inheritance as opposed to a capitalist one."⁴⁷

Certain classes of persons were protected from the testator's power of disinheritance. "Minors or disabled children, disabled surviving spouse, disabled parents or adoptive parents, and any actual dependents all have been guaranteed two thirds of their intestate share."⁴⁸ If the estate being distributed by will would "deprive any or all of the statutorily denominated heirs of their obligatory share, the will [shall] be found void to that extent."⁴⁹ Apart from the restriction just mentioned, citizens were even allowed to "disinherit one, several, or all of [their] heirs at law."⁵⁰

The provisions for intestate succession, while making a much less radical break with the Soviet past, are based on blood and family ties as much as any Western law, and distinguish even more sharply than some between legitimate and illegitimate children and between lawful and *de facto* spouses. In accordance with Continental rather than peculiarly socialist practice, the financial and clerical burden of administering the

42. Foster-Simmons, *supra* note 22, at 42.

43. *Id.*

44. *Id.* at 50.

45. *Id.*

46. Tay, *supra* note 23, at 480.

47. *Id.*

48. Foster-Simmons, *supra* note 22, at 50.

49. *Id.*

50. *Id.*

law is placed primarily on the State and not on the interested parties: most of the legal formalities are carried out through a State notary office and not through legal representatives preparing material for the State or courts at the client's expense.⁵¹

Perhaps more appropriate to the discussion here, the new Code made major changes to intestate succession.⁵² Class inheritance was "replaced by a streamlined system."⁵³ Two groups of eligible heirs emerged: "the first comprising the issue of the deceased (including adopted children), the surviving spouse, and natural or adoptive parents; the second containing the brothers and sisters, and grandparents of the deceased."⁵⁴ The first group shares equally in the estate, "with grandchildren or great-grandchildren inheriting *per stirpes* by right of representation."⁵⁵ The property devolves to the second group in equal shares if none of the first group takes, either by absence or disinheritance by will.⁵⁶

Current Russian legislation largely reflects the principles specified in the 1964 Code with changes which are reflected in the 1991 Fundamental Principles of Civil Legislation and the 1996 Family Code of the Russian Federation.⁵⁷ Following are portions of the Russian Civil Code⁵⁸ that speak to the issue of intestate succession, directly or indirectly.

A. *Who May Inherit*

Inheritance of real⁵⁹ or personal property may be effectuated by intestacy or by will.⁶⁰ The Russian Civil Code currently divides the categories of potential heirs into two groups and even makes special allowances for other relatives or strangers.

51. Tay, *supra* note 23, at 480.

52. Foster-Simmons, *supra* note 22, at 51.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. WILLIAM E. BUTLER, *RUSSIAN LAW* 390-91 (1999).

58. GRAZHDANSKII KODEKS RF [GK RF] [Civil Code] § VII, art. 532.

59. Only recently has Russia moved toward allowing citizens the right to own real property outright. For a discussion of real estate transactions, see Colin McC. Breeze, *Citizen and Law after Communism: Real Estate Transactions in Russia*, 7 *EAST EUR. CONST. REV.* 81 (1998), available at <http://www.law.nyu.edu/eecr/vol7num1/feature/realestate.html> (last visited Nov. 3, 2000).

60. See Foster-Simmons, *supra* note 22, at 50.

The first category consists of the decedent's children (including posthumous and adopted children), spouse and parents.⁶¹ Adopted children inherit from and through their adoptive parents, not their natural parents.⁶² Illegitimate children are always considered heirs of their mother, but only inherit from their father if paternity has been established by legal procedure.⁶³

The second category includes brothers and sisters, as well as grandparents on both sides.⁶⁴ This group inherits only if there are no first category heirs who are willing or able to succeed to the estate.⁶⁵ "If there are no such claimants, or if they have been specifically disinherited by will without heirs being named, the estate is divided equally among members of the second group."⁶⁶

Additionally, those unable to work⁶⁷ that were dependent on the deceased and had lived with the deceased for at least one year before the decedent's death were allowed to inherit from either the first or second group, whichever actually inherits.⁶⁸ Such dependents "may not... comprise the whole of the first group and thus deprive members of the second. [T]his prevents dependents outside the degrees of kinship recognized for intestate succession from receiving the estate to the exclusion of kin, but permits them an equal share with the relatives."⁶⁹ A possible public policy reason for this provision is mentioned by Hardwood.⁷⁰ Strong anti-family feelings were prevalent during the time of the revolution, and inheritance was considered an institution which helped to strengthen the family.⁷¹ The government could, in effect, weaken the family by "assuring the succession rights of *all* those depend[er]nt upon an individual."⁷² This provision also benefited poorer relatives and those "who could not inherit under a will because of rigid restrictions of the early

61. Tay, *supra* note 23, at 481.

62. *See id.* at 482.

63. Foster-Simmons, *supra* note 22, at 51.

64. Tay, *supra* note 23, at 481.

65. *Id.*

66. *Id.*

67. Regardless whether they were related to the deceased.

68. Tay, *supra* note 23, at 481.

69. *Id.*

70. Karen E. Hardwood, *Soviet Inheritance: Ideological Consistency or a Retreat to the West*, 23 GONZ. L. REV. 593, 608 (1987/88) (citing Z. Szirmai, *The Soviet Union, in THE LAW OF INHERITANCE IN EASTERN EUROPE AND IN THE PEOPLE'S REPUBLIC OF CHINA* 41 (Z. Szirmai ed., 1961)).

71. *Id.*

72. *Id.* (emphasis added).

code.”⁷³ Hardwood notes that “[t]his provision may have also counterbalanced other restrictions in the inheritance law.”⁷⁴ “From 1918 through 1926, adoptions were prohibited in the USSR, so there would be no legal way to assure the support of a de facto adopted child if this avenue was not available.”⁷⁵

B. Household Effects

Article 533 addresses objects of common household use.⁷⁶ Household effects and furnishings pass to those heirs who have lived with the decedent, regardless of category or share in the estate, as long as they have lived there at least one year prior to the decedent’s death.⁷⁷ “‘Living with the deceased’ means living in the same apartment or room.”⁷⁸ “‘Domestic furnishings and utensils’ must not include tools of professional trade or employment, e.g., a specialist library, musical instruments, apparatus, etc., or articles of luxury (the latter, according to Soviet writers, no longer include such things as television sets, radios, refrigerators).”⁷⁹ If no heirs who have lived with the deceased for at least one year exist, then such items are merged into the rest of the estate.⁸⁰

C. Lapse

A form of anti-lapse provision exists⁸¹ within the Russian Code allowing for the testator’s grandchildren and great-grandchildren to step into the place of their parents. If the parents have died before the opening of the inheritance, the grandchildren and great-grandchildren take per stirpes with representation.⁸² However, “adopted children and their descendants become part of the adoptive family and enter into no inheritance relations with their natural parents and other non-descending blood relatives—i.e., do not inherit from them on intestacy and do not pass inheritance rights to them.”⁸³ “Step-children do not inherit from step-parents except as adopted children or depend[e]nts.”⁸⁴

73. *Id.*

74. *Id.*

75. *Id.*

76. Tay, *supra* note 23, at 481.

77. *Id.*

78. *Id.*

79. *Id.* at 481-82.

80. *Id.* at 482.

81. GK RF § VII, art. 532.

82. Tay, *supra* note 23, at 482.

83. *Id.*

84. *Id.*

D. *Those Precluded from Inheriting*

Those who inherit through intestacy must be citizens in being at the time of the intestate's death.⁸⁵ A child in gestation will be counted "as a life in being only if he or she is a child of the deceased."⁸⁶ Article 531 also notes that there are classes of individuals who are precluded from inheriting if the heir has attempted to gain inheritance by some unlawful act "directed against the deceased, any of his successors, or against the carrying out of the wishes of the deceased as expressed in his will, provided such acts are established in judicial proceedings."⁸⁷ Parents will not inherit from their children's estate through intestacy if their parental rights had been terminated and they had not been restored before the decedent's

85. *Id.*

86. *Id.*

87. *Id.* "Such acts must be intentional and specifically directed at the deceased, one of his heirs or the carrying out of the intention of the deceased as expressed in his will." *Id.*

[E]xamples of culpable actions for this purpose [are] murder of the deceased, forcing an heir to refuse his inheritance in order to receive a larger or exclusive share, substituting a forged will for the real one. . . . [I]n one case F., who killed her husband, was not deprived of her right to inherit from the husband because she had been found insane at the time of the murder and therefore incapable of intending the act; murder of the deceased, . . . however, is sufficient to disqualify even if it was not carried out for the purpose of inheriting and this suggests that "promoting the inheritance" is being treated objectively and not subjectively. . . . "A person is deprived of the right to inherit independently of whether he had the gaining of the inheritance as a result of his unlawful actions in view or whether his actions resulted from other motives. What is important is that they should objectively promote his coming into the inheritance." *Id.* Thus M. was deprived of the right to inherit from his wife after the Moscow City Court found that she died as a result of the beating he had given her to punish her for coming home drunk and sentenced him for homicide. Similarly, the notarial office refused a certificate of right to inherit to E. who had been convicted by a Moscow People's Court of a fatal assault on her husband, who died as a result of a wound he received when she threw a knife at him during a quarrel. . . . [T]he judicial proceedings in which such disqualifying facts must be established before the right of inheritance can be withdrawn can be either civil or criminal proceedings. Art. 531 . . . refers only to unlawful acts and [this can be interpreted] to include acts not punishable by the Criminal Code but violating the Civil Code. . . . [H]owever, . . . acts which do not violate legal provisions, but are contrary only to morality or the rules of socialist social life, may not be regarded as "unlawful acts" disqualifying an heir from the right to inherit.

Id. at 482-83 n.21.

death.⁸⁸ Additionally, parents and adult children are prohibited from inheriting “who maliciously declined to fulfil [sic] their statutory duties to maintain the deceased . . . [if] confirmed by judicial proceedings (Art. 531).”⁸⁹ According to Tay, these disqualifications were new to the 1964 code.⁹⁰

E. Miscellaneous

Spouses must have been in a married relationship with the deceased at the time of the deceased’s death before such spouses may inherit.⁹¹ A marriage which ends in divorce or one that has been annulled “means that the person ceases to be or had never been a spouse of the deceased and may therefore not inherit.”⁹²

Property acquired during the marriage becomes joint property, “one half of which generally goes directly to the surviving spouse not by inheritance, so that only the residue becomes part of the inheritable estate devolving on the statutory or testamentary heirs who may, of course, include the spouse.”⁹³ Prenuptial property remains that spouse’s separate property.⁹⁴

Even if their parents are not married, children are always statutory heirs with regard to their mothers; however, in order to inherit from their fathers a judicial determination of fatherhood must have been established.⁹⁵ Children from divorced parents inherit from “the father whether they lived with him or with their mother, but children of unregistered (*de facto*) marriages do not succeed to their fathers or their paternal grandparents and vice versa, unless the marriage has subsequently been registered or the father has acknowledged paternity in some judicial

88. Tay, *supra* note 23, at 483.

89. *Id.*

90. *Id.*

91. *Id.* However,

[a] surviving “spouse” who stood in a relation of *de facto* marriage with the deceased before July 8, 1944, may inherit if this *de facto* marriage is or has been recognized in a judicial proceeding on the basis of the Ukaz of the Presidium of the Supreme Soviet of November 10, 1944, and the ruling of the Plenum of the Supreme Court of the U.S.S.R. of May 7, 1954. *De facto* marriages formed after July 8, 1944, are not recognized.

Id.

92. *Id.* “Where there are two claimants as spouses to the estate of the deceased, the notarial office may not issue a certificate of right to inherit to either before a judicial decision on the invalidity of one of the marriages.” *Id.* at n.22.

93. *Id.* at 483-84.

94. Tay, *supra* note 23, at 484.

95. *Id.*

form.”⁹⁶ “The mother and her parents do have full inheritance rights in relation to such children, although the grandfather on the maternal side may be excluded if he does not stand, with respect to the mother of the deceased (his natural daughter) in a juridically recognised relationship.”⁹⁷

For the first time, the 1964 Code recognized brothers and sisters as heirs, provided that the courts had recognized a “parental relationship with the father.”⁹⁸ Assuming such a relationship exists, siblings of the half-blood count as full blood, but not stepchildren.⁹⁹ Siblings who all share the same mother are always statutory heirs.¹⁰⁰

IV. RECENT REFORM TO RUSSIAN INTESTACY LAW

Although the new Russian Civil Code is quite young, economic and political chaos in Russia has yet to provide for a concrete foundation for the stabilization of the rule of law.¹⁰¹ However, there are many who see the Civil Code as a foundational effort to redirect the path of this new Russia. The newest Civil Code in Russia was adopted by the state Duma in 1994 and provides for the devolution of property, personal and real, by will or by intestacy. The following section of the Russian Civil Code’s intestacy provisions, “heir on the spot,” is worthy of special attention.

A Russian heir only becomes entitled to any property when he actually accepts. This can be accomplished by either actually taking physical possession of the assets or by notifying the notary at the deceased’s last place of residence. Acceptance must take place within six months of the intestate’s death, which of course favors the “heir on the spot.” One glaring problem with this preference is that the “heir on the spot” has no incentive to notify the other heirs if they are scattered over the country. One may well envision a situation where a decedent leaves an estate to be distributed through intestacy in Vladivostok while the majority of heirs are in Arkhangelsk.¹⁰² The “heir on the spot” may not even notify the other heirs until six months after the intestate’s death. If the distant heirs notify the notary within the allotted time, the notary may take steps for the preservation of the assets for the period of six months. This has the

96. *Id.* “These provisions flow from the rather harsh provisions of the Code of Marriage, Family and Guardianship Law, meant to discourage irregular unions.” *Id.* at n.23.

97. *Id.*

98. *Id.*

99. *Id.*

100. Tay, *supra* note 23, at 484.

101. See generally, THE RULE OF LAW AND ECONOMIC REFORM IN RUSSIA (Jeffrey D. Sachs & Katharina Pistor eds., 1997).

102. The two cities are a ten to twelve-day train ride apart.

effect of preventing the “heir on the spot” from disposing of all the estate property to the prejudice of the distant heirs. But, any steps taken by the notary will lapse after six months.

If the distant heir shows up after the six-month period, his only recourse to claim any of the estate property is to bring a lawsuit. His chances of winning depend on his ability to convince the court that he had a good excuse for not coming within the six-month period. Absence because of military service or other official duties seem to be good excuses, but ignorance of the death of the deceased or ignorance of his right to make a claim appear not to be good excuses.

Another peculiarity of the Russian Code includes giving the “heir on the spot” the intestate’s house effects.¹⁰³ Article 533 addresses common household items. These items are passed to the heirs who had lived with the decedent, regardless of category or share, in the estate as long as they have lived there at least one year prior to the decedent’s death. Such items must not include tools of profession, trade or employment. If no heirs who have lived with the deceased for at least one year exist, then such items are merged into the rest of the estate.

V. CONCLUSION

The difficulties of Russian intestacy are unique to Russia because of its history of neglecting a citizen’s personal rights. Indeed, personal rights were subservient to the rights of the many under Communist principles. Only recently has the Russian legislature addressed any substantive private property reform.¹⁰⁴ According to the Russian Embassy, land ownership remains one of the most controversial and rapidly changing topics in Russian Property Law. The Russian Constitution abolished limitations on absolute ownership of land in 1993. Full scale, private ownership of land has yet to be completely implemented. Even now as Russia moves towards a complete property rights initiative, Russians seem to be making more use of their ability to pass real and private property by intestacy or by will.¹⁰⁵

This century has seen a 180-degree turn in how Russia has dealt with inheritance. From an absolute ban on all inheritance¹⁰⁶ immediately after the Bolshevik Revolution to the later acceptance and incorporation into

103. See text *supra* Part III.B.

104. See, e.g., Ethan S. Burger & Irina Paliashvili, *Long-Awaited Russian Law on Registration of Rights to Immovable Property* (Nov. 1997), available at <http://www.rulg.com/publications.htm> (last visited Nov. 3, 2000).

105. See *id.*

106. See Tay, *supra* note 23, at 473.

legislation,¹⁰⁷ Russians have experienced an unfortunate and tumultuous roller coaster ride. Despite earlier attempts to remove inheritance completely, intestate succession nonetheless remains an integral part of the entire inheritance scheme.

107. See Foster-Simmons, *supra* note 22, at 50.