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MATERIAL AND INHERITANCE LAW

Private law texts, cases and materials

Raková, Fotopulosová, Horony, Klincová, Loffay

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Example of citation: Raková, K., Fotopulosová, L., Horony, Š., Klincová, Z., Loffay, F. Material and Inheritance law. Scriptum. Bratislava: Comenius University Bratislava, Faculty of Law, 2024, 181 p. ISBN: 978-80-7160-712-0.

The text has not been subject to any language revision.
The legal status of the publication is as of 31.12.2024.

2024
First edition

Published by Faculty of Law Comenius University Bratislava, 2024
ISBN (e-version): 978-80-7160-712-0.

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PREFACE

This study material is intended for students enrolled in the English-language study program, specifically for the course *Comparative Material Law and Inheritance Law*, which is delivered at the Faculty of Law, Comenius University in Bratislava.
The purpose of this material is to provide students with a general overview of legal institutions in the fields of property law and inheritance law under Slovak legislation. The objective is for students to understand the fundamental functioning of these areas in Slovak legislation, to be able to conduct comparative analyses with foreign legal systems during the course.
The chapters are structured in accordance with the Course Description, including theoretical analyses of relevant topics, questions for repetition, as well as practical cases and selected court decisions, with aim to assist students in gathering a better understanding of the issues covered.
Although this material is intended primarily for foreign students at the Faculty of law, it may also serve as a useful resource for any foreign student seeking to acquire a general understanding of selected aspects of substantive property and inheritance law.

Bratislava, December 2024

Karin Raková
Chief editor

LIST OF SHORTCUTS

ABGB	Allgemeines bürgerliches Gesetzbuch
Act on ownership of flats	Act No. 182/1993 Coll. on the Ownership of Flats and Non-Residential Premises, as amended
Act on Railways	Act No. 513/2009 Coll. on Railways, as amended
Act on Voluntary Auctions	Act No. 527/2002 Coll. on Voluntary Auctions, as amened
Bankruptcy Act	Act No. 7/2005 Coll. on Bankruptcy and Restructuring, as amended
BGB	Bürgerliches Gesetzbuch
Building Act	Act No. 200/2022 Coll. Building Act, as amended
CC, Civil Code	Act No. 40/1964 Coll. Civil Code, as amended
CCL, Code of Contentious Litigation	Act No. 160/2015 Coll. Code of Contentious Litigation, as amended
CEL, Code of Extra-Contentious Litigation	Act No. 161/2015 Coll. Code of Extra-Contentious Litigation, , as amended
Execution Procedure Code	Act No. 233/1995 Coll. on bailiffs and execution activity, as amended
Land Registry Act	Act No. 162/1995 Coll. on the Land Registry of Immovable Property and on the Registration of Ownership and Other Rights to Immovable Property
Notarial Code	Act No. 323/1992 Coll. on Notaries and Notarial Activities, as amended
Tax Code	Act No. 563/2009 Coll. on Tax Administration, as amended

CHAPTER 1

MATERIAL LAW

RIGHTS IN REM

SECTION A : BRIEF SUMMARY

Rights in rem are categorized under property rights, alongside obligations and inheritance law. The current Civil Code does not provide a legal definition of rights in rem; however, **rights in rem** are characterized by several features, including:

- they grant the holder direct control over a thing (often referred to as legal dominion over the thing),
- they operate *erga omnes* and therefore have an absolute character,
- they define the relationship between a subject and a specific object within civil law relations, focusing on the subject's connection to a particular object.

In contrast to rights in rem, obligations affect the parties *inter partes* and characterize the relationship of a subject to another subject.

The Civil Code regulates rights in rem in its Second part (§ 123 et seq. of the Civil Code). In this section, mandatory norms prevail, from which deviation is not allowed.

The subjects of rights in rem can be all subjects of civil law relations (i.e., natural persons, legal persons, and also the state). However, in some cases, the law itself limits who can hold a certain real right (see, e.g., § 125 para. 2 of the Civil Code).

The **objects** of rights in rem can be:

- movable and immovable things,
- natural forces that are usable and controllable,
- flats and non-residential premises,
- living animals,
- in some cases of real rights, even a right (possession).

Types of Rights in Rem

A fundamental principle concerning rights in rem is the **principle of numerus clauses**, which limits the number of rights in rem to those explicitly recognized by law. This principle precludes the creation of new right in rem through private agreements, restricting their recognition to statutory provisions.

Under the current Civil Code, rights in rem include:

1. **Ownership Right**, including **co-ownership**,
2. **Possession (possessio**), characterized by the possessor's lack of ownership (see § 129 and subsequent sections of the Civil Code),
3. **Rights to Foreign Things**, including right od lien, retention right, and rights corresponding to easements,

4. **Pre-emptive Rights**.

1. Ownership Right

- The most significant right in rem, regulated under § 123 et seq. of the Civil Code,
- Ownership right is non-prescriptible,
- Its importance is emphasized in the Constitution of the Slovak Republic (Article 20), as it is one of the fundamental human rights. The Constitution prohibits the abuse of ownership right to the detriment of the rights of others, and the exercise of ownership right must not harm health, life, nature, the environment, or cultural monuments,
- Distinction is made between:
  1. **Objective Ownership Right** – A set of legal norms regulating ownership relations,
  2. **Subjective Ownership Right** – The entitlements of the owner established by objective law (see § 123 of the Civil Code),
- **The subject matter of ownership right** may include only tangible things, natural forces that are controllable and usable, flats and non-residential premises, and living animals,
- The ownership right can be held by various entities under the law, including **natural persons, legal persons, and the state**. According to Article 4 of the Constitution, mineral wealth, caves, underground waters, natural healing resources, and watercourses are owned by the Slovak Republic. Further regulation is provided in § 125(2) of the Civil Code, which stipulates that a special law determines which objects may be subject to ownership only by the state or designated legal persons,
- The content of ownership right consists of the following triad of ownership entitlements:
  1. The right to possess (ius possidendi),
  2. The right to use and enjoy fruits (ius utendi),
  3. The right to dispose of the thing.

2. Co-ownership Right

- is classified among rights in rem, regulated under § 132 et seq. of the Civil Code,
- § 132(2) of the Civil Code explicitly establishes two types of co-ownership: **(i) share co-ownership and (ii) joint co-ownership of spouses,**
- Share and joint co-ownership differ in the following aspects:
  1. **Formation** – While share co-ownership may arise at any time based on the same legal facts that apply to acquiring exclusive ownership of a thing, joint co-ownership of the spouses can only arise after the conclusion of marriage, upon the acquisition of the first asset into the spouses' joint co-ownership,
  2. **Duration** – share co-ownership is not time-limited, whereas joint co-ownership of spouses exists only for the duration of the marriage,
  3. **Subject-matter** – The subject of joint share co-ownership may include anything that can be the subject of exclusive ownership, while joint ownership of spouses applies only to assets acquired during the marriage,
  4. **Subjects** – Shared co-owners can be natural persons, legal persons, or even the state, whereas joint co-ownership of spouses is limited to spouses only.

3. Possession

- Regulated under § 129 et seq. of the Civil Code,

- Possession can be understood both as (i) a component of ownership right and (ii) an independent legal institute (§ 129-131 of the Civil Code),
- **The subject of possession** may include any object capable of being the subject of civil law relations. Additionally, possession may also extend to rights that allow for permanent or repeated exercise, such as rights corresponding to an easement,
- **Subjects of possession** – The possessor may be a natural person, a legal person, or the state. The concept of plural possession is not excluded, meaning that a particular object may be possessed by multiple subjects as co-possessors, for example, spouses,
- **Possession may be**:
  1. **Lawful** (§ 130 of the Civil Code), or
  2. **Unlawful** (§ 132 of the Civil Code)

  depending on whether the possessor knows or should know, considering all circumstances, that the object or right does not belong to him.

4. Rights of Lien

- Regulated under § 151a et seq. of the Civil Code,
- It is classified as a right to foreign things (iura in re aliena),
- The right of lien serves two primary purposes:
  1. To secure the fulfilment of the secured creditor's claim and its appurtenances,
  2. To satisfy the creditor's claim if the debtor fails to duly and timely fulfil their obligation.
- **The subjects of the right of lien** may involve the following parties:
  1. **Pledgee** - The creditor of the claim secured by the right of lien. This party holds the position of a creditor in relation to the obligational debtor,
  2. **Obligational Debtor** - The party against whom the pledgee holds the claim. Typically, the obligational debtor is also the owner of the lien (referred to as the pledgor), but ownership is not a prerequisite,
  3. **Pledgor -** The owner of the lien, whose property is encumbered by the right of lien. The pledgor may be the obligational debtor or a third party providing security on behalf of the debtor. A third party, distinct from the obligational debtor, can become a pledgor by consenting to the establishment of the right of lien on their property,
- The subject-matter of the right of lien may include any object capable of being the subject of civil law relations, provided that it is transferable and can be monetized.

5. Right Corresponding to an Easement

- Regulated under § 151n et seq. of the Civil Code,
- It belongs to rights to foreign things (iura in re aliena),
- An easement constitutes a real property restriction on the exercise of ownership right over immovable property for the benefit of another subject,
- Subjects of the right corresponding to an easement:
  1. **Obligor of the Easement** - Always the owner (or co-owner) of the immovable property burdened by the easement. The obligor cannot be the owner of movable property,
  2. **Entitled Party of the Easement** - The individual entitled to the right corresponding to the easement. The entitled party can either be:
     (i) The owner of a specific immovable property, where the easement is established for the benefit of the owner of another immovable property,

(ii) A specific individual who does not need to be the owner of immovable property,

- The subject-matter of easements is limited to immovable property, specifically land and buildings that are permanently attached to the ground by a solid foundation (§ 119 subs. 2 of the Civil Code),
- The content of an easement consists of the obligation of the obligor to either (i) perform certain actions, (ii) refrain from specific actions, or (iii) tolerate specific actions. The content of an easement cannot include an obligation to provide something.

6. Right of Retention

- Regulated under § 151s et seq. of the Civil Code,
- It is a right to foreign things, which, similar to the right of lien, serves to secure the creditor's claim; however, it secures only a due monetary claim,
- The satisfaction function of the right of retention becomes effective only during ongoing enforcement proceedings against the debtor,
- The subject-matter of the right of retention is limited to movable property only.

7. Pre-emptive Right

- Regulated under § 140 of the Civil Code and § 602 et seq. of the Civil Code,
- Its essence lies in the obligation of the owner who intends to transfer their ownership right (or co-ownership share) to first offer it to the person entitled under the pre-emptive right,
- In the context of pre-emptive rights, a distinction is made between:
  1. **Statutory Pre-emptive Right -** Arises directly from the law and is always a right in rem, meaning it remains binding even against a new co-owner of the property. It exists in the context of shared co-ownership (see § 140 of the Civil Code),
  2. **Contractual Pre-emptive Right -** It constitutes a right in rem only if the parties agree upon it as such in the contract, in accordance with § 603(2) of the Civil Code, otherwise, it is treated as an obligation right, binding only the contracting parties, and it does not transfer to heirs upon the death of the entitled person, nor can it be transferred to another individual.

Principles of Rights in Rem

The Slovak legal system recognizes several principles associated with rights in rem. The fundamental principles of rights in rem include:

1. Principle of Numerus Clausus

- This is one of the fundamental principles of rights in rem, based on the premise that all rights in rem are regulated by law. Under the current legal framework (de lege lata),
- participants cannot create new rights in rem by agreement,
- Rights in rem are exhaustively regulated by law, and only the legislator can establish new rights in rem.

2. Principle of the Absolute Nature of Rights in Rem

- Rights in rem have an erga omnes effect, meaning they apply against everyone and entitle the holder to exercise all rights associated with the given right in rem (e.g., an owner can use, destroy, or sell their property),

- Other subjects, except for the entitled persons, must refrain from any actions that would unlawfully interfere with the right in rem of a specific subject.

3. Principle of the Binding Nature of Rights in Rem

- The scope of rights and obligations of the subjects of rights in rem is always defined by law and cannot be altered by agreement between the parties,
- For instance, § 123 of the Civil Code exhaustively defines all entitlements related to ownership right, and due to its mandatory nature, deviations from this provision are not allowed.

4. Principle of the Indivisibility of Rights in Rem

- According to Slovak law, multiple persons cannot have ownership right to the same thing, with the exception of shared and joint co-ownership of spouses,
- It is strictly prohibited for an individual to be the owner of only a part of an object. Even in the case of joint co-ownership, the co-owner's share is only an ideal share, not a physical portion of the thing.

5. Principle of Superficies Solo Non Cedit

- Explicitly expressed in § 120(2) of the Civil Code, which states that buildings, watercourses, and underground waters are not part of the land,
- In literal translation, this principle means that the surface does not yield to the subsoil,
- As a result, the Slovak Civil Code allows for the possibility that the owner of the land may be a different person than the owner of the building,
- This principle is closely related to the legal institute of an unauthorized construction regulated in § 135c of the Civil Code.

6. Principle of Publicity of Rights in Rem

- To ensure effective protection of rights in rem, it must be clear who holds a particular right and to what extent,
- In the case of movable property, publicity is ensured through factual possession, whereas for immovable property, it is secured by registration in the Land Register,
- However, certain rights in rem related to movable property may also be subject to registration in a specific register, such as a lien on movable property.

SECTION B : TEORETICAL QUESTIONS

1. In which part of the Civil Code is the issue of rights in rem regulated?
2. List the characteristic features of rights in rem.
3. Outline the differences between obligation rights and rights in rem.
4. What can be the object of rights in rem?
5. Explain the principle of a limited number of rights in rem.
6. What types of rights in rem are regulated by the Civil Code?
7. Is ownership right regulated in the Constitution of the Slovak Republic?
8. What are the differences between subjective and objective ownership right?
9. Explain the principle of superficies solo non cedit and its significance in Slovak law.
10. Explain the principle of Indivisibility of Rights in Rem.
11. Explain the principle of Binding Nature of Rights in Rem.

12. What are the limitations on ownership rights arising from the Constitution and laws of the Slovak Republic?
13. What distinguishes share co-ownership from joint co-ownership of spouses?
14. What rights to foreign things are recognized by the Civil Code?
15. What are the primary functions of the right of lien under the Civil Code?
16. What is considered immovable property under the Slovak Civil Code?
17. Define the right of retention.
18. State the functions of the right of retention.
19. Can an easement be established on movable property?
20. Explain the difference between statutory and contractual pre-emptive rights.

SECTION C : PRACTICAL CASES

Case No 1

Mr. Andrej and Mr. Matej are co-owners of a family house. Mr. Andrej decides to sell his co-ownership share to a good friend, whom he has not seen for many years.

Give the answers to the following questions:

1. Can Andrej sell his co-ownership share without any further conditions?
2. Does the pre-emptive right in this case have a real or an obligational nature? Explain the differences.

SECTION D : RELEVANT PROVISIONS OF ACT NO. 40/1964 CALL. CIVIL CODE AS AMENDED

Ownership Right

§ 123

The owner is entitled, within the limits of the law, to possess, use, enjoy the fruits and benefits of, and dispose of the subject of their ownership. § 124 All owners have equal rights and obligations and are provided with the same legal protection. § 125 (1) A special law regulates ownership of flats and non-residential premises. (2) A special law determines which objects may be subject to ownership only by the state or designated legal persons.

Possession

§ 129

(1) A possessor is one who treats a thing as their own or exercises a right for themselves.

(2) Things as well as rights that allow for permanent or repeated exercise may be possessed.

§ 130

(1) If the possessor, considering all circumstances, is in good faith that the thing or right belongs to them, they are considered a rightful possessor. In case of doubt, it is presumed that the possession is rightful.

(2) Unless otherwise provided by law, a rightful possessor has the same rights as the owner, including the right to the fruits and benefits of the thing during the period of rightful possession.

(3) A rightful possessor is entitled to claim reimbursement from the owner for expenses reasonably incurred for the thing during the period of rightful possession, to the extent corresponding to the value added to the thing at the time of its return. However, usual maintenance and operational expenses are not reimbursed.

§ 131

(1) An unlawful possessor is always obliged to return the thing to the owner along with its fruits and benefits and to compensate for any damage caused by the unlawful possession. They may deduct necessary maintenance and operational expenses.

(2) An unlawful possessor may separate any improvements made to the thing at their own expense, provided it can be done without impairing the essence of the thing.

Co-ownership

§ 136

(1) A thing may be co-owned by multiple owners.

(2) Co-ownership can be shared or joint. Joint co-ownership can arise only between spouses.

Pre-emptive Right

§ 140

If a co-ownership share is being transferred, co-owners have a pre-emptive right, unless the transfer is to a close person (§ 116, 117). If the co-owners cannot agree on the exercise of the pre-emptive right, they have the right to acquire the share proportionally according to their ownership shares.

§ 602

(1) If a thing is sold with the condition that the buyer must offer it back for sale if they wish to sell it, the seller has a pre-emptive right.

(2) Such a right can also be agreed upon for other types of disposals beyond sale.

§ 603

(1) The pre-emptive right imposes an obligation only on the person who promised to offer the thing for sale.

(2) The pre-emptive right may also be agreed upon as a right in rem, which applies to the successors of the buyer. The agreement must be concluded in writing, and the pre-emptive right is acquired by registration in the Land Register. If the seller does not purchase the offered thing, the pre-emptive right remains valid against the buyer's legal successor.

(3) If the pre-emptive right is violated, the entitled person may either demand the acquirer to offer the thing for sale or retain their pre-emptive right.

§ 604

The pre-emptive right does not pass to the heir of the entitled person and cannot be transferred to another person.

SECTION E : RELEVANT COURT DECISIONS

Ownership Right

Supreme Court of the Slovak Republic, Case No. 6 Sžo 206/2008: The constitutional right to ownership is not identical to ownership right as an institute of civil law. The constitutional right to ownership is understood as a public law institute that serves as a binding determination for the legislator and expresses the relationship between the state and the owner, which is directly applicable under certain substantive and procedural conditions. The constitutional right to own property primarily means the protection of duly acquired

ownership. Additionally, it ensures equal legal conditions for acquiring ownership (access to property). The content of ownership right is determined by law under the conditions established by the Constitution of the Slovak Republic (Articles 13 and 20). The specific entitlements (partial rights) that form the content of ownership right are established by § 123 of the Civil Code, according to which the owner is entitled, within the limits of the law, to possess, use, enjoy the fruits and benefits, and dispose of the subject of their ownership. Therefore, the claim that participants in a purchase contract cannot dispose of their ownership is unfounded, as the transfer of immovable property is not impossible; however, legal requirements must be met, i.e., the immovable properties intended for transfer must be properly designated and identified in the purchase contract to fulfill the conditions for registration of ownership by an entry, as required by the Land Registry Act. Thus, if the petitioner argued that if the state changed the method of real estate registration, it should bear the costs associated with this change and ensure that such a process does not interfere with fundamental human rights, this objection is legally irrelevant because proper identification of real estate has always been required for its transfer.

Possession

R 45/1986: Good faith is the acquirer's belief that they are not acting unlawfully when, for example, they appropriate a certain thing. It is, therefore, a psychological state, an internal conviction of the subject, which in itself cannot be the subject of evidence.

Co-ownership

R 61/1966: Co-ownership among citizens is fundamentally joint co-ownership, and the share expresses the extent to which co-owners participate in the rights and obligations arising from co-ownership of the property (§ 137(1) of the Civil Code). The numerical expression of the co-ownership share does not mean that the co-owner is the exclusive owner of a specific physical part of the shared property, even if its size corresponds to the co-ownership share.

Rights to Foreign Things

R 89/2000: If the creditor's claim is satisfied from the collateral of a pledgor who is not identical to the debtor, the pledgor may seek reimbursement from the debtor, applying an analogy to § 550 of the Civil Code.

Supreme Court of the Slovak Republic, Case No. 1Cdo 40/2008: Easements restrict ownership right in favor of another subject. This restriction can only apply to immovable property (§ 119(2)). Under this legal relationship, the owner of the immovable property has an obligation in favor of the entitled subject to tolerate something (pati), refrain from something (non facere), or perform something (facere). Each obligation arising from the easement relationship corresponds to the rights of the entitled party. These rights (entitlements) of easements are of two types:

1. Easements linked to the ownership of a specific immovable property (rights in rem). Any owner of the property is entitled to these easements. The entitlements pass to every subsequent owner through singular or universal succession. Such easements facilitate the more effective and beneficial use of the entitled owner's immovable property. An example is an easement corresponding to the right of way – crossing or driving over a neighbouring plot.
2. Easements in favour of a specific person (rights in personam), such as the right to use a specific property for life or to receive support in kind or financial payment from the

obligor. These rights cannot be transferred by contract and do not pass to another person.

In both cases, the specific determination of the rights and obligations arising from the easement relationship is established by the act through which the right in rem was created.

Supreme Court of the Slovak Republic, Case No. 6 Obdo 91/2007: The right of retention is an emergency security measure that is not pre-agreed in a contract. It serves as a means of securing an obligation, whereby the party obliged to return an item may retain it to secure their claim until it is satisfied. Retention constitutes a unilateral legal act of the creditor. Therefore, the claimant's actions cannot be considered arbitrary. The right of retention aims to compel the debtor to voluntarily fulfil their obligation to the creditor under the threat that the creditor will exercise their right and retain the debtor's property in their possession. By retaining the debtor's property, the creditor creates a more favourable position for satisfying their due claim.

Pre-emptive Right

Judgment of the Supreme Court of the Czech Republic, Case No. 22 Cdo 831/2000: The pre-emptive right of a co-owner arises directly from the law; it is a statutory pre-emptive right, meaning it is a right in rem. The pre-emptive right can also be established by contract. Contractual pre-emptive rights are regulated in **§ 602 et seq. of the Civil Code**, and these provisions apply subsidiarily (**§ 853 of the Civil Code**) where the statutory pre-emptive right does not contain special regulations.

CHAPTER 2

THE CONCEPT OF PROPERTY RIGHTS

SECTION A : BRIEF SUMMARY

CONCEPT AND CHARACTERISTICS

Property rights are one of the constitutionally guaranteed rights and can be simplified as the most complete and broadest legal dominion over its subject. From a constitutional perspective, ownership is also seen as an institutional guarantee in terms of protecting a specific legal position. Ownership and the right to its protection are fundamental basic human rights, which are inseparably connected with the protection of the owner's private sphere and freedom. Property rights represent an important prerequisite for the self-realization of a person, ensuring their independence, thereby creating a space for the realization of their freedom. Property rights, by their nature, are unlimited rights in terms of their time and content. Property, being the only real right that is not subject to limitation by time, and the boundaries of its content are fundamentally determined by a negative definition through normative restrictions. The absolute nature of property rights is manifested in the fact that everyone is obliged to respect it and no one (except for exceptions established by the legislator) may interfere with the exercise of property rights by the owner. The legal order of the Slovak Republic recognizes and regulates a single type of property rights; legally, the classification of property rights by types and forms has been abandoned. The property rights of all subjects are equal and have the same legal protection, which is most prominently reflected in the same content of property rights established by law and in the same legal protection. When evaluating the issue of subjects of property rights, it should be based on the principle that any subject of civil law relations (individuals, legal entities, or the state) may own tangible things (movable and immovable) without general qualitative or quantitative limitations. Exceptions to this rule, where certain things can only be owned by specific entities, are established by law. Article 4 of the Constitution of the Slovak Republic contains an exhaustive list of things that can only be owned exclusively by the state, such as mineral wealth, caves, groundwater, natural healing resources, and watercourses.

Property rights refer to a legally regulated ownership relationship. The concept of property rights can be understood in two dimensions:

- **objective property rights:** these represent a set of legal norms regulating ownership relationships from an economic standpoint.
- **subjective property rights:** these represent the most complete and broadest real right, being the possibility of the owner, within the limits established by law, to hold, use, enjoy its fruits and benefits, and dispose of the thing based on their own discretion and interest, recognized and protected by law, independent of the power of any other subject regarding the same thing at the same time.

From the definition of subjective property rights, it follows that the owner is limited by the law in their behavior. Their conduct must therefore be confined within the boundaries set by law. The owner, when enforcing their individual property interests, must also respect the interests of others and, above all, the public interest. The exercise of their property rights must not harm human health, nature, cultural monuments, or the environment.

THE SUBJECT OF PROPERTY RIGHTS

The Civil Code establishes the foundation for the ownership regime of all things, both movable and immovable. However, the legal regime for immovable property has certain peculiarities, which are reflected in most of its aspects, especially in the legal regulation of the creation, change, or termination of property rights to immovable property. The ownership regime of immovable property, according to legal regulation, also applies to the ownership of flats and non-residential premises.

The Civil Code does not define the subject of property rights. According to legal doctrine, the subject of property rights can be tangible things and natural forces or energy resources (if they serve human needs and are controllable). Intangible things such as claims and results of creative intellectual activity do not fall under the subject of property rights, as they have a completely different nature compared to the subject of property rights as a basic real right and therefore are governed by a different legal regime. The subject of property rights includes:

- **movable things**: The Civil Code does not define the term "movable thing," so anything that does not fall under the category of immovable property is considered movable.
- **flats and non-residential premises**: These have specific characteristics, and the foundations of the ownership regime of flats and non-residential premises are contained in a special law, namely Act on the Ownership of Flats and Non-residential Premises. While flats and non-residential premises are subject to separate property rights, the common parts and common facilities of the building, and typically the land on which the building stands, are in share co-ownership of the owners of the flats and non-residential premises. Contractual acquisition of ownership of flats and non-residential premises is tied to registration in the Land Register. The Civil Code applies subsidiarily in relation to this special law.
- **buildings and land**: All land and buildings connected to the land by a solid foundation are considered immovable property. The management of such property involves a public interest, which is manifested in a greater application of public law norms. The current Civil Code applies the principle "superficies solo non cedit," meaning that, according to current legal regulation, land and buildings on it are considered two separate things (so the owner of the building may be a person different from the owner of the land on which the building is constructed). § 120(2) Civil Code stipulates that buildings, watercourses, and groundwater are not part of the land.

CONTENT OF PROPERTY RIGHTS

The content of property rights consists of the rights and obligations of the owner, with subjective property rights encompassing four typical ownership entitlements. These are:

- **the right to use and enjoy the benefits of the thing** (ius fruendi and ius utendi) — through this entitlement, the utility value of the thing is realized. This entitlement has two aspects: one is the use and appropriation of the essence and useful properties of the thing, and the other is the appropriation of the benefits and fruits of the thing. The right to use the thing also includes the possibility for the owner to alter the essence of the thing or consume it according to the nature of the thing. The right to enjoy applies only to fruit-bearing things, whether natural or civil fruits. For example, the owner of a garden has the right to appropriate fruits like apples; conversely, the owner of money, by lending it to another party, has the right to claim interest. It is important

to note that the utility value of the thing may be realized by a subject other than the owner, such as leasing the thing to another party, which also includes the right to benefits and fruits.

- **the right to dispose of the thing (ius disponendi)** — this entitlement enables the owner to realize the exchange value of the thing, meaning they can transfer their ownership rights to another person. The owner can dispose of the thing without legal restrictions.
- **the right to hold the thing (ius possidendi)** — the right of possession, as another partial entitlement of the owner, is an inherent part of property rights and provides the owner with the legal possibility to have the thing physically in their control. The existence of the right of possession is conditioned and inseparably linked to the existence of the other two rights, as without having the thing in their possession, the owner cannot use or dispose of it.

It is a principle that all owners have the same rights and obligations and are granted equal legal protection.

PROTECTION OF PROPERTY RIGHTS

The content of property rights also includes the right to protection against any unlawful interference with the property right. Property rights, as the most basic absolute subjective right acting erga omnes, are protected by the entire legal order (beginning with the constitution, which presumes that legal protection should only be granted to property that has been acquired in accordance with the law). Civil law protection of property rights is conceived broadly, with the Civil Code contributing to the inviolability of ownership. This corresponds to the duty of any other subject not to interfere with the legitimate exercise of the owner's property rights to the thing. Civil law protection measures can be divided into general and specific (depending on whether the measures can serve to protect other subjective rights or whether they provide protection exclusively to property rights).

General protection measures for property rights:

General protection measures for property rights include:

- judicial protection
- preliminary protection by the municipality
- self-help.

Judicial Protection:

The person whose rights are threatened or violated may seek protection from the authority designated to do so. If the law does not stipulate otherwise, this authority is, according to § 4 of the Civil Code, the court.

Preliminary Protection by the Municipality:

If there has been a clear interference with the peaceful state of a subject's civil legal relationship, the municipality may provide protection. The municipality can preliminarily prohibit the interference or require that the previous state be restored. This does not affect the right of the subject in the civil legal relationship to seek protection in court (§ 5 of the Civil Code).

Self-Help:
If there is an imminent threat of unlawful interference with the rights of a subject in a civil legal relationship, the affected person may, in a reasonable manner, prevent the interference on their own (§ 6 of the Civil Code).

Specific Protection Measures for Property Rights
The specific protection measures for property rights are two types of property claims (§ 126(1) of the Civil Code): a) Claim for the Return of a Thing (rei vindicatio) b) Negatory Claim (actio negatoria).

a) Claim for the Return of a Thing (Rei Vindicatio)
The substantive legal basis for this claim is the fact that a certain thing is in the actual possession of a person other than its owner, and this person is retaining the thing without legal grounds. The active party entitled to bring the claim is the owner of the unlawfully retained thing or the person who is authorized to have the thing (authorized possessor); if the unlawfully retained thing is in share co-ownership of multiple co-owners (or in joint property of spouses), any of the co-owners is entitled to bring the claim. The passive party is the person who unlawfully retains the thing. The prerequisite for the defendant to return the thing is that they have it in their possession. The claim for the return of the thing does not apply in cases where the claim is directed against a person who has destroyed or consumed the thing. In this case, the owner will have a claim for monetary compensation from that person, expressed by the value of the thing.

The prerequisite for bringing the claim is the existence of the plaintiff's ownership of the thing (the burden of proof is on the plaintiff) and the fact that the defendant is retaining the thing without legal grounds, i.e., unlawfully (the claim would therefore be unjustified if the defendant had the thing based on a lease agreement made with the owner). A claim for the return of the thing is only applicable until the authorized possessor acquires ownership of the thing through prescription (this type of claim is time-limited - three years for movable things and ten years for immovable things). The claim for the return of the thing includes a request for the thing itself; along with the thing (main thing), the return of its accessories may also be demanded.

b) Negatory Claim (Actio Negatoria)
The negatory claim is aimed at removing other interferences with property rights, other than unlawful retention of a thing. Its essence is the right of the owner to demand that the defendant refrain from unlawful interference with their property rights. The owner, through the negatory claim, demands that the defendant be prohibited from a certain disruptive act or that the thing be returned to its original state. The active party entitled to bring this claim is the owner of the thing (or co-owner), who must prove the existence of ownership of the thing. The passive party is the person who unlawfully interferes with the owner's exercise of property rights, regardless of the fault of the interfering party. The prerequisites for filing this claim, apart from proving ownership of the thing, include the existence of unlawful interference with the property right and the fact that the unlawful interference that occurred is ongoing, continuing, or that there is a risk of it recurring. In practice, negatory claims are widely applied, especially in the context of neighbor relations concerning immovable property (e.g., unlawful interferences with neighboring properties, such as smoke or noise).

Property claims are not subject to prescription, but the claim for the return of the thing may be time-limited by the possibility of acquiring ownership of the thing through prescription.

ACQUISITION OF OWNERSHIP

Ownership of a thing may be acquired by subjects of civil legal relationships in various ways and on the basis of different legal facts.

Ways of acquiring ownership

a) original acquisition of ownership = this occurs when ownership is acquired regardless of the ownership rights of a predecessor, i.e., the acquirer does not derive their ownership from the previous owner (e.g., acquisition by prescription, creation of a new thing).
b) derivative acquisition of ownership = this depends on the same or more extensive ownership rights of a predecessor, i.e., the acquirer derives their legal position from the original owner of the thing (e.g., acquisition of ownership based on a purchase agreement).

Legal grounds for acquiring ownership

The legal grounds for acquiring ownership may be:

- **contract** = Contractual acquisition of ownership refers to any change in the person of the owner of a thing established by contract, where the acquirer derives their ownership from the previous owner. A typical contract for acquiring ownership is a purchase agreement, exchange agreement, or donation agreement. The contract must be in writing if required by law or by the agreement of the parties. A contract for the transfer of immovable property must always be in writing, and the manifestations of the parties must be on the same document. The acquisition of ownership by contract occurs in two stages. In the first stage, the contract is concluded, which is the legal ground for acquiring ownership, and based on this contract, a legal relationship arises between the transferor and the acquirer, the content of which is the obligation of the transferor to transfer ownership of the thing to the acquirer. The second stage represents the legal means of acquiring ownership, meaning that a valid contract must be followed by another legal act, such as the taking over of the thing in the case of movable property, unless otherwise stipulated by law or agreed upon by the parties, or for immovable property, the registration in the Land Register.
- **inheritance**
- **decision of a state authority (public authority)** = This refers to a decision by a court or another state authority; ownership is acquired on the date specified in the decision, and if no date is specified, then on the date the decision becomes final. The Civil Code regulates cases of acquiring ownership based on a decision of a court or state authority in the following cases:
    1. A court decision in the case of processing another person's property under § 135b of the Civil Code.
    2. A court decision on an unauthorized building on another's land under § 135c of the Civil Code.
    3. A court decision on the cancellation and settlement of share co-ownership under § 142 of the Civil Code.
    4. A court decision on the cancellation and settlement of joint property under § 150 of the Civil Code.
    5. A decision by an administrative authority in expropriation proceedings under § 128(2) of the Civil Code.

- **other facts established by law** = Other facts established by law include acquiring ownership by prescription, acquiring ownership of lost, hidden, and abandoned property, acquiring ownership through the creation of a new thing, acquiring ownership by accession and processing of the thing, acquiring ownership of unauthorized buildings, and acquiring ownership directly by law.

Termination of Property Rights

The termination of property rights can occur based on various legal facts, which can be classified according to several distinguishing criteria.

The termination of property rights can be divided into absolute and relative:

a) **relative termination of property rights** = This refers to the termination of property rights to a specific thing of one subject, connected with the acquisition of property rights to the same thing by another subject (e.g., sale of the thing),

b) **absolute termination of property rights** = This refers to the termination of property rights to a specific thing by one subject, which is not connected with the acquisition of property rights to the same thing by another subject; no one acquires property rights to the thing (e.g., destruction of the thing).

According to the type of legal fact that causes the termination of property rights, we distinguish:

Termination of property rights based on a legal act, which occurs:

- By a contractual transfer of property rights,
- By abandoning the thing.

Termination of property rights based on an event, which occurs:

- By the destruction of the thing,
- By the death of the owner,
- By the loss of the thing,
- By the expiration of the prescriptive period.

Termination of property rights based on a final decision of a state authority, namely:

- By a court decision,
- By a decision of a state authority (public authority).

SECTION B : TEORETICAL QUESTIONS

1. What are the differences between objective and subjective property rights?
2. What are the main differences in the legal regime of ownership of movable and immovable property?
3. What are the four main entitlements that form the content of subjective property rights?
4. What is the legal protection of property rights and what are the means of its protection according to the Civil Code?
5. What are the differences between general and specific means of protection of property rights?
6. What are the differences between original and derivative acquisition of property rights and what legal facts are associated with them?

7. What are the conditions and consequences of filing a claim for the return of a thing (rei vindicatio)?
8. What legal instruments are available to the owner to protect against unlawful interference with their property rights?
9. What factors influence the possibility of acquiring property rights through prescription and what limitations are associated with this?
10. What are the differences between absolute and relative termination of property rights, and in what cases is each category applied?

SECTION C : PRACTICAL CASES

Case No 1

Mr. Novák owns a family house in the outskirts of the city. His neighbor, Mr. Kováč, built a fence on the common boundary of their properties, which affects Mr. Novák's access to his garden.

1. What legal steps can Mr. Novák take to protect his property rights?
2. What is the difference between a negatory claim and a claim for the return of a thing (rei vindicatio)?
3. What are Mr. Kováč's responsibilities when building the fence?
4. What are the prerequisites for filing a negatory claim?
5. When can the municipality provide preliminary protection to Mr. Novák?

Case No 2

Veronika lives in a house that her parents built more than 30 years ago. After her parents' death, Veronika continued using the house, which was informally entrusted to her, although it was not registered in the Land Register under her name. After several years, she decided that she wanted to officially transfer the house to her name in order to dispose of it and obtain funds for its renovation. However, Veronika is unsure whether she has the right to legally own the house, as there was never a contract for the transfer of ownership.

1. What conditions must Veronika meet in order to acquire ownership of the house through prescription?
2. What is the difference between lawful and unlawful possession, and what role does good faith play in this case?
3. What legal steps should Veronika take to prove her ownership of the property in the Land Register?
4. If someone claims ownership of this house, what should Veronika do to protect her property rights?
5. What are the time requirements for acquiring property rights to immovable property through prescription according to Slovak law?

SECTION D : RELEVANT PROVISIONS OF ACT NO. 40/1964 CALL. CIVIL CODE AS AMENDED

§ 123

Within the limits of law, the owner shall be entitled to hold the subject of his ownership, use it, consume its proceeds and dispose of it.

§ 124

All owners shall have the same rights and duties and shall be granted the same legal protection.

§ 125

(1) A special act shall regulate ownership of flats and non-residential premises.

(2) A special act shall stipulate what things can be owned only by the state or by specified legal entities.

§ 126

(1) The owner shall have the right to protection against anyone who unlawfully infringes its ownership; in particular, the owner may demand surrendering of the thing against the person who unlawfully retains his thing.

(2) The analogous right shall belong to the person who is entitled to hold the thing.

§ 127

(1) The owner of a thing must omit all that inadequately bothers another person or that seriously jeopardises the exercise of his rights. Therefore, the owner must in particular not jeopardies the neighbor's building or plot by arrangements of his plot or by arrangements of his building placed thereon without taking sufficient measures for stiffening of the building or plot; furthermore, the owner must not inadequately bother the neighbors with noise, dust, ashes, smoke, gases, vapour, smells, solid or liquid waste, light, shading and vibrations; he must not let bred animals intrude the neighbor's plot and carelessly or in an unsuitable season remove roots of trees from his soil or remove branches of trees exceeding to his plot.

(2) If it is necessary and if it does not prevent a useful use of the neighboring plots and buildings, the court may, after ascertaining the opinion of the competent building authority, decide that the owner of the plot must fence the plot.

(3) Owners of neighboring plots must admit entrance to their plots eventually buildings placed thereon for a necessary time and to a necessary extent if it is necessary for maintenance and management of the neighboring plots and buildings. If damage to plots or building arises from such use, the person who caused the damage must compensate it; he cannot liberate himself from this liability.

§ 128

(1) The owner of a thing must admit use of his thing in a state of stress or in an urgent public interest for a necessary time and to a necessary extent and for a reimbursement unless the purpose of the use cannot be achieved otherwise.

(2) In a public interest, a thing may be expropriated, or ownership thereof may be restricted unless the purpose can be achieved otherwise; the expropriation or restriction may be done only on the basis of law, only for this purpose and for a compensation.

Possession

§ 129

(1) Possessor shall be defined as a person who possesses a thing as it was his own or who exercises a right for himself.

(2) Possession may concern things as well as rights allowing a permanent or repeated exercise.

§ 130

(1) Lawful possessor shall be defined as a possessor who is, with regard to all circumstances, in good faith that he is the owner of the thing or the right. In case of doubts, the possession must be presumed lawful.

(2) Unless an act stipulates otherwise, a lawful possessor shall have the same rights as the owner; in particular, he shall be entitled to proceeds from the thing that arose during the lawful possession.

(3) The lawful possessor shall have the right against the owner to reimbursement of costs reasonably spent on the thing during the lawful possession up to the extent corresponding to the valorisation of the thing at the moment when it was returned. However, usual expenses connected with the maintenance and operation shall not be reimbursed.

§ 131

(1) An unlawful possessor must always surrender the thing to its owner together with all its proceeds and compensate the damage arisen due to the unlawful possession. However, he may deduct costs necessary for maintenance and operation of the thing.

(2) The unlawful possessor may separate what he valorised the thing by if it is possible without impairment of the substance of the thing.

Acquisition of ownership

§ 132

(1) Ownership of a thing may be acquired on the basis of a purchase, donation or other agreement, by way of succession, on the basis of a decision of a state authority or on the basis of other facts laid down by an act.

(2) If the ownership is acquired on the basis of a decision of a state authority, the ownership shall be acquired on the day specified therein; if no such day is specified, on the day when the decision became final and conclusive.

§ 133

(1) If a movable thing is transferred on the basis of an agreement, the ownership shall be acquired by taking over the thing unless a legal regulation or the participants' agreement stipulate otherwise.

(2) If a real estate property is transferred on the basis of an agreement, the ownership shall be acquired by entering it in the Land Register according to special regulations unless a special act stipulates otherwise.

§ 134

(1) A lawful possessor shall become owner of a thing if he holds the thing uninterruptedly for at least three years as for movable things and for at least ten years as for a real estate property.

(2) Ownership to things that cannot be subject to ownership or to things that can be owned only by the state or legal entities specified by an act (§ 125) cannot be acquired in this way.

(3) The period mentioned in paragraph 1 shall include the period during that legal ancestor lawfully held the thing.

(4) Provisions regulating the course of the limitation period shall adequately apply to the commencement and course of the period under paragraph 1.

§ 135

(1) A person who finds a lost thing must give it off to the owner. Unless the owner is known, the finder must give the thing over to the competent state authority. Unless the owner applies for the thing within one year after it was given over, the thing shall pass to the ownership of the state.

(2) The finder shall have the right to reimbursement of necessary expenses and to a reward in the sum of 10 % of the price of the found thing. A special legal regulation may regulate the rights of the finder otherwise.

(3) The provisions of paragraphs 1 and 2 shall adequately apply also to hidden things whose owner is not known and to abandoned things.

§ 135a

Accessions of the thing, even if they were separated from the main thing, shall belong to the owner of the thing.

§ 135b

(1) If somebody works up somebody else's thing in good faith into a new thing, the new thing shall pass to the ownership of the person whose share of the thing is bigger. However, the new owner must provide the other owner with reimbursement of the price of what his property was reduced by. If the shares are equal and the participants are not able to agree, the dispute shall be decided by a court upon the request of any of them.

(2) If somebody works up somebody else's thing knowing that he is not the owner of the thing, the owner may ask him to give off the thing and restore the preceding state. If restoration of the preceding state is possible or useful, the court shall, according to all circumstances, decide on who is the owner of the thing and what reimbursement shall belong to the owner or worker unless they are able to agree.

§ 135c

(1) If somebody constructs a building on somebody else's plot without being entitled thereto, the court may upon a request of the owner of the plot decide that the building is to be removed at costs of the person who construed the building (hereinafter the "owner of the building").

(2) Unless the removal of the building is useful, the court shall decide that the building shall pass to the ownership of the owner of the plot if this owner agrees to this solution.

(3) The relationships between the owner of the plot and the owner of the building may be regulated by the court also otherwise; the court may in particular establish for a compensation an easement that is necessary for exercise of the ownership of the building.

SECTION E : RELEVANT COURT DECISIONS

R 86/2001: The court is authorized to preliminarily resolve the issue of property rights in a case of a property claim regarding immovable property; when determining who the owner is, it may also depart from the state registered in the Land Register.

Supreme Court of the Slovak Republic, Case No. 7Cdo/127/2021: A prerequisite for prescription is that the possessor is in good faith, considering all circumstances, that they are the owner of the thing or right. The assessment of whether the possessor is in good faith, considering all circumstances, cannot be based solely on the possessor's subjective beliefs. Good faith must be assessed from an objective perspective, i.e., whether the possessor, with the due caution that could be reasonably required of anyone based on the circumstances of the case, had or could have had doubts about whether they are using an immovable property that they had not acquired ownership of. Lawful possession does not necessarily require an existing legal title; it is sufficient if there was a presumed legal title (titulus putativus), meaning that the possessor, considering all circumstances, is in good faith that such a legal title exists (Supreme Court decision Case No. 4Cdo/287/2006). In a constitutionally compliant interpretation of the good faith of possession, it must be examined whether the possessor could objectively be convinced that they had acquired the property honestly. It is not decisive that they did not fulfil the legal conditions. A proper way of acquiring the property should be considered when it is in accordance with good morals. It is usually decisive if the possessor paid the agreed sum for the property or provided other agreed consideration, or if it was demonstrably a gift as an unpaid transfer. [Constitutional Court of the Slovak Republic, Case No. II. ÚS 484/2015 from November 14, 2018 (see also Case No. 5Cdo/210/2019)].

Supreme Court of the Slovak Republic, Case No. 10Sžr/86/2012: In this case, a purchase agreement was concluded between spouses, who were both the sellers and had immovable property in joint ownership, and at the same time, the buyers were purchasing the immovable property into their joint property. ... In the examined case, the administrative authority correctly found that the participants in the contract were circumventing the mandatory provisions of the Civil Code regarding the scope and duration of joint property, and that the act they performed was in conflict with the law or circumvented it. ... After evaluating all the evidence, the administrative authority concluded that since the persons on the selling and buying sides were identical, it was not possible to transfer ownership from the sellers to the buyers, even though the presented purchase agreement changed the form of ownership for the buyers, who were also the sellers. Referring to §s 143 and 39 of the Civil Code, the transfer in the aforementioned agreement was considered a circumvention of the mandatory provisions of the Civil Code regarding the scope and duration of joint property. ... In this regard, the appellate court states that in this case, it is not possible to transfer ownership from the sellers to the buyers and change the form of ownership from share co-ownership to joint property. The appellate court found no errors in the proceedings of the administrative authority or the first-instance court.

R 68/2001: If a lawsuit is possible to determine the right or legal relationship, there is no urgent legal interest in determining the invalidity of the contract that concerns this right or legal relationship.

R 55/2009: A court judgment that negatively determines that the defendants are not the owners of the immovable property cannot improve the plaintiff's legal position, who does not

prove their ownership with a title to the property and has not yet been registered as the owner of the immovable property in the legal relationship registry. The plaintiff does not have an urgent legal interest in filing such a lawsuit.

Supreme Court of the Slovak Republic, Case No. 3Cdo/144/2010: The Supreme Court of the Slovak Republic confirmed the principle of Roman law that no one can transfer more rights to another than they themselves have (nemo plus iuris ad alium transferre potest quam ipse habet), meaning that a legal successor cannot validly acquire ownership if the subject from whom they derive their property rights to an immovable property never acquired that right and thus could not have transferred it validly. A consumer who requests the determination of ownership rights always has an urgent legal interest in having it clarified to reconcile the registered and legal status in the Land Register. The owner of a pledged property provided a loan to the consumer but presented them with a purchase agreement for their immovable property, including a residence. The Supreme Court of the Slovak Republic confirmed that the participants only pretended to conclude the purchase agreement because their real intent was to secure the claim of the pledgor through a loan agreement, in the form of an unlawful lien, which the law does not allow. The purchase agreement is therefore absolutely invalid under § 37 of the Civil Code because it was not made seriously and concealed an act that contradicts § 39 of the Civil Code. As a result, even the second acquirers could not validly acquire the immovable property into their ownership because they lacked a valid title to acquire the property. This conclusion remains unchanged even with the good faith of the acquirers — the buyers.

Supreme Court of the Slovak Republic, Case No. Cpj33/01: A contract for the transfer of immovable property must be in writing, and the expressions of the parties, including their signatures, must be on the same document (§ 46(1) and (2) of the Civil Code); if such a contract, including its indivisible attachments, consists of more than one sheet, all these individual sheets must be firmly bound (stitched) together so that they form a technical unity of the document before it is signed.

Supreme Court of the Slovak Republic, Case No. 6 Sžo 106/2007: According to the valid legal regulations, the cadaster authority must decide on the application for registration according to the factual and legal status existing at the time of the decision on the application. When deciding on this application (i.e., from the time it is submitted until the decision is made), the cadaster authority must examine whether there have been factual and legal circumstances that may affect the approval of the registration, or which may prevent the application (with the land registry law also referring to the enforcement code). If during this process an enforcement procedure is initiated involving the sale of immovable property (in which the rights to these immovable properties are involved in the cadaster proceedings), and a note of the initiation of this enforcement is subsequently registered, then this enforcement procedure undoubtedly constitutes a circumstance that prevents the registration in the cadaster for this property.

Supreme Court of the Slovak Republic, Case No. 184/2005: A decision by the cadaster authority approving the registration of ownership rights to an immovable property is not a decision that the law links to the effectiveness of the contract for the transfer of ownership rights to the immovable property (§ 47 of the Civil Code). The effects of registration under §

133(2) of the Civil Code consist of acquiring ownership of the immovable property, i.e., in the real legal consequences, and not in the obligation consequences (effectiveness) of the contract, which arise from the valid acceptance of the proposal to conclude the contract (§ 44(1) of the Civil Code).

Supreme Court of the Slovak Republic, Case No. 1 Cdo 31/2000: If the seller violated a contractual obligation arising from a purchase agreement under which ownership rights were not registered in the Land Register, and the same immovable property is transferred by another contract to someone else, this violation does not result in the invalidity of the second purchase agreement under § 39 of the Civil Code, according to which the registration of ownership rights in the Land Register was approved. The person who was harmed by the double transfer has the right to compensation for the damage caused, according to the general provisions on liability for damage (§ 420n of the Civil Code).

Supreme Court of the Slovak Republic, Case No. 5 Cdo 87/2010: The purpose of prescription is to enable the acquisition of ownership by the possessor who has long controlled the property in good faith, believing they are the owner, and this good faith (bona fide) is given "with regard to all circumstances." The opposite of control by the possessor is the inaction of the owner. Prescription, therefore, remedies defects or the lack of an acquisition title. If the contract is invalid due to a defect that the acquirer could not have known with usual caution, or if there is no title at all, and the acquirer is in good faith, believing the title exists, they become the rightful possessor of the property and, upon meeting other conditions, may acquire it through prescription. The purpose of prescription is to align long-term factual possession with legal status.

Supreme Court of the Slovak Republic, Case No. 6 M Cdo 44/2012: An unauthorized building under § 135c(1) of the Civil Code is one that is constructed by the builder on someone else's land without having a legal title to build on the land. For determining whether the building is unauthorized, it does not matter whether the builder had a building permit or whether they had the approval of the municipal authority. It is sufficient for the building to be on foreign land, even partially. Foreign land for the builder is any land to which they do not have ownership (co-ownership) rights, rights corresponding to an easement, or an obligation-based right enabling the construction.

CHAPTER 3

DIVISION OF OWNERSHIP TITLE – JOINT OWNERSHIP OF SPOUSES

SECTION A : BRIEF SUMMARY

CONCEPT AND CHARACTERISTICS

According to §136(2) of the Civil Code, *"Co-ownership shall be shared or joint. Joint ownership may only arise between spouses."* The Civil Code regulates the joint ownership of spouses in provisions §§143 to 151. This form of ownership is established in connection with the creation of marriage. The legislation is based on the principles of equality between spouses regarding their rights and obligations in property relations, joint and equal participation in the acquisition of joint property, and undivided participation in exercising joint ownership rights. The term "joint ownership of spouses" refers to the method by which spouses jointly acquire property during marriage. This applies exclusively to the legal relationship created by the marriage. Joint ownership of spouses serves as the fundamental form of the matrimonial property regime. Due to the specific purpose and function of marriage, as well as society's interest in the stability and permanence of the matrimonial bond, this property regime is subject to a special legal framework.

The Civil Code regulates joint ownership of spouses in relation to property acquired during marriage. A distinctive feature of joint ownership of spouses is that spouses do not hold quantitatively determined shares, as is the case with share co-ownership. Instead, each spouse is considered the owner of the entire property included in the joint ownership, with their ownership rights limited by the equal rights of the other spouse. Both spouses share the property jointly and severally, a concept often referred to as 1/1 ownership. Historically, this approach stems from the presumption of cohabitation between spouses and the principle that items held in joint ownership of spouses belong equally to both co-owners, each owning the entirety of the property but subject to the other spouse's equal rights. Joint ownership of spouses is linked to marriage, both existentially and functionally. The property held in joint ownership of spouses of is primarily intended to meet the needs of the spouses and their family.

By law, joint ownership of spouses can only exist between spouses - two natural persons (a woman and a man) who have validly contracted a marriage, provided that the marriage is ongoing. Therefore, persons other than spouses cannot be parties to joint ownership. The current legislation does not recognize separate co-ownership regimes for partners or cohabitants. If such individuals wish to acquire property jointly, the only option available to them is shared ownership.

ESTABLISHMENT OF THE JOINT OWNERSHIP OF SPOUSES

The creation and duration of joint ownership of spouses are conditional on the creation and duration of marriage. Joint ownership of spouses arises even if the spouses do not live together or share a common household. However, the fact that the spouses do not live in the same household could, under the conditions set out in § 148(2) of the Civil Code, and in conjunction with other circumstances, serve as one of the grounds for a court decision to dissolve the joint ownership of spouses upon the application of one of the spouses for compelling reasons. Joint ownership of spouses also arises in the case of an invalid marriage. However, it does not arise in the case of an apparent (non-existent) marriage, which has no

legal existence; in such cases, subsequent convalidation is excluded. Upon the termination of the marriage, the joint ownership of spouses is also dissolved, and the matrimonial property is settled. Only in exceptional cases, as provided by law, may joint ownership of spouses be dissolved while the marriage continues. Conversely, the reverse situation is not possible, i.e., a dissolved marriage cannot result in the continuation of joint ownership. Therefore, in the case of joint ownership, the legal relationship cannot exist independently and is inseparably linked to marriage.
The celebration of marriage is an essential condition for the creation of joint ownership. However, the celebration of marriage alone does not automatically create joint ownership; at the time of the celebration, joint ownership of spouses is "empty." The acquisition of property into joint ownership of spouses occurs only on the basis of a legal act to which the law links the creation of ownership rights. The decisive factor for the creation of joint ownership of spouses is the moment at which ownership of the property is acquired. This must be assessed in accordance with the relevant provisions of the Civil Code (§§ 132 and 133).

Thus, joint ownership of spouses arises if:

a) the marriage is legally subsisting (even if void)
b) the property qualifies as joint ownership of spouses under the provisions of § 143 of the Civil Code, and
c) joint ownership of spouses has not been dissolved or annulled by a court decision.

The law on joint ownership of spouses provides that property acquired by either spouse before the marriage does not become part of joint ownership, even if it is used by both spouses. Such property remains the exclusive property of the spouse who acquired it. If the spouses had acquired property jointly by contract before the marriage, it would have been owned by them as co-ownership. Any doubt regarding the ownership of items acquired in exchange for, or derived from, property that was the exclusive property of one spouse has been resolved through case law. According to this interpretation, such items remain the sole property of that spouse, as they constitute merely a transformation of the same property (R 42/1972). However, if funds from joint ownership of spouses are used, even partially, to acquire a new item, the entire item will belong to joint ownership of spouses (R 42/1972).

SUBJECT MATTER AND EXTENT OF THE JOINT OWNERSHIP OF THE SPOUSES

For assessing whether an object belongs to joint ownership, it is decisive whether it was acquired during the marriage, by whom it was acquired, and with what means. According to §143 of the Civil Code: *"The joint ownership of the spouses includes everything which may be the subject of ownership and which was acquired by either spouse during the marriage, with the exception of things acquired by inheritance or gift, as well as things which, by their nature, serve the personal need or the exercise of the profession of only one of the spouses, and things issued under the rules on restitution of property to one of the spouses who had possession of the issued thing prior to the marriage or to whom the thing was issued as the successor in title of the original owner."*

This enumeration shows that the legislator has excluded certain items from joint ownership of spouses either for practical reasons or because their acquisition was not a joint effort of the spouses. In determining the extent of joint ownership, the legislator proceeds on the principle that joint property should include those things in the acquisition of which both spouses have contributed. Under the joint ownership of spouses regime, spouses acquire into this regime

everything that can be the subject of ownership and was acquired by at least one of them during the marriage automatically, without the need for a specific legal act. However, this principle is not absolute, as the law excludes certain items from joint ownership of spouses even though they were acquired during the marriage. Such an arrangement of property relations arises directly from the law as a consequence of marriage. To modify, limit, or extend this statutory regime, a specific agreement (in accordance with § 143a of the Civil Code) must be concluded in advance, either concerning the entire estate or specific items. If the spouses do not conclude such an agreement, the celebration of marriage automatically causes all assets acquired subsequently to fall under joint ownership of spouses in accordance with § 143 of the Civil Code.

§143 of the Civil Code defines the subject matter of joint ownership of spouses both positively and negatively. Thus, only property that meets the definitional characteristics of joint ownership of spouses set out in §143 Civil Code is included. Property of a spouse that is not joint property of spouses is either the exclusive property of one spouse or share co-ownership (§ 137 of the Civil Code).

Pursuant to §143 of the Civil Code, the subject matter of joint ownership of spouses is defined by the following features:

a) It includes everything that can be the subject of ownership by a natural person
b) The property was acquired by either spouse during the marriage
c) It excludes property:

- acquired by inheritance,
- acquired by gift (if the donee was only one spouse, the gift belongs to their exclusive ownership; if both spouses are donees, the gift is held in share co-ownership)
- serving, by its nature, the personal needs or the pursuit of the profession of one spouse (the decisive factor is whether the property actually serves the personal needs or professional activities of only one spouse; if so, it belongs to the exclusive property of that spouse, regardless of how it was acquired or its value),
- issued under restitution legislation (e.g., Act on the Mitigation of Certain Property Injustices, Act on Extrajudicial Rehabilitations or Act on the Regulation of Ownership Relations to Land and Other Agricultural Property) to one spouse who possessed the property before the marriage or to whom the property was issued as the legal successor of the original owner.

The law applies three criteria for determining the extent of joint ownership:

a) the time at which the property was acquired (e.g., joint ownership of spouses does not include property acquired before the marriage),
b) the manner in which the property was acquired (e.g., joint ownership of spouses does not include property given as a gift to only one spouse),
c) the purpose the property serves (e.g., joint ownership of spouses does not include items used exclusively by one spouse in the exercise of their profession).

The subject of joint ownership of spouses includes everything that can be the object of ownership, except for things that may only be owned by the state or specific legal entities based on special laws. Joint ownership of spouses encompasses various movable and immovable property, such as land, cottages, houses, flats, or non-residential premises in accordance with ownership. The main sources of joint ownership of spouses primarily include

income and savings from employment, business, and social security. Income from employment covers not only wages but also other forms of remuneration, such as bonuses, artists' fees, income from licensing agreements, royalties for inventions, premiums for improvement proposals, or other royalties. For all income and property of the spouses, the principle applies that it becomes part of joint ownership of spouses when it is received by one of the spouses. A key aspect of joint ownership of spouses is that only wages or income already paid and received become part of it, not the wage entitlement itself, as entitlements cannot be subject to joint ownership. The claim for payment of income remains separate because it constitutes a claim, not a tangible object.

JOINT OWNERSHIP OF SPOUSES MODIFIED BY AGREEMENT

Pursuant to §143a(1) of the Civil Code: *"The spouses may by agreement extend or reduce the extent of the joint ownership of spouses determined by law. They may likewise agree on the administration of the joint property."* The Civil Code thus allows spouses to regulate joint ownership of spouses differently from the statutory regime through agreements modifying the joint ownership. Spouses may only modify their mutual relations arising from joint ownership of spouses by derogating from the law based on an agreement under §143a of the Civil Code, which must be concluded in the form of a notarial deed under penalty of absolute nullity.

Spouses cannot validly regulate their property relations by any other legal act, nor can they exclude the acquisition of assets that would otherwise belong to their joint ownership of spouses if they were legally entitled to them. In the absence of such an agreement, the creation of joint ownership of spouses cannot be excluded, postponed, or otherwise modified. A simple agreement between spouses to acquire an object as sole property, if not expressed in the form of a notarial deed, cannot exclude the object from joint ownership. Similarly, a declaration by one spouse that a certain asset acquired during the marriage does not belong to joint ownership of spouses is legally irrelevant if the law deems it part of the joint ownership.

The validity of an agreement concluded under this provision is subject to the following conditions:

- It must be an agreement between the spouses.
- It must be concluded during the marriage (not before or after).
- It must only take effect prospectively (pro futuro) and cannot interfere with existing property rights.

All these prerequisites must be cumulatively fulfilled; failure to meet even one renders the agreement absolutely null and void (§39 Civil Code). Agreements under §143a of the Civil Code must also respect the mandatory nature of the statutory rules on joint ownership. Any agreement that deviates from these limits would be void for being contrary to the law. For example, spouses cannot entirely exclude joint ownership of spouses by agreement, as it is a statutory form of the matrimonial property regime arising ex lege upon marriage. However, joint ownership of spouses as a system of property rights concerning assets acquired during the marriage remains intact. Spouses' agreements cannot alter the essence of this institution. Spouses may invoke agreements modifying joint ownership of spouses against third parties only if the latter are aware of the agreement. This rule ensures the protection of third-party property rights. The third party must be aware not only of the agreement's existence but also of its content. If a third party lacks sufficient information when making decisions about their property rights, they cannot make an informed decision. The burden of proving that the third

party was aware of the agreement and its content lies with the spouses. If third parties are unaware of the agreement, the spouses cannot rely on it to contest their property relations against them.

The agreement-modified joint ownership of spouses regime may deviate from the statutory one in only three respects:

1. **Extent of Joint Ownership**
    a) spouses may extend the scope of joint ownership to include assets that would otherwise remain the exclusive property of one spouse, such as property acquired by inheritance or gift,
    b) spouses may narrow the scope of joint ownership compared to its statutory extent. However, they cannot reduce it to the point of effectively dissolving joint ownership. At a minimum, items constituting the usual furnishings of the household must remain in the joint ownership. For instance, spouses may agree that proceeds or benefits from an asset owned by one spouse will remain that spouse's exclusive property, even if statutory rules would include them in joint ownership. However, it is not permissible to agree that joint ownership will not arise at all or to apply such agreements retroactively to property acquired before the agreement (§30/2008).
2. **Administration of Joint Property**
    Spouses may agree to administer joint property differently from the statutory rules. For example, they may agree that only one spouse will administer the joint property or that all property will be administered jointly. The law does not restrict the forms of administration they may choose.
3. **Timing of Joint Ownership**
    According to §143a(2) of the Civil Code, *"The spouses may agree to reserve the creation of joint ownership to the date of termination of the marriage."* This means spouses may modify the timing of joint ownership's creation without altering its extent. During the marriage, each spouse retains sole ownership of assets acquired, with full freedom of disposition. Upon dissolution of the marriage, all assets that would have belonged to joint ownership of spouses under §143 Civil Code automatically become joint property, and the settlement is carried out. In such cases, the creation and dissolution of joint ownership occur simultaneously.
    The form of agreements modifying joint ownership of spouses or its administration must comply with the requirement for a notarial deed to be valid. Failure to meet this requirement results in absolute nullity (§40(1) Civil Code). Neither the simple consent of the spouses nor a unilateral declaration by one spouse can produce the legal effects of §143a of the Civil Code unless formalized in a notarial deed.

CONTENT OF THE LEGAL JOINT OWNERSHIP OF SPOUSES

The content of legal joint ownership of spouses consists of the mutual rights and obligations of the spouses and their rights and obligations toward third parties. As joint owners, spouses have essentially the same rights and obligations as an individual owner, with the distinction that all rights and obligations are exercised jointly, and their participation is not defined by shares. The legal relations arising from joint ownership of spouses are twofold:

a) **legal relations between the spouses, and**
b) **legal relations of the spouses with third parties.**

(a) Legal Relations Between the Spouses

In relationships between spouses, the Civil Code in § 144, provides that spouses jointly use the property and jointly bear the costs incurred for its use and maintenance. The phrase "use the thing jointly" in §144 does not imply that both spouses must use the item simultaneously. Instead, it establishes the legal right for both spouses to use the item. For example, one spouse cannot demand exclusive possession of car documents for a vehicle belonging to the joint ownership, thereby excluding the other spouse from its use (R 42/1964).

The Civil Code presumes that spouses will agree on exercising their rights and obligations arising from co-ownership. The law does not require any specific form for such an agreement; it may be written, oral, or implied. In cases of disagreement about joint ownership, either spouse may petition the court to decide, as stipulated in §146(1) of the Civil Code. This applies not only to disputes over the use of joint property but also to situations where one spouse arbitrarily prevents the other from using the property (R 42/1972).

Disagreements may arise over various aspects of joint ownership, including:

- the manner or extent of property use,
- property maintenance or repair,
- investments in joint property,
- spending for the property's upkeep, or
- decisions on the property's disposition,
- protection under §146(1) of the Civil Code also extends to cases where one spouse uses the property wastefully or in a way that causes damage.

(b) Legal Relations of the Spouses with Third Parties

The legal relationship of joint owners with third parties primarily concerns dispositive acts. The law distinguishes between legal acts related to ordinary matters and those involving non-ordinary matters. Under §145(1) of the Civil Code, either spouse may independently handle ordinary matters relating to joint property. However, for non-ordinary matters (acts outside the scope of routine management), both spouses' consent is required. A legal act performed without the other spouse's consent is subject to relative nullity, meaning the affected spouse may invoke the nullity within a three-year limitation period. If this right is not exercised within the prescribed period, the act is considered valid.

The law does not explicitly define what constitutes "ordinary" or "non-ordinary" matters, leaving this determination to case-by-case analysis. Relevant factors include:

- the extent of the joint ownership,
- the type and value of the property involved,
- the financial and economic circumstances of the spouses,
- their standard of living, and
- the property's usual purpose and value.

Ordinary acts typically include:

- handling the family's daily needs,
- routine household expenses,
- minor repairs,
- regular payments related to joint property, and
- small gifts or reasonable expenses for children.

Non-ordinary acts include transactions that alter the substance of joint ownership of spouses or significantly reduce its value, such as:

- selling or purchasing real estate,
- donating substantial assets,
- mortgaging joint property, or
- providing benefits to third parties without justification.

Business activities of one spouse

A spouse's business activities pose a heightened risk to the matrimonial property regime, as business ventures often involve assets from joint ownership. Failed business ventures can therefore impact the extent of joint ownership. In response, the Civil Code introduced §148a to provide safeguards for the non-business spouse. This provision protects the non-business spouse in two ways:

1. Consent Requirement: When a spouse starts a business, they must obtain the other spouse's consent to use joint property (§148a(1) Civil Code). The consent may be oral, written, or implied, as no specific form is required. If a spouse starts a business using joint property without consent, the transaction is null and void.
2. Court-Ordered Termination: If the business poses significant risks to the joint ownership, the court may dissolve the joint ownership of spouses at the non-business spouse's request (§148a(2) Civil Code).

However, once a business is established, the entrepreneur spouse does not require ongoing consent for business-related transactions.

RESTRICTION OF THE RIGHT TO USE THE HOUSE OR APARTMENT

If the spouses live in a house or apartment belonging to their joint ownership, they use the property jointly by virtue of their ownership rights. As with other jointly owned property, one spouse cannot exclude the other from using the shared house or apartment against their will. § 146(2) of the Civil Code states: *"If physical or psychological violence, or the threat of such violence, towards a spouse or a close person living in the shared house or apartment has made continued cohabitation unbearable, the court may, upon the application of one of the spouses, restrict the other spouse's right to use the house or apartment belonging to the joint ownership of spouses or exclude them from its use altogether."*

This provision establishes a specific ground for limiting a spouse's right to use a house or apartment in joint ownership. The purpose of the legal regulation, introduced into the Civil Code by Amendment No. 526/2002 Coll., is to protect the legitimate interests of the spouse and close persons (as defined in § 116 of the Civil Code) living in the shared property from the violent behavior of the other spouse. This protection is achieved by either restricting the spouse's right to use the house or apartment or by excluding them from use altogether.

The restriction or exclusion of a spouse's use of the property constitutes a serious interference with their ownership rights and is considered an exceptional measure. It is not intended as a typical solution to disputes between spouses, which are usually addressed under § 146(1) of the Civil Code. Instead, this measure serves as a punitive civil sanction imposed to penalize a spouse for unlawful and culpable behavior toward the other spouse or other close persons. The prerequisites for applying this measure are as follows:

- the house or apartment is jointly owned by the spouses,
- the individuals cohabiting in the house or apartment are at risk of domestic violence,
- physical or psychological violence, or the threat of such violence, has occurred,
- continued cohabitation has become intolerable.

If any of these conditions are not met, restricting a spouse's right to use the shared house or apartment will not be justified. The intolerability of cohabitation must reach a significant level of severity, rendering living conditions so diminished that they objectively qualify as unbearable. This condition means that the circumstances in the property must prevent the non-violent spouse, their children, or other close relatives from peacefully using the property without fear for their safety or health. Importantly, the law does not require that the violent behavior meet the elements of a criminal offense under the Criminal Code.
The legal remedy is for the affected spouse to apply to the court to restrict the violent spouse's right to use the house or apartment or to exclude them from its use altogether. Only the non-violent spouse has the standing to file this application, even if the violence or threats were directed at close persons living in the shared property. By specifying "limitation of the right of use" and "exclusion from use," the legislator emphasizes that this measure affects only a partial entitlement within the broader ownership rights. In both cases, the restriction is a limitation of ownership rights imposed by a court decision.

TERMINATION OF THE JOINT OWNERSHIP OF SPOUSES

The joint ownership of spouses is extinguished by operation of law upon the occurrence of a specified legal fact or through a final court decision on its termination. In principle, the joint ownership of spouses is extinguished upon the termination of the marriage. Exceptionally, it may also be extinguished during the marriage by a court decision on the grounds referred to in §148(2) and §148a(2) of the Civil Code, or by operation of law through the declaration of bankruptcy of one spouse's property or a court order forfeiting one spouse's property. The termination of joint ownership of spouses by agreement between the spouses or through a unilateral legal act is not provided for by law.

The joint ownership of spouses ceases to exist in the following cases:

a) **By the termination of the marriag**e (§ 148 of the Civil Code) as a result of:
- the death of one of the spouses,
- the declaration of death of one of the spouses (effective on the date when the decision on the declaration of death becomes final),
- a final court decision on the termination of the marriage.

b) **By a final court decision on the termination of joint ownership of spouses** (§ 148(2) and § 148a(2) of the Civil Code).

c) **By the declaration of bankruptcy on the property of one spouse** (§ 53(1) and § 167i(1) of Act on Bankruptcy).

d) **By a final court ruling on the forfeiture of one spouse's property in criminal proceedings** (§59 (3) of the Criminal Code).

Ad a) Termination by Operation of Law (Upon Termination of Marriage)

The termination of joint ownership of spouses by operation of law primarily occurs upon the termination of the marriage, i.e., through the death or declaration of death of one spouse or the termination of the marriage by court decision. Since the existence of joint ownership of spouses is tied to the duration of the marriage, its termination removes the basis for the special regulation of property relations between spouses.

Ad b) Termination by Court Decision During Marriage

The joint ownership of spouses is dissolved upon the finality of a court judgment dissolving the joint ownership. The Civil Code provides two grounds for such termination during the marriage:

Compelling Reasons (§148(2) of the Civil Code):
The court may dissolve joint ownership of spouses at the request of one spouse if there are compelling reasons, particularly if the continuation of joint ownership of spouses would be contrary to good morals.
The court assesses the seriousness of the reasons, considering the overall marital situation, the relationship between the spouses, their relationship to the joint ownership, and the behavior of the spouse against whom the proceedings are brought.
The law does not define "compelling reasons" exhaustively but provides as an example the general principle of protecting good morals.

Business Activities (§148a(2) of the Civil Code):
If one spouse has acquired a business license, the court may dissolve joint ownership of spouses at the request of the non-business spouse.
The legislation assumes that business activities by one spouse pose a substantial threat to the joint property and the interests of the non-business spouse.
Only the non-business spouse may file the application unless both spouses hold business licenses, in which case either may file.
The business license must still be valid at the time of the court's decision; if it has been revoked, the court cannot dissolve joint ownership of spouses under §148a(2) (R 54/1999).

Ad c) Termination Due to Bankruptcy
One method of dissolving joint ownership of spouses during the marriage is regulated by Act on Bankruptcy. Under §53(1), the declaration of bankruptcy automatically terminates the joint ownership of spouses.

Ad d) Forfeiture of Property in Criminal Proceedings
Joint ownership of spouses is extinguished by operation of law if a court imposes the penalty of forfeiture of property on one spouse under §59(3) of the Criminal Code.

Restoration of Joint Ownership
A defunct joint ownership of spouses may only be restored by a court decision at the request of one spouse, provided the marriage is still subsisting (§151 of the Civil Code). Restoration by agreement between the spouses is excluded by law.

Restoration of joint ownership of spouses takes effect *ex nunc* (from the date of the final court decision). The court assesses whether the conditions for restoration are met during the proceedings.

SETTLEMENT OF THE JOINT OWNERSHIP
After the termination of joint ownership, joint ownership of spouses must be settled, i.e., the property must be divided, and the mutual claims arising from the joint ownership of spouses must be resolved. The termination of joint ownership of spouses and its settlement do not occur simultaneously. Settlement of joint ownership of spouses involves a comprehensive resolution of the property relations between the former co-owners. The object of the settlement includes everything that belonged to the joint ownership of spouses and existed at the date of its termination as joint ownership.

Settlement by agreement or by court decision must be carried out in accordance with the principles set out in §150 of the Civil Code. This provision is mandatory and applies to all methods of settling joint ownership. These principles are as follows:

- the settlement is based on the assumption that the shares of both spouses are equal,
- each spouse is entitled to reimbursement for what they have spent on the joint ownership,
- each spouse is obliged to reimburse what has been spent from the joint ownership of spouses on their separate property,
- the needs of minor children shall also be considered, as well as the manner in which each spouse has cared for the family and contributed to the acquisition and maintenance of the joint ownership. This includes consideration of childcare and the management of the common household.

§ 149 of the Civil Code provides for three forms of settlement of joint ownership. Settlement can only take place in one of the following ways:

a) By agreement of the spouses on the settlement of joint ownership: This agreement must cover all the property that constituted the joint ownership of spouses at the time of its termination. If the agreement concerns immovable property, it must be in writing (and takes effect upon entry into the Land Register). In other cases, the spouses are obliged to provide each other, upon request, with written confirmation of how the property has been settled. Such an agreement may be concluded within a three-year limitation period following the termination of joint ownership. If the settlement is not agreed upon within this period, it will be based on the statutory presumption under § 149(4) of the Civil Code.
b) By court settlement of joint ownership: If the settlement is not achieved through an agreement between the spouses, either spouse may file an application with the court within three years of the termination of joint ownership. If no application is filed within this three-year period, the settlement will be based on the statutory presumption under § 149(4) of the Civil Code.
c) By operation of law (ex lege): If the three-year period following the termination of joint ownership of spouses expires without an agreement or court petition, settlement occurs automatically under § 149(4) of the Civil Code.

The settlement results in a definitive determination of which specific assets remain the exclusive property of each spouse or, where applicable, their share co-ownership. Before reaching this conclusion, the court must ascertain what belonged to the dissolved joint ownership. The extent of the joint ownership of spouses must be determined as of the date of its termination, not the date of its settlement.

SECTION B : TEORETICAL QUESTIONS

1. What is joint ownership of spouses, and what are its essential defining characteristics?
2. What are the key differences between joint ownership of spouses and share co-ownership under the Civil Code?
3. Which items are excluded from joint ownership of spouses under § 143 of the Civil Code?
4. What are the legal consequences of the termination of marriage on joint ownership?
5. What legal actions can spouses take to adjust the scope or manner of managing joint ownership?

6. What are the consequences of failing to meet the statutory conditions for an agreement modifying joint ownership?
7. What rules apply to the management of joint property of spouses under the Civil Code?
8. What legal remedies are available to a non-business spouse against risks arising from the business activities of the other spouse?
9. In what cases may the court decide to restrict or exclude one spouse from using the house or apartment?
10. What criteria determine whether a legal act by the spouses qualifies as an "ordinary matter" within joint ownership?
11. Under what circumstances can the court decide to terminate joint ownership of spouses during the marriage?
12. What are the rules for the settlement of joint ownership of spouses in the event of divorce?
13. What are the consequences if spouses fail to agree on the settlement of joint ownership of spouses within three years of its termination?
14. What are the legal consequences of a bankruptcy declaration on the property of one spouse for joint ownership?
15. How are items acquired by one spouse before marriage assessed in relation to joint ownership?

SECTION C : PRACTICAL CASES

Case No 1

In 2020, husband and wife Ivan and Lucia bought a new car, which was financed from their joint savings. They divorced in 2022 and could not agree on who would own the car. Does the car belong to the joint ownership?

1. How would the court settle the ownership of the car if the spouses could not agree?
2. If Lucia spent her personal savings to purchase the car, how would the court take that into account in the settlement?
3. How could Lucia proceed if Ivan does not allow her to use the car?
4. How might the court consider the needs of their minor children in making a decision?

Case No 2

During the marriage, Simona received an apartment as a gift from her parents, which was used by both spouses for living together. After the divorce, her husband Michal claims half of the value of the apartment.

1. Does the apartment which Simona received as a gift belong to the joint ownership of the spouses?
2. How would the situation be resolved if the apartment were donated jointly to both spouses? Would the apartment in this case belong to the joint ownership of the spouses?
3. Can Michal claim compensation from Simona for the investment in the apartment from their joint property?
4. How would the court assess the value of the apartment in a joint property settlement?
5. How would the division of property be affected if the apartment were rented and the rental income contributed to the marital budget during the marriage?

Case No 3

Peter started a business during the marriage and used funds from the joint property of spouses for this purpose. However, during the course of the business, a debt was incurred which exceeded the value of the joint property. His wife, Jana, seeks the termination of the joint ownership.

1. Can Jana apply for the termination of the joint ownership because of Peter's business?
2. Is the consent of the other spouse required to start the business?
3. How is liability for debts incurred as a result of one spouse's business dealt with?
4. What effect does the termination of the joint ownership of spouses have on Peter's future business?

Case No 4

Husband Juraj filed an action for termination of the joint ownership, claiming that his wife Elena was disproportionately spending money.

1. What conditions must the court examine to dissolve the joint ownership of spouses during the marriage?
2. Can the court dissolve the joint ownership of spouses without Elena's consent if it finds Juraj's allegations to be well-founded?
3. What are the legal consequences of the termination of the joint ownership of spouses on the property already acquired?
4. How is the future acquisition of property after the termination of the joint ownership of spouses dealt with?

Case No 5

During the marriage, Lenka purchased expensive jewellery from their joint funds. After the divorce, she claims that the jewellery belongs exclusively to her because it was for her personal use.

1. How would the court look at the value and purpose of the jewellery in dividing the property?
2. Can Lenka's husband claim reimbursement for the funds spent on the purchase of the jewellery?
3. If the jewellery was not for personal use only, but for investment, would that change its character in the settlement?
4. How is the value of such property determined in a joint property settlement?

SECTION D : RELEVANT PROVISIONS OF ACT NO. 40/1964 CALL. CIVIL CODE AS AMENDED

§ 136

(1) A thing may be co-owned by multiple owners.

(2) Co-ownership can be shared or joint. Joint co-ownership can arise only between spouses.

§ 143

The joint property of spouses shall comprise everything which may be the subject of ownership and which has been acquired by either spouse during the marriage, with the exception of things acquired by inheritance or gift, as well as things which, by their nature, serve the personal or professional needs of only one of the spouses and things issued under the rules on restitution of property to one of the spouses who had possession of the issued

thing before the marriage or to whom the thing has been issued as the successor in title of the original owner.

§ 143a

(1) The spouses may by agreement enlarge or narrow the statutory extent of the joint ownership. They may likewise agree on the administration of the joint property.

(2) The spouses may agree to reserve the creation of the joint ownership of spouses to the date of termination of the marriage.

(3) An agreement pursuant to paragraphs 1 and 2 shall require the form of a notarial deed. The spouses may invoke this agreement against another person only if the latter is aware of the agreement.

§ 144

Property held in joint ownership of spouses shall be used jointly by both spouses; they shall also jointly bear the costs incurred for or in connection with the use and maintenance of the property.

§ 145

(1) Ordinary matters relating to joint property may be dealt with by either spouse. In other matters, the consent of both spouses is required; otherwise, the act is null and void.

(2) Both spouses are jointly and severally entitled and obliged to legal acts concerning joint property.

§ 146

(1) If there is a disagreement between the spouses as to the rights and obligations arising from the joint ownership, the court shall decide on the application of either of them.

(2) If, because of physical or psychological violence or the threat of such violence in relation to the spouse or to a close person living in the shared house or flat, further cohabitation has become unbearable, the court may, on the application of one of the spouses, restrict the right of the other spouse to use the house or flat belonging to the joint ownership of spouses or exclude him or her from its use altogether.

§ 147

(1) A claim of a creditor of only one of the spouses, which arose during the marriage, may also be satisfied in the enforcement of a judgment out of the property belonging to the joint ownership of the spouses.

(2) This shall not apply in the case of a claim of a creditor of one of the spouses who have reached an agreement pursuant to the provisions of § 143a, insofar as the claim arose from the use of property which does not belong to the joint ownership of the spouses.

§ 148

(1) On the termination of the marriage, the joint ownership of the spouses also ceases to exist.

(2) For serious reasons, in particular if the continuation of the joint ownership of spouses would be contrary to good morals, the court may, on the application of either of the spouses, dissolve the joint ownership of spouses even during the marriage.

§ 148a

(1) For the use of property in joint ownership of spouses, an entrepreneur needs the consent of the other spouse when starting a business. For subsequent legal acts related to the business, the consent of the other spouse is no longer required.

(2) The court, upon request, shall dissolve the joint ownership of spouses if one of the spouses has obtained authorization for entrepreneurial activity. The request may be filed by the spouse who did not obtain the authorization for entrepreneurial activity. If both spouses have obtained the authorization, either one of them may file the request.

(3) If the entrepreneurial activity after the dissolution of joint ownership of spouses is carried out jointly or with the help of the spouse who is not an entrepreneur, the income from the business shall be divided between them in the proportion determined by a written agreement; if such an agreement has not been concluded, the income shall be divided equally.

§ 149

(1) If the joint ownership of spouses ceases to exist, a settlement shall be made in accordance with the principles set out in § 150.

(2) If the settlement is affected by agreement, the spouses shall be obliged to give each other, on request, written confirmation of the settlement.

(3) If the settlement is not affected by agreement, it shall be effected by the court at the request of either spouse.

(4) If the joint ownership of spouses has not been settled by agreement within three years of the termination of the joint ownership or if the joint ownership has not been settled by a court decision on an application made within three years of its termination, the spouses shall be deemed to have settled the joint ownership of spouses in respect of movable property according to the state in which each of them uses the matrimonial property of the joint ownership of spouses for the use of himself or herself, of his or her family and of his or her household exclusively as owner. Other movable and immovable property shall be deemed to be held in joint ownership and the shares of the two co-owners shall be equal. The same shall apply to other property rights which are common to the spouses.

(5) If, after the joint ownership of spouses has been settled by court decision or agreement, assets are discovered which were not included in the settlement, the presumption referred to in paragraph 4 shall apply to them.

§ 149a

Insofar as agreements between spouses pursuant to §143 and 149 relate to immovable property, they shall be in writing and shall take effect upon entry in the Land Register.

§ 150

The settlement shall be based on the assumption that the shares of both spouses are equal. Each of the spouses shall be entitled to be reimbursed for what he has expended out of his own for the joint ownership and shall be obliged to reimburse what he has expended out of the joint ownership for his other property. In addition, account shall be taken in particular of the needs of minor children, the way in which each spouse has cared for the family and the contribution he or she has made to the acquisition and maintenance of the joint ownership. In determining the degree of contribution, account shall also be taken of the care of the children and the provisioning of the joint household.

§ 151

If the joint ownership has been dissolved during the marriage, it may be restored only by a decision of the court given on the application of one of the spouses.

SECTION E : RELEVANT COURT DECISIONS

Judgment of the Supreme Court of the Slovak Republic, Case No. 3 Cdo 304/2009: The joint ownership of the spouses includes everything that can be the subject of ownership and that was acquired by either spouse during the marriage, with the exception of things acquired by inheritance or gift, as well as things that by their nature serve the personal need or profession of only one of the spouses, and things issued under the rules on restitution of property to one of the spouses who had the issued thing in his/her possession before the marriage or to whom the thing was issued as a legal successor of the original owner (Art. 143 of the Civil Code). On the termination of the marriage, the joint ownership of the spouses also ceases to exist (Art. 148 of the Civil Code). If the joint ownership ceases to exist, a settlement is made in accordance with the principles set out in § 150 (§ 149(1) of the Civil Code).

Judgment of the Supreme Court of the Slovak Republic, Case No. 4 Cdo 111/2009: I. The law associates the acquisition of the right to run a business with the creation of the right to termination of the joint property of spouses by the court. This is a special regulation (lex specialis) in relation to § 148(2) of the Civil Code, because in this provision (§ 148a(2)) the grounds for its annulment are given directly by law. The condition is that one of the spouses has obtained a business licence. The law grants the spouse who is not an entrepreneur the active legal capacity to bring the application. In the case where both spouses are entrepreneurs, either of them may file the application for termination of the joint ownership. II. If the joint ownership has been dissolved by a court and the marriage continues, its restoration, as follows from the provisions of § 151 of the Civil Code, can only be affected by a court decision on the basis of an application by one of the spouses. The law excludes its de facto restoration as well as its restoration by agreement of the spouses. The mere expression of the will of one of the spouses to restore the joint ownership does not mean that the court will grant such an application without further delay. The success or failure of such an application will depend on the circumstances of the particular case, in particular whether or not the reasons for which the joint ownership was dissolved have ceased to exist, that is to say, whether or not the spouse who acquired the right to run a business has lost that right.

Judgment of the Supreme Court of the Slovak Republic, Case No. 5 Cdo 255/2007: Also, one of the spouses who have jointly donated an object (movable or immovable) from the property forming the subject of the joint ownership of the spouses may independently claim the return of the gift on the grounds specified in the provisions of § 630 of the Civil Code.
This also applies in the event of the death of one of the former joint owners - the donors, where the surviving spouse may, referring to the specific nature of the joint ownership, claim the return of the entire subject-matter of the gift.

Judgment of the Supreme Court of the Slovak Republic Case No. 4 Cdo 147/2011: I. One of the prerequisites for the effects of the settlement referred to in § 149(4) of the Civil Code is the existence of unsettled property which constituted the joint ownership of the spouses, either the whole or part of the joint ownership. The expiry of the statutory period of three years from the termination of the joint ownership shall apply the legal regime of this provision

of the Civil Code (irrebuttable legal presumption) not only if the joint ownership has not been settled by agreement within that period or if the joint ownership has not been settled by court decision on a petition filed within three years from its termination, but also to that part of the unsettled property which has not been included in the court decision or in the agreement of the parties.
II. In accordance with the provisions of § 149 of the Civil Code, even in such a case, it must be assumed, as regards movables (not included in the agreement), that they belong to the spouse who uses them exclusively as owner for his/her own, his/her family's and his/her household's needs. Other movable property and immovable property and property rights (not included in the agreement) shall likewise be deemed to be held in joint ownership and the shares of the two co-owners to be equal. It is necessary to respect the will of the parties who are willing to conclude an agreement also concerning the settlement of the individual items or part of the property belonging to the joint ownership of the spouses.
III. Where the joint ownership is settled by agreement, the parties to the civil law relationship have discretion to conclude the agreement. Accordingly, an agreement on the division of the joint ownership by which even one of the parties acquires a substantially smaller share, or acquires nothing, or an agreement which does not concern all the property, which was held in joint ownership, is not void for breach of Article 150 of the Civil Code. It is based on the will of the parties as to how the dissolved joint ownership is to be settled, and if there is an agreement between the wills of both parties, the agreement cannot later be considered void for breach of Article 150 of the Civil Code. Nor can it be excluded that the parties attach to the agreement a declaration that they have no further claims against each other under the joint ownership.

Resolution of the Supreme Court of the Slovak Republic, Case No. 2 Cdo 176/2011: If the joint ownership of the spouses ceases to exist, the settlement shall be carried out according to the principles set out in § 150 of the Civil Code (see § 149(1) of the Civil Code). The settlement of the BSM pursuant to § 150 of the Civil Code consists of both a qualitative aspect, i.e. the arrangement of the ownership of the individual items belonging to the BSM, and a quantitative aspect, which concerns the value shares of the parties - the former spouses. The value of the individual items belonging to the BSM is therefore essential for the settlement. The object of the settlement of the BSM is everything that belonged to the joint ownership and existed on the date of its termination. The valuation of the (movable and immovable) property belonging to the BSM to be settled is based on the state of the property on the date of the termination of the BSM, but on the price at the time of the settlement (see e.g. R 42/1972). In the present case, the Court of Appeal did not consistently follow these principles.

Resolution of the Supreme Court of the Slovak Republic, Case no. 4MCdo/19/2012: The prerequisite for the settlement of the joint ownership in inheritance proceedings is, firstly, the existence of the property which constituted the joint ownership of the testator and the surviving spouse and, secondly, the fact that during the testator's lifetime no court proceedings for the settlement of the joint ownership were initiated. If such proceedings have been initiated, the judicial commissioner shall await the final decision in those proceedings and shall include in the succession the assets and debts of the testator in accordance with that decision, by which he shall be bound.

Resolution of the Supreme Court of the Slovak Republic, Case no. 1Cdo/211/2022: § 149(1) of the Civil Code requires that the settlement of the BSM shall be carried out in accordance

with the principles set out in the provisions of § 150. This provision, both by its general wording and by the fact that the list of considerations to be taken into account in the settlement of the BSM is given only as an example, provides a wide range of possibilities to take into account, according to the circumstances of the case, various (also not mentioned in this statutory provision) facts which may influence the manner of settlement. In interpreting and applying this provision, the courts must therefore take into account the circumstances of the particular case and endeavour to ensure that the court order settling the BSM, within the framework given by the applicable statutory provisions, regulates the property relations between the parties in the most expedient manner. The law does not expressly lay down any considerations for determining which specific assets are to be allocated to each spouse - the determining factor is, in principle, the expedient use of the assets so that, as far as possible, no monetary compensation is required. However, this procedure is not without exception. In court practice, the principle is applied in proceedings for the settlement of BSM that, as far as possible (in particular taking into account the time that has elapsed since the termination of the marriage or the spouses' separate living arrangements), the property should be assigned to the party who last held it and whose property has been depreciated (for support, see e.g. the judgment of the Supreme Court of the Czech Republic, Case No. 22Cdo/980/2003 of 2 December 2003).

Judgment of the Supreme Court of the Slovak Republic, Case No. 5 Obdo 11/2007: I. The value of a business share belongs to the joint ownership of the spouses; therefore, the consent of both spouses is required for its sale, which falls outside the category of ordinary property.
II. Lack of consent of the other spouse to the sale of a share in a limited liability company is a ground for the annulment of such a contract.

Resolution of the Supreme Court of the Slovak Republic, Case No 8 Cdo 288/2019: Any disposal of property belonging to the joint ownership of the spouses by only one spouse without the consent of the other spouse is not a gross breach of good morals; it is only a disposal in which the dishonest intention of the acting spouse to grossly damage the property rights of the other spouse has been proven.

Judgment of the Supreme Court of the Slovak Republic, Case No. 5 Cdo 255/2007: After the death of one of the spouses, the surviving spouse may claim the return of a gift (§ 630 of the Civil Code) which at the time of donation was the subject of the joint property of spouses.

Judgment of the Supreme Court of the Slovak Republic, Case No. 2 Sž-o-KS 93/2006: I. An agreement on the extension or reduction of the extent of the spouses' joint ownership, concluded pursuant to § 143a(1) of the Civil Code, may not change the existing property relations.
II. An agreement pursuant to § 143a of the Civil Code may only regulate the regime for the future acquisition of the joint ownership of spouses but may not in itself be a legal title for changing the spouses' property relations established prior to its conclusion.

Resolution of the Supreme Court of the Slovak, Case No. 5Cdo/58/2017: The narrowing must not occur to such an extent that the joint ownership ceases to exist at all. In other words, the arrangement in the above wording does not constitute a narrowing of the scope of the joint ownership, but de facto regulates its termination, which of course the institute of

narrowing the scope of the joint ownership regulated in the provisions of § 143a of the Civil Code does not allow, even taking into account the possible consent of the spouses, i.e. the otherwise accepted principle of contractual freedom (autonomy of the will) in civil law relations.

Judgment of the Supreme Court of the Czech Republic, Case No. 5 Cdo 111/1997 (R 101/1999): If the spouses, for a period of three years after the divorce, used the common flat and its furnishings in such a way that each of them used the separated parts of the flat and used the rest of the flat together without settling the joint ownership by agreement or filing a petition for its settlement, the movable property in the common flat was settled by operation of law pursuant to § 149(1)(a) of the Act on the division of the property in the common flat. 4 of the Civil Code, so that the items used in the separated parts of the flat were acquired by each of them in sole ownership and the items in the jointly used parts of the flat were acquired by them in joint ownership.

Resolution of the Supreme Court of the Slovak Republic, Case no. 8Cdo/263/2019: The provision of § 145 of the Civil Code applies to legal acts concerning joint property, i.e. property that is already part of the joint ownership. The legal possibility for only one spouse to conclude contracts is not limited by the existence of joint ownership. It is settled case-law of the Court of Appeal that such acts do not directly concern property already acquired in the BSM. Thus, the conclusion of such contracts by one spouse alone does not give rise to a joint obligation of the spouses, but only to an individual obligation of the spouse who concluded the contract. However, in the broader context of the existence of joint property, such a loan or credit affects the joint property of the spouses, since, according to Article 147 of the Civil Code, a claim of a creditor of only one of the spouses, which arose during the marriage, may also be satisfied in the enforcement of a judgment out of the property belonging to the joint ownership of the spouses. The unfavorable consequences of this provision for the spouse against whom the creditor has no claim are due to the existence of the joint ownership, which entails the need for the spouses to share each other's property for as long as the joint ownership lasts. In view of the construction, creation and extent of the joint ownership, these adverse effects can only be eliminated by changing the extent of the joint ownership or by its termination.

Resolution of the Supreme Court of the Slovak Republic, Case No. 3 Cdo 8/2010: A creditor's claim against a spouse which arose during the duration of his or her earlier marriage cannot be satisfied in the enforcement of a judgment out of property belonging to the joint ownership of the spouses which was acquired during the duration of the marriage.

CHAPTER 4

RIGHTS IN REM

DIVISION OF OWNERSHIP TITLE

SHARE CO-OWNERSHIP

SECTION A : BRIEF SUMMARY

CONCEPT AND CHARACTERISTICS

The Civil Code does **not contain a legal definition of share co-ownership**. The legal regulation of share co-ownership can be found in the provisions of § 136 to § 142 of the Civil Code. In addition to this legal regulation, this text will also deal in passing with the provisions relating to share co-ownership. These include in particular § 40a, § 101, § 107, § 511, § 513 and § 602- § 606 of the Civil Code.[1]

The fundamental assumption of share co-ownership is, therefore, the existence of several (at least two) subjects of ownership who jointly have control over the same thing without dividing it, while externally and among themselves they jointly consider themselves as the sole owner of this thing.

There are several ways in which share co-ownership can be established:

- **On the basis of a contract**,
- **Inheritance by law** or **Inheritance by the will**,
- **By decision of a public authority** (especially a court - § 142 Sec. 1 of the Civil Code or other state authorities),
- Other circumstances established by law:
    - **Fiction of settlement of joint ownership of spouses** (§ 149 Sec. 4 of the Civil Code).
    - **Creation of a new thing.**
    - **Acquisition of property through joint activity in an association** (§ 833, § 834 and § 835 of the Civil Code).
    - **Acquisitive prescription** (rare in practice, § 134 of the Civil Code).

Share of co-ownership

The concept of share of share co-ownership is defined in § 137 of the Civil Code. The *share* expresses the extent to which co-owners participate in the rights and obligations arising from share co-ownership. In other words, share of co-ownership concerns the determination of the extent to which co-owners participate in the rights and obligations relating to the common property. This may involve several types of rights and obligations, such as contribution to the expenses related to the common property, use of the shared property, and others. The share co-ownership does not relate to a specific part of the asset and does not entitle the co-owner to exclusive use of only that part of the asset. It only concerns the ideal part of the common assets. The amount of co-ownership is usually expressed as a fraction (2/3, 1/2, 3/5,) or

[1] The current wording of these provisions can be found in Section D.

percentage (50%, 25%, 10%) of the joint property. Unless otherwise provided by law or agreed by the participants, the shares of all co-owners are equal. The size of the co-ownership share may be a matter of dispute.

Actions of the individual co-owners in relation to the common assets vis-à-vis third parties, minority co-owners' voting rights

In this section of the publication, we will explain the following:

a) **Legal acts concerning the common asset in relation to third parties (§ 139 Sec. 1 of the Civil Code).**
b) **Management of the common asset (§ 139 Sec. 2 of the Civil Code).**
c) **Significant changes to the common asset (§ 139 Sec. 3 of the Civil Code).**

a) **Legal acts concerning the common asset in relation to third parties**

The concept of *"legal acts relating to the common assets"* is broader than *"management of the common assets"* and includes all acts relating to the common property, irrespective of the importance of their significance. The term "*common property or common assets*" means the whole of the property/assets that are held in co-ownership. Acts not included in this category are those which merely establish the regime of common property, such as a contract of sale acquiring the property/assets. For this reason, there is no passive solidarity established for the payment of the purchase price. Actions dealing only with the co-ownership share are also excluded from this category – such as transfer of the co-ownership share or creation of a pledge over the co-ownership interest and other.

Any of the co-owners may carry out the tasks relating to the common assets, unless agreed otherwise. Irrespective of this, all co-owners have joint and several rights and obligations towards third parties. The law establishes the active and passive solidarity of co-owners pursuant to § 511 and § 513 of the Civil Code, and co-owners may not agree otherwise. The provisions on active and passive solidarity shall apply without exception.

With regard to the decision of the co-owners on the management of the common assets, a distinction must be made between the regular management of the common property, in which case the principle of majority rule clearly applies, and management that results in a significant change to the common property, in which case the outvoted co-owner has the right to request that a court decide on this change.

b) **Management of the common assets** (§ 139 Sec. 2 of the Civil Code)

These are all acts relating to the economic aspect of the whole of the common property which maintain, repair, alter, value (or devalue), remove, cancel or dispose of the common property. The management of the common assets is primarily decided by agreement between the co-owners. There is no specific decision-making procedure. The resulting agreement does not have to be in writing.

The agreement on the management of the common property is therefore an informal act to which all the co-owners must be parties. The non-participation of even one of them excludes the conclusion of an agreement. It can also be concluded by implication, provided that the expression of the will of the co-owners is undisputed and sufficiently clear.

The agreement may cover all the elements that make up the content of the property rights. It may involves deciding, for example, on the following sub-issues:

- which of the co-owners will hold or use the common property, and under what conditions;
- how the fruits or the benefits will be distributed among the individual co-owners;

- whether the common property will be rented;
- what investments will be made in the common property and who will pay for them; or
- other particular questions.

A majority, calculated according to the size of the co-ownership shares, is required to reach an agreement. This is known as the majority principle.

Basic rules of the decision-making process:

- None of the co-owners (not even a minority one) can be excluded from the decision-making process.
- If the minority co-owner has had the opportunity to comment on the intention to manage the common assets but does not agree with the majority decision, this disagreement has no legal significance. The minority co-owner is obliged to submit to the majority decision. He cannot seek a court decision to manage the common assets differently.
- If the minority co-owner has not been given the opportunity to comment on the planned management of the common assets, the case law has come to the conclusion that this would be an invalid legal act, because such a decision of the majority co-owner (even if it is significantly dominant) would still be a decision of an "individual" (one or more co-owners) and could not be considered either as a decision of the all "co-owners" or as a decision of the "majority" pursuant to Article 139 Sec. 2 of Civil Code. This opinion is not explicitly supported by the written law, and court practice derives it only from the logical interpretation of the legal norm. In the case of abuse of the rights of the majority co-owner, this could be an act contrary to good morals under § 39 of Civil Code.

If the co-owners under the § 139 (2) of the Civil Code:

- do not agree on the management of the common property, or
- there is equality of voting rights in the management of the common property (typically two co-owner with equal voting rights); or
- fail to achieve the required majority (at least 51 %);
- the management of the common property is decided by the court on the basis of a proposal by the any co-owner.

Type of action: action for substitution of a declaration of intent pursuant to Article 139(2) of the Civil Code.

The following shall apply to the decision of the court:

- The court is not bound by the specific solution proposed by the co-owners.
- The court should consider the size of the co-ownership shares, the expediency of the use of the property, the needs of the individual co-owners.
- The decision of the court is of a constitutive nature.
- It must therefore be clear from the operative part of the judgment that it replaces what is lacking in order to obtain a majority or an agreement on the disputed act which the plaintiff seeks to achieve in the management of the common property.
- Statement of judgement: "*co-owner XX agrees to the following content of the decision on the management of the common property ...(content of the decision on the management of the common property)".*

c) **Important change to the common cause** (§ 139 (3) of the Civil Code) means in particularly:
    - **A change in the legal or material nature of the common property such as:**
        - Sale of the property;
        - Creation of an easement;
        - Creation of a pledge; etc.
    - **A change in the use or function of the common property such as:**
        - Change in the building's structural use of the building from residential to an office use;
        - Change of the building plot to a farm plot,
        - Conversion of the common house;
        - Major renovation work; etc.
    - **Temporary or permanent change in the economic use of the common property without changing its basic material nature.**

The common property is altered in such a way that the value of the common property or its profitability may be substantially jeopardized.

Under the § 139 (3) of the Civil Code, even if a majority has been reached, but it is an important change to the common cause with which some co-owners do not agree with, the co-owners may request the court to decide on the change. In other words, the co-owner with active standing is the declared co-owner, regardless of whether a majority has been reached.

Selected legal issues regarding share co-ownership

Investments in a common cause
A distinction is made between:

- **Investments for necessary repairs or maintenance.** In this case, the co-owner is obliged to bear the costs of necessary repairs and maintenance immediately. The amount of unjust enrichment would be determined by the proportion of the investment corresponding to the share in the common property. The obligation to pay the unjust enrichment arises from the investment made during the co-ownership relationship, and therefore the co-owner who has incurred costs beyond the scope of his co-ownership share, does not have to wait until the end of the co-ownership relationship to apply for payment of the unjust enrichment from other co-owners (*see, Section E, The judgement of the Supreme Court of the Czech Republic 22 Cdo 599/99*). There are legal opinions that the claim is not unjust enrichment but a special property right of the investing co-owner asserted against the other co-owners.
- **Investments other than necessary repairs and maintenance.** The co-owner's obligation to pay the unjust enrichment arises only upon the termination of his co-ownership, in the amount of the increase in value of his share as a result of the investment made, such increase being determined by the difference in the price of the share before and after the investment (*see, in Section E, decision Case No. R 37/1982*).

Use beyond the scope of the co-ownership share
Use in excess of the co-ownership share occurs when the co-owner uses the common property to a greater extent than the co-owner's share of the common property entitles him/her to. This is the case, for example, when a 50% co-owner of a property uses 100% of

the property on his own or, for example, with his family, who do not have a co-ownership share in the property. However, when assessing the extent of use of the common property, not only the size of the used part of the property (the area of a part of the land plot) may be decisive, but also the utility (economic) value of the used part of the property, if this value differs from one part of the property to another due to particular circumstances (*see Section E, The judgement of the Supreme Court of the Slovak Republic No. 6 Cdo 184/2010*).

Such a claim does not arise even if the co-owner uses only part of the thing to an extent not exceeding his/her co-ownership share, because in such a case nothing prevents the other co-owner from also sharing his/her usufruct right to the extent of his/her share by using the remaining part of the thing.

In this context, the question arises whether the claim of a co-owner or several co-owners who do not use the subject of co-ownership can be considered as a claim for unjust enrichment or whether it is a special type of claim. The resolution of this question has a fundamental impact on other legal institutions, such as the question of the limitation period of the claim.
In this respect, two scholars have emerged in our decision-making practice:

- **The first scholars** state that even in the relationship between share co-owners there may be a legal relationship that can be assessed as a right to compensation for unjust enrichment *(see the decisions in Section E, e.g. R 37/1982, or the judgement of the Supreme Court of the Czech Republic, Case No. 22 Cdo 2624/2003, and others).* Unjust enrichment of a co-owner who uses an object in share ownership in excess of his co-ownership share occurs regardless of whether such use was decided by a majority of co-owners calculated according to the size of their co-ownership shares, or was regulated by an agreement of the co-owners, or was decided by a court, unless the agreement of the co-owners implies otherwise, e.g. that they will not pay anything for use in excess of the co-ownership share (*see the decision in Section E, the judgement of the Supreme Court of the Czech Republic, Case No. 22 Cdo 2624/2003*).
- According to the **second scholars**, unjust enrichment does not arise between share co-owners in connection with the excessive use of a common good, but is a special claim arising from the provisions of § 137(1) of the Civil Code (*see, the Section E, the judgement of the Supreme Court of the Slovak Republic of 27 October 2010, Case No. 6 Cdo 184/2010 or the judgement of the Constitutional Court II. ÚS 471/2005*). In other words, the relations between the co-owners, in the absence of an agreement between them, are governed by the provisions of the Civil Code, which give rise to claims between them, and in the present case the matter cannot be assessed under any of the facts of unjust enrichment, but is a claim based on Article 137(1) of the Civil Code.

Statutory pre-emption right and consequences of its breach (§ 140 of the Civil Code)
The legal right of pre-emption of co-owners is regulated in § 140 of the Civil Code (*See the Section D*). The essence of the co-owners' right of pre-emption is in the case when the co-ownership share is transferred. The other joint co-owners have a right of pre-emption. This does not apply if the transfer is made to a close person within the meaning of articles 116, 117 of the Civil Code (*see Section D*). If the joint co-owners do not agree on the exercise of the pre-emption right, they have the right to redeem the share in proportion to the size of their shares.

Purchaser of co-ownership share

As we have already indicated, there are two groups of entities that can act as purchasers in the transfer of co-ownership shares:

- **close persons**
    - The co-owner is not restricted in any way in the transfer of the co-ownership share to close relatives, specify in the Civil Code (*see Section D, § 115, § 116 of the Civil Code*).
    - According to case law, under certain conditions a legal person may also be considered a close person (*see, the judgement of the Supreme Court of the Czech Republic, 22 Cdo 1836/2003*).
- **other persons**
    - In the case of transfer of the co-ownership share to persons not close to the co-owner under the provisions of § 115 and § 116 of the Civil Code, the co-owner is limited by the pre-emption right of the other joint co-owners. The essence of the pre-emption right of the other co-owners is the obligation of the co-owner, in the event of a transfer of the share, to offer it preferentially to the person entitled to the pre-emption right.

The nature of the pre-emption right

The right of pre-emption of the co-owners is a statutory right of pre-emption which arises *ex lege.* It is not registered in a special register (e.g. the Land Register of the Slovak Republic) and is valid as long as the co-ownership relationship of the common property lasts.

It has substantive legal nature, which means that it is linked to the co-ownership of the assets and binds each co-owner who transfers his share. This means that it also operates against the purchaser's successors in title. It represents legal institute different from management of the common property or an important change to the common property.

The legal regime of pre-emption right

In the case of absence of an express legal regulation of the statutory pre-emption right, the general legal regulation of the pre-emption right contained in the eighth part of the Civil Code governing the law of obligations (*see Section D, §§ 602 to 606 of the Civil Code*) shall be applied by analogy. Those provisions which relate exclusively to the contractual pre-emption right may not be applied (*see Section E, The judgement of the Supreme Court of the Czech republic, Case No Rc 72/2002).*

Specific legal issues arising from the right of pre-emption

- **Does the provision of § 140 of the Civil Code apply to cases of transition of a co-ownership share?**
    - court practice uniformly classifies only cases of transfer of co-ownership rights under the regime of § 140 of the Civil Code;
    - the provision of § 140 of the Civil Code does not apply to the transition of ownership by inheritance (*see Section E, The judgement of the Supreme Court of the Slovak Republic, Case No. R 54/1973)*
- **Are both transfers for consideration and transfers without consideration subject to the provisions of § 140 of the Civil Code?**
    - In this context, we distinguish two schools of thought, one of which is based on the case law of the courts of the Slovak Republic and the other on the case law of the courts of the Czech Republic.

- The Slovak Republic decision practice: The right of pre-emption of a co-owner also applies to the transfer of a co-ownership share on the basis of a gift agreement. This argument is based on a grammatical interpretation, i.e. on the content of the term "transfer" (which covers all forms of alienation - sale, gift, exchange) and on the purpose of the provision, which is to give preference to the existing co-owners over third parties (*see, The judgement of the Supreme Court of the Slovak Republic, Case No. 1 Cdo 102/2005, R 58/2005).*
- The Czech Republic decision practice: The pre-emption right of a co-owner does not apply in the case of transfer of a co-owner's share on the basis of a gift agreement. The reasoning is based on the content of the term "pre-emption right". If § 140 of the Civil Code also applies to donation, the share would not be effectively donated, because the other co-owners would almost always be interested in the share, which was undoubtedly not the meaning of this provision *(see, The judgement of the Supreme Court of the Czech Republic, Case No: 22 Cdo 2408/2007, 22 Cdo 3188/2006).*

The exercise of the co-owners' pre-emption right and the so-called "buy-out offer"

A co-owner who intended to transfer his co-ownership share to another person (with the exception of close persons as defined in § 115, § 116 of the Civil Code) must make a "*purchase offer or buyout offer*" to the other joint co-owners.

An offer is a unilateral legal act, which, in addition to the requirements generally imposed on legal acts (§ 37 et seq. of the Civil Code) and the requirements of a proposal for the conclusion of a contract (§ 43 et seq. of the Civil Code), must contain all the conditions under which the obligated co-owner offers his co-ownership share for purchase (*e.g. the object of purchase/the amount of the co-ownership share offered, the purchase price of co-ownership share and other*), the fulfilment of which may enable the beneficiary to exercise his right of pre-emption. There are some aspects related to the so-called buy-out offer according to case law:

- **Form of the offer.** There is no prescribed form for an offer relating to movables. The will must be expressed. It cannot be implied. In the case of immovables, the written form is required by the § 46 of the Civil Code. If the right of pre-emption is granted to several persons, the offer must be made to all the co-owners.
- **The existence of a specific purchaser at the time of the offer.** Czech jurisprudence unanimously holds that at the time when another co-owner makes an offer to transfer a co-ownership share, there need not be a specific buyer (*see, the judgment of Supreme Court of the Czech Republic, Case No: 30 Cdo 153/2002*). However, the opposite view is taken in the literature by L. Svoboda *(see for example: Pre-emption right, 1st edition Prague, C.H.Beck 2005 - refers to § 605 of the Civil Code*).
- **Change in the conditions under which the co-ownership share was offered for purchase.** A change in the terms and conditions of the original offer creates an obligation for the obligated co-owner to notify the change to other joint co-owners, by means of an addressed legal act. (*see, the judgment of Supreme Court of the Czech Republic, Case No: 33 Odo 663/2004*).
- **The manner of acceptance of the offer.** Court practice distinguishes the moment of the declaration of acceptance of the offer without payment of the share price within the statutory period from the moment of actual payment of the share price by the interested co-owner, with the conclusion that only the payment of the share price by the interested co-owner results in the acceptance of the offer to purchase the co-

ownership share (*see, the judgment of Supreme Court of the Czech Republic, Case No: 22 Cdo 1996/2005*).

Infringement of the right of pre-emption

The right of pre-emption is violated in the following cases:

- **The buyout offer was not made to the co-owners.**
- **The purchase of the co-ownership share was offered to the co-owner at a price significantly higher than the price at which it was ultimately realized in favor of the new purchaser.**
- **The co-ownership share has been transferred to a new purchaser on terms more favorable than those set out in the offer.** In the case of a sale on less favorable terms, there is no breach of the pre-emption right. (*see, the judgment of Supreme Court of the Czech Republic, Case No: 22 Cdo 1996/2005*).
- **The co-ownership share has been transferred before the agreed (or statutory) period for sale has expired.** According to court practice, if the entitled co-owner has not accepted the offer within a reasonable period of time, the co-ownership share may be transfer even before the expiry of the time limits set out in § 605 of the Civil Code. (*see, the judgment of Supreme Court of the Czech Republic, Case No: 33 Odo 854/2003*). If the entitled co-owner has explicitly stated that he does not intend to use the pre-emptive right or does not intend to use it under the offered conditions, the pre-emptive right is extinguished. It would be against the meaning of the pre-emptive right that in the case of a clearly declared and expressed lack of interest in using the pre-emptive right, the obliged co-owner would be forced to wait for the expiration of the statutory or agreed period.

The consequences of violation of the pre-emption right

We distinguish several consequences of violation of the pre-emption right:

- **The co-owner is entitled to require the purchaser of the co-ownership share to offer him the acquired co-ownership share for sale.** At the request of the entitled co-owner, the acquirer is obliged to offer the acquired co-ownership share for sale on the same terms and conditions as the acquisition. Should he fail to fulfil this obligation, the co-owner may request that his expression of will in this respect be replaced by a court decision pursuant to § 229 of the Code of Contentious Litigation. This right of entitled co-owner is time-barred by the general limitation period of three years (*see Section E, the judgment of Supreme Court of the Czech Republic, Case No. 22 Cdo 1875/05, dated 19.09.2007).* The terms of the contract must be the same as those under which the purchaser acquired a share in share co-ownership from the original co-owner. If the co-ownership is transferred to other persons, the principle of *nemo plus iuris* applies.
- **The entitled share co-owner retains the right of first refusal against acquirer, as this is a right in rem.**
- **The entitled co-owner has the possibility to invoke the relative nullity of the contract by which the co-ownership share was transferred to another person (to acquirer)** pursuant to § 40a of the Civil Code (*see Section D*). In the event of the invalidity of an act, it shall be considered as if it had not occurred. The right of pre-emption shall remain with the entitled co-owner and shall be effective against the obliged co-owner. The legal effects of a plea of relative nullity shall arise from the moment when the expression of will of the entitled co-owner reaches both, the

transferor (original co-owner) and the transferee (acquirer of the ownership share). The right to invoke relative nullity is time-barred within the general limitation period of three years from the date on which the act in breach of the right of pre-emption was performed, even if the act still required an official decision (see, *the judgment of Supreme Court of the Czech Republic, Case No:* 32 Odo 568/2002). However, this issue may be problematic if the application for registration is not filed within three years and the right is time-barred, even though the co-owner has not learned of the sale. The Slovak jurisprudence solved this problem in such a way that the right of a co-owner, who's right of pre-emption has been infringed, to require the acquirer to offer the property for sale in accordance with § 603 Sec. 3 of the Civil Code, arises only at the moment when the acquirer acquires the right of ownership of the real estate, since only at that moment is he authorized to dispose of the real estate in question (§ 123 of the Civil Code). This means that the property is entered into the public register - the Land Register of the Slovak Republic (*see, the judgment of Supreme Court of the Slovak Republic, Case No.* 7 Cdo 269/2019, R 53/2022). **However, relative invalidity will not force the subject to transfer the co-ownership share!**

In conclusion, the jurisprudence of the Supreme Court of the Slovak Republic on the question of the admissibility of the accumulation of individual claims has concluded that they are mutually exclusive, and the entitled person cannot claim all or two of them at the same time. The co-owner is not obliged to sell the co-ownership share and is not obliged to do so even if he violates the pre-emption right and the entitled co-owner effectively invokes the relative invalidity of the transfer agreement; this obligation to sell the co-ownership share is not enforceable by filing an action.

The exercise of pre-emption rights by authorized persons

If there are several co-owners entitled to the pre-emption right, the law presupposes an agreement between the co-owners on the exercise of the pre-emption right, without specifying further details. The co-owners may agree that the pre-emption right will be exercised only by some or all of them. Co-owners can agree on the pre-emption right earlier by agreeing not to exercise the pre-emption right and the case law has accepted this procedure (*see, the judgment of Supreme Court of the Czech Republic, Case No. 22 Cdo 1599/2003*). § 140 of the Civil Code has dispositive character, it may be subject of contractual changes.

Pursuant to provisions §§ 602 – 606 of the Civil Code which applies analogically , if there is no agreed time until the sale is to take place, the acquirer of co-ownership share must pay for the movables within eight days, and immovables within two months after the offer. The above statutory time limits for payment of the purchase have preclusive character.

Termination of pre-emption rights

There are several ways how the pre- emption right can be terminated:

- **The lapse of the time limit for payment of the price for the transfer of the co-ownership share.**
- **The termination of the pre-emption right by express refusal to purchase the item.**
- **General reasons for the termination of obligations where this is considered due to the nature of the matter (merger, impossibility of performance and others).**

Due to the material legal effects, the right of first refusal is preserved for the legal successors.

Termination and settlement of share co-ownership
Co-ownership may be dissolved by agreement of the co-owners or by a court decision. The law, based on the contractual freedom of co-ownership, prefers the agreement of the co-owners as the basic and natural way to dissolve co-ownership. The possibility of termination and settlement of the joint of property may not be excluded or limited by contract (*see, Section E the judgement, Case No. R 54/1973*).

Termination and settlement of the co-ownership – by agreement (§ 141 of the Civil Code)
The first method of termination and subsequent settlement of co-ownership is by agreement of the co-owners. Its legal regulation can be found in § 141 of the Civil Code (*see section D*). This method of termination and subsequent settlement is prioritized by the legal order.
The form of the agreement is not specified in the case of movables, in the case of immovable property a written form is required. In the case of settlement of movable property, if the agreement has not been concluded in writing, each of the co-owners is obliged to issue a written confirmation of how they have settled. The absence of a confirmation does not affect the validity of the agreement on the settlement of the co-ownership shares. This obligation may be enforced by means of an action brought before a court in accordance with the provisions of Article 229 of the Code of Civil Procedure (type of claim: claim for replacement of a declaration of intention).
All co-owners must be parties to the agreement. If any co-owner disagrees, the agreement can be enforced by the court. The agreement must cover the entire subject matter of the co-ownership. The content of the agreement will usually be an agreement on one of the methods of settlement listed in § 142 of the Civil Code - however, other settlements are not excluded, e.g. that the share co-ownership of three persons becomes a share co-ownership of two persons. If the subject is real estate, it is necessary to submit a proposal for registration in the Land Register of the Slovak Republic.
An agreement on the termination and settlement of the co-ownership cannot be replaced by the recognition of one co-owner as the sole owner by the other co-owner or the other co-owners (*see, Section E, the judgement Case No. R 51/1974*).

Termination and settlement of the share co-ownership – by court decision (§ 142 (1) of the Civil Code)
If no agreement is reached, the court shall dissolve the share co-ownership and settle it at the request of one of the co-owners. This process consists of two stages:

(i) **termination of share co-ownership**, and
(ii) **settlement of share co-ownership.** Share co-ownership cannot be settled before the termination.

Regardless of the size of the co-ownership share, the procedure is initiated at the request of any co-owner (*see, the judgement of the Constitutional court of Czech Republic, Case No: I. ÚS 174/2005*).

(i) **Termination of the share co-ownership**. The reasons for the termination and settlement of share co-ownership by a court decision are usually prolonged or serious disagreements between the co-owners, the objective impossibility of using the subject of co-ownership, financing maintenance or investments, but also the lack of interest in remaining in co-ownership. All the shared owners must be involved in the proceeding. From a procedural point of view, the co-owners have the status of

inseparable partners pursuant to § 91 (2) of the Code of Civil Procedure. Furthermore, the operative part of the decision on the termination of the share co-ownership and the operative part of the decision on the settlement of the share co-ownership are linked. Therefore, it is not possible for one operative part to become final and the other not to become final. The court is bound by the proposal for the termination of the share co-ownership, but not by the proposed method of settlement, so it can decide on a different method of settlement as proposed by each co-owner.

(ii) **Settlement of** share co-ownership**.** If the court dissolves the share co-ownership, it must also settle it. The following methods of settlement are possible:
   a) **Division of the property.**
   b) **Assigning the property to one or more co-owners against appropriate compensation.**
   c) **Ordering the sale of the property and the distribution of the proceeds.**

If the parties reach a settlement in the court proceedings, which is subject to court approval, any method of settlement can be achieved regardless of its legal order. In other cases, the court will have to examine the various options for settlement one after the other, in such a way that it can only consider each other option once it has ruled out the previous one. In the decision-making process court is obliged to take into account in particular: 1) the size of the co-ownership share, 2) the efficient use of the property.

a) Division of the property

It is a preferred method of settling the share co-ownership, which must be considered by the court as a matter of priority. In particular, if all the co-owners have an interest in retaining their ownership of the property, the court will consider whether the property can realistically be divided. The property/the object of ownership must be capable of being divided from both a factual and a legal point of view. One of the most important factors in assessing the real divisibility of a case is the financial cost factor.
Court must always consider the following:

- **the cost of the work that is necessary for the actual division of the property** (the objective aspect). According to the practice of the courts, if the property could not be divided without costly modifications, then the thing would have to be regarded as realistically indivisible (*see, Section E the judgement Case No. R 61/1968*).
- **the willingness of the co-owners to contribute financially to the works necessary for the division of the property** (the subjective aspect). According to the practice of the courts, if none of the co-owners were willing to contribute to the necessary structural alterations, the building would have to be considered indivisible from this point of view (*see, Section E the judgement Case No. R 45/1991*).

If the division of the thing would result in the divided property no longer serving the purpose, the co-ownership cannot be settled by dividing the property. Access to the local road and zoning must be taken into account.
In the case of subdivision of property, beware of the prohibition on the fragmentation of agricultural land *(see, Section E the judgement Case No. R 48/2008).* The subdivision of the structure must also comply with building regulations. If the building, which is a residential building, has a single electricity, water and gas connection prior to its division, the actual

division of the building is only possible if this situation is resolved by the creation of an easement.
If it is not possible to settle the co-ownership in this way, the court will settle the co-ownership in the next way, in the following order.

b) Assigning the property to one or more co-owners against appropriate compensation

This is the court's method of settlement in cases where there is no possibility of division of the property. The command of a thing can have a threefold form, namely assigning the whole property to the exclusive ownership of one of the co-owners or bequeathing the whole property to more than one of the existing co-owners (joint ownership).
We distinguish two basic prerequisites for assigning the property to one or more co-owners against appropriate compensation:

- **Objective prerequisites**. When settling co-ownership by assignment of the property, the court takes into account in particular (a) the size of the co-ownership shares, (b) the intended use of the property and (c) the violent behavior of the co-owner towards the other co-owners. The appropriate use of the property is a matter for the court's discretion. The criteria are: (a) the housing needs of the co-owners, (b) who has previously lived in the house; (c) who has maintained, repaired or invested in it; (d) who is able to continue to maintain it (*see, for example the judgement, Case No: R 54/1973*). In the case of a property used for business, who has run the business, maintained it, etc. (*see, for example the judgement, of the Supreme Court of the Czech Republic, Case No: 22 Cdo 879/2005*). The principle that the property cannot be assigned to the co-owner who wants to sell it is enforced, but it does not apply without exception (*see, for example the judgement, of the Supreme Court of the Czech Republic, Case No: 22 Cdo 946/2004*). However, circumstances other than the size of the share and the purposeful use of the thing may also be taken into account (*see, for example the judgement, of the Supreme Court of the Czech Republic, Case No: 22 Cdo 1727/2006*). Slovak law also explicitly mentions violent behavior of a co-owner towards other co-owners.
- **Subjective prerequisites**. The subjective condition for the assignment of the property to one or more co-owners is the ability of the co-owner to provide adequate compensation. The co-owner to whom the property is to be assigned agrees with the assignment *(see, for example the judgement of Supreme Court of the Czech Republic, Case No: 22 Cdo 1346/2002, the judgement of the Constitutional Court of the Czech Republic, Case No: III. ÚS 687/04).*

According to settled case law, the basis for determining the appropriate compensation for a property is its general price at the time of the decision. The court determines this compensation on the basis of the corresponding proportion of the price of the whole, not on the basis of the price at which only the co-ownership share could be sold (*see, for example the judgement of Supreme Court of the Czech Republic, Case No: R 15/99 or the opinion of the Civil Law Collegium of the Supreme Administrative Court of the Slovak Republic of 20 October 1997, Case No: Cpj. 30/97*).
It considers the prices at which properties of a similar quality would be sold in a particular place and at a particular time in accordance with the supply and demand situation.
see, for example the judgement of Supreme Court of the Czech Republic, Case No: 22 Cdo 885/2001). The price of the property at the time of the settlement is decisive in determining

the appropriate compensation (*see, for example the judgement of Supreme Court of the Czech Republic, Case No: 22 Cdo 1927/2004).*
The court determines the appropriate compensation, but it is usually based on an expert's opinion of the usual price of the property, information from entities that deal in the purchase and sale of similar items (e.g. estate agents), or documents directly from the parties to the proceedings.
The court may refrain from ordering the payment of adequate compensation if the otherwise entitled co-owner declares that he does not require the payment of adequate compensation.
In proceedings for the termination and settlement of co-ownership, a co-owner who is ordered to pay the other co-owner an appropriate compensation for the property to be settled may not set off any other property claim against such a claim of the co-owner, and the court may not reduce the monetary compensation on the grounds of good morals pursuant to § 3 of the Civil Code (*see, for example the judgement of Supreme Court of the Czech Republic, Case No: 22 Cdo 1927/2004*).
The decision taken by the Court is constitutive and establishes rights and obligations for the future.

c) Ordering the sale of the property and the distribution of the proceeds

The final option, provided for in the Civil Code, is for the court to order the property to be sold and for the proceeds to be divided between the joint owners in proportion to each other's share. This option is used when none of the co-owners want the property, or neither is able to pay adequate compensation.
The standard wording of the judgment reads: "*The co-ownership of the participants in ..... is terminated. The sale of this property is ordered, with the provision that the proceeds of the sale shall be divided among the parties as follows: one half to the ...., one quarter to the ...., and one quarter to the .....*" The co-ownership does not cease to exist until the date on which the sale of the property takes place.

Rejection of the application for the termination of the joint of property (§ 142 (2) of The Civil Code)
The law provides for the possibility of not dissolving the co-ownership and thus rejecting the application for reasons worthy of special consideration. The possibility not to dissolve and not to settle the co-ownership for reasons worthy of special consideration does not apply to the actual division of the property, the law expressly states this possibility only for the other two methods of settlement (*see, for example the judgement of Supreme Court of the Czech Republic, Case No: 22 Cdo 704/2005).* It follows that, as long as the division of property is possible, the proposal cannot be rejected only for reasons that deserve special consideration. The term "*reasons worthy of special consideration* " are not set out in the Civil Code even in a demonstrative manner. Court practice has established following examples:

- The high age of the defendant, coupled with his poor health and the fact that he has lived most of his life in the property that is the subject of the share co-ownership and has an emotional attachment to it.
- The fact that the minor child of the share owners is living in the property concerned.

The rejection of the petition for termination of the shared property does not constitute an obstacle to res iudicata. If the reason for which the petition was rejected no longer exists, a new petition for the termination of the shared co-ownership may be filed.

Establishment of easement (§ 142 (3) of The Civil Code)
In the case of termination and settlement of co-ownership by division of the property, the court may establish an easement in favor of the owner of another newly created property in respect of the newly created property. The persons to whom the rights attached to the immovable property belong may not be adversely affected by the termination and settlement of joint ownership. It will only be considered in the event of the settlement of co-ownership by means of the actual division of the property. The establishment of an easement in proceedings for the termination of the share co-ownership and its settlement does not require a proposal of a party to the proceedings.

SECTION B : TEORETICAL QUESTIONS

1. Characterize the joint co-ownership.
2. What is a co-ownership share? How is its amount determined?
3. What principle applies to the management of the common property by the co-owners?
4. Under what conditions can the declared co-owner file an court action?
5. What is considered an important change to the common cause? What, on the other hand, is not considered an important change to the common cause?
6. What kinds of investments in a common cause can we distinguish and what is the different between them?
7. Characterize pre-emption right.
8. When do co-owners have no pre-emption right when transferring a co-ownership share?
9. Does the provision of article 140 of the Civil Code apply to the transition of a co-ownership share?
10. Are both transfers for consideration and transfers without consideration subject to the provisions of § 140 of the Civil Code?
11. What are the requirements for a so-called "buy-out offer"?
12. Is there a prescribed form for a buy-out offer?
13. Describe the ways in which the right of pre-emption can be infringed.
14. What are the consequences of an infringement of the right of pre-emption?
15. What are the deadlines for payment of the purchase price after receipt of the buy-out offer?
16. How can the right of pre-emption be terminated?
17. How can the co-ownership be dissolved and settled?
18. On what grounds does the court not cancel and settle the community of property?
19. Is the court bound by the proposal for the termination of the shared co-ownership? Is the court bound by the proposed method of settlement?
20. Can the court decide on any settlement option even if it has not ruled on the previous one?
21. What are the reasons worthy of special consideration for rejecting of the application for the termination of the joint of property?
22. Can the court establish an easement over movable property?

SECTION C : PRACTICAL CASES

Case No 1

Zuzana in share ¾, Tomáš in share 1/8, Petra in share 1/8, are joint co-owners of land - garden in Bratislava-old town, as well as the construction of a small garden cottage built on the land.

- **Zuzana, as the majority co-owner, proposes to sow cereals in the whole the garden and sell the harvest. The other joint co-owners disagree.**
  1. Can the decision on this matter be considered as management of the common good? Give reasons for your answer.
  2. Can the other co-owners, Tomáš and Petra, seek protection in court against the decision taken by the majority?
  3. Is Zuzana, as the majority co-owner, entitled to make the decision by herself, without giving the minority co-owners the opportunity to express their opinion?

- **Zuzana, as the majority co-owner, proposes to rent the garden and the cottage to the owner of the neighboring garden, as none of the co-owners has time to visit the garden and it is therefore deteriorating. Tomáš and Petra agree to rent it, but at a price five times higher than that offered by the owner of the neighboring garden.**
  1. Can the decision on this issue be considered as management of the common property? Give reasons for your answer.
  2. Can the other co-owners, Tomáš and Petra, seek protection in court against the decision taken by the majority?

- **Tomáš suggests repairing the leaking roof. Zuzana agrees, but Petra does not.**
  1. Can the decision on this issue be considered as management of the common property? Give reasons for your answer.
  2. Can Petra seek protection in court against a decision taken by a majority?
  3. Who is liable to pay the repair costs? Only Zuzana and Tomáš, who made the decision to repair the roof by majority vote, or also Petra, even though she voted against it?
  4. At what point does the obligation to pay the costs arise.

- **Zuzana decides to sell the garden and the cottage as a whole after communication problems with the other co-owners, Tomáš and Petra.**
  1. Can the decision on this issue be considered as management of the common property?
  2. Can Zuzana, as majority co-owner, decide on this issue without the consent of the others?
  3. What are the legal consequences of concluding a contract of sale for the transfer of the entire property between Zuzana and the buyer?

- **Zuzana, after finding out that neither Tomáš nor Petra are interested in selling the garden with the cottage, she decides that she will only sell her majority co-ownership share in its entirety, to Barbora.**

1. What are Zuzana's obligations to the other co-owners if she wants to sell a share to Barbora, who is not related to her?
2. What are Zuzana's obligations to the other co-owners if she wants to sell the share to her daughter and husband?
3. Draw up a legally valid purchase offer from Zuzana to the other co-owners in accordance with § 140 of the Civil Code. Are there any binding periods set up by law?

- **When the original purchaser of the co-ownership shares discovered that Zuzana was not the sole owner of the property, he withdrew from the purchase. Zuzana is therefore of the opinion that the only solution to her situation is the termination and settlement of the co-ownership.**
  1. Can Zuzana, as the majority co-owner, decide on her own to dissolve the co-ownership without the consent of Tomáš and Petra? Can the decision on this issue be considered as management of the share co-ownership?
  2. If you conclude that the termination and settlement of the share co-ownership must be decided by all the co-owners, what options does Zuzana have if Tomáš and Petra do not agree to the termination of the share co-ownership by agreement?
  3. What alternatives does the court have when deciding on the termination and settlement of the share co-ownership ?

- **Zuzana, Petra and Tomáš agreed that they will cancel the share co-ownership and settle the co-ownership by real division of the property. They will divide the property in such a way that Zuzana will be the sole owner of the building of the cottage, the part of the land on which the cottage is built and the part of the land from the cottage along the boundary of the land, the value of which approximately corresponds to the size of her ownership share. Petra will be the sole owner of the part of the land from the lower boundary of the property to the middle of the property and Tomáš will be the owner from the middle to the upper boundary of the property.**

- **What documents are necessary for the conclusion of such an agreement on the termination and settlement of the co-ownership and its subsequent registration in the Land Register of the Slovak Republic?**

<u>Case No 2</u>

Brothers Milan and Roman are joint co-owners of a family house in the village of Milocnice in southern Slovakia. The size of each co-ownership share is ½ of the total.

- **Roman wants to rent out the house as it has not been used for a long time. According to expert opinion, the rental price in this location ranges from EUR 650-700.**
  1. Decide and express your opinion, whether is it management of the common property or an important change of the common good?
  2. What is the principle governing the decision of the co-owners in the management of the common property?

3. Can Roman decide on his own without giving Milan opportunity to express his opinion? Would the situation change if Roman had ¾ and Milan ¼ of the co-ownership shares? Assess the validity of the decision in question.
4. Analyze decision, Case No: R 54/1997: *"A co-owner who disagrees with the management of the common property, as determined by a decision of the co-owners by a majority calculated according to the size of the shares (the so-called majority principle), cannot successfully seek a court decision on a different management of the property (this right is available only if no majority or agreement of the co-owners can be reached). The declared co-owner must submit to the decision of the majority".*
5. Does the agreement on the management of common property have a prescribed legal form?
6. Milan refuses to rent the house. Deal with the situation.

- **Milan has been using the whole house with his family for a long time. Roman does not use the property. Roman does not like the situation, he would also like to "profit" from the property.**
  1. Suggest to Roman possible alternatives for resolving his situation (making sure that the primary concern is to preserve the property right to the property) and rank the different alternatives for resolving the situation from least to most invasive interference with the property right.
  2. Define the term "**overuse**" of the property. Does overuse give rise to a claim for unjust enrichment or is it a separate claim under § 137 (1) of the Civil Code? Consider the existing case law of the courts + formulate the claim.
  3. Explain the concept of passive solidarity of the joint co-owners expressed by the words "the co-owners are jointly and severally bound."
  4. Can part of the co-ownership interest in the property be leased to the other co-owner? Explain.

- **The following repairs/adjustments were needed on a family house, valued at EUR 250 000 EUR. (a) Damage to the roofing during a severe storm (repair value EUR 10 000) and (b) replacement of a creaking floating floor (repair valued at EUR 2 000) and (c) a cracked glaze on a sink that does not drain (repair valued at EUR 100). As a result of the investment, the value of the property has increased to EUR 268 000. Milan paid for all the repairs. Roman did not give his consent for the repairs. There was no prior agreement. To resolve the situation.**
  1. Who is liable for the cost of repairs/adjustments and to what extent?
  2. Who is obliged to pay for the repair/adjustment and when?
  3. Would the situation change if there was an agreement between the co-owners? Consider the situation if all the costs were paid by Milan. What are the claims that Milan has against Roman and when does the statute of limitations begin to run? What is the length of the limitation period in this case? (see § 137 (1) of the Civil Code, § 511 (3) of the Civil Code, § 101 of the Civil Code).
  4. When are they time-barred:
     - the right to reimbursement of current/non-recurrent costs incurred with the consent of the other co-owners?
     - unavoidable costs without the consent of the other co-owners?
     - costs that are not necessarily incurred, however without the consent of the other co-owners?

- **Roman decided to transfer his co-ownership share to his two daughters.**
  1. Does Roman have an obligation to offer a co-ownership share to Milan? If yes, why. If not, why not?
  2. Define the term "*close person*."
  3. Would the situation change if Roman wanted to donate the co-ownership share to charity? Analyze in the context of the following court decisions: the judgement of the Supreme Court of the Slovak Republic, Case No: 1 Cdo 102/2005 (R 5/2005) and the the judgement of the Supreme Court of the Czech Republic, Case No: 22 Cdo 2408/2007 and the judgement of the Supreme Court of the Czech Republic, Case No: 22 Cdo 3188/2006.
  4. Does the right of pre-emption also apply in the event of a transition of ownership? See, for example, the judgement of the Supreme Court of the Slovak Republic, Casa No: 22 Cdo 1143/2000 or R 54/1973.
  5. Would the situation change if Roman donates his co-ownership share to the Ltd. company, the company in which he is the managing director? See e.g. the judgement of the Supreme Court of the Czech Republic, Case No: 22 Cdo 1836/2003.
  6. Is the right of pre-emption according to § 140 of the Civil Code of a substantive legal nature or the nature of obligation? Explain.
  7. Are the provisions of §§ 602 to 606 of the Civil Code applicable to the legal regulation of the statutory pre-emption right under § 140 of the Civil Code? If so, on the basis of which provision or principle of civil law?
  8. Characterize the so-called "buy-out offer". Describe its individual elements.
  9. Can Roman change the terms of the buyout offer after submitting a "buyout offer" to Milan?
  10. In what cases can the right of pre-emption be considered to have been infringed? Please list.
  11. What are Milan's options if he has a legal pre-emption right, but Roman does not make the "buyout offer" and transfers the ownership right to another entity XX who is not his close person. Can these claims be cumulated?
  12. Analyze the Resolution of the Supreme Court of the Slovak Republic of 31 May 2022, Case No. 7 Cdo 269/2019, published in the Collection under Case No. R 53/2022: *"The right of a co-owner whose right of pre-emption has been infringed (§ 140 of the Civil Code) to require the acquirer to offer the property for sale to him within the meaning of § 603 (1) of the Civil Code arises only at the moment when the acquirer has acquired the right of ownership of the immovable property, since only then does he have the right to dispose of the immovable property in question (§ 123 of the Civil Code)".*
  13. Is it possible to force the original co-owner who violated the pre-emption right (i.e. Roman) to transfer the ownership right to the other co-owner (i.e. Milan) by invoking the relative invalidity of the legal act?
  14. How would you deal with the situation where person X, who bought the property from Roman in violation of the legal pre-emption right, transfers the ownership right to another entity Y?
  15. When does the pre-emption right cease to exist?

- **Roman and Milan have quarreled and therefore cannot agree on anything concerning their common property. Milan no longer wants to remain in the co-ownership relationship.**
  1. Advise Milan what are the options if you know you can't reach an agreement with Roman?
  2. What can constitute a reason of special consideration under the provisions of § 142 (2) of the Civil Code?

SECTION D : RELEVANT PROVISIONS OF ACT NO. 40/1964 CALL. CIVIL CODE AS AMENDED

§ 3

Good morals

(1) The exercise of rights and obligations arising from civil relations shall not, without lawful cause, interfere with the rights and legitimate interests of others, nor be contrary to good morals.

§ 39

Invalidity of the legal acts

A legal act is invalid if its content or purpose contradicts the law or circumvents the law or if it is contrary to good morals.

§ 40a

Relative invalidity of the legal act

If the ground for invalidity of the act is based on the provisions of §s 49a, 140, 145(1), 479, 589 and 701(1), the act shall be deemed valid unless the person affected by the act invokes the invalidity of the act. Invalidity may not be invoked by the person who caused it. The same applies if the act was not performed in the form required by the agreement of the parties (Art. 40). If a legal act is contrary to a generally binding price regulation, it is void only to the extent that it is contrary to that regulation, if the person affected by the act invokes the invalidity.

§ 101

General limitation period

Except as otherwise provided in other provisions, the limitation period shall be three years and shall run from the date on which the right could have been exercised for the first time.

§ 107

Unjust enrichment – limitation period

(1) The right to recover unjust enrichment shall be time-barred two years from the date on which the beneficiary becomes aware of the unjust enrichment and of the fact that he has been enriched to his detriment.

(2) The right to recover unjust enrichment expires at the latest three years and, in the case of intentional unjust enrichment, ten years after the date on which the unjust enrichment occurred.

(3) If the parties to a void or rescinded contract are obliged to compensate each other for everything they have received under the contract, the court will only take into account a plea of limitation if the other party could also have pleaded limitation.

§ 116

Close persons

A close person is a relative in the direct line of descent, a sibling, and a spouse; other persons in a family or similar relationship shall be deemed to be close if the injury suffered by one of them would reasonably be perceived by the other as an injury to himself or herself.

§ 117

The degree of relationship between two persons is determined by the number of births by which one is descended from the other in the direct line, and by the number of births by which both are descended from the nearest common ancestor in the branch line.

§ 136

Co-ownership

(1) A thing may be jointly owned by more than one owner.

(2) Co-ownership can be shared or joint. Joint co-ownership can arise only between spouses.

§ 137

Share co-ownership

(1) The share expresses the extent to which the co-owners participate in the rights and obligations arising from the co-ownership of the shared property.

(2) Unless otherwise provided by law or agreed by the parties, the shares of all co-owners shall be equal.

§ 139

Decision making process of shared co-owners

(1) All co-owners are jointly and severally entitled and obliged to legal acts concerning the shared property.

(2) The management of the share property is decided by the co-owners by a majority calculated according to the size of the shares. In the event of an equality of votes, or if no majority or agreement is reached, the court shall decide on the application of any co-owner.

(3) If there is an important change to the common property, the co-owners who are being voted over may request that the court decide on the change.

§ 140

The right of pre-emption

If the co-ownership share is transferred, the co-owners have the right of pre-emption /the right of first refusal/, except in the case of the transfer to a close person (§ 116, 117). If the co-owners do not agree on the exercise of the pre-emption right, they have the right to redeem the share in proportion to the size of the shares.

§ 141

Termination and settlement of co-ownership by agreement

(1) The co-owners may agree on the termination of the co-ownership and on a mutual settlement; if the subject of the co-ownership is immovable property, the agreement must be in writing.

(2) Each of the co-owners is obliged to provide the other co-owners, upon request, with a written confirmation of the settlement, unless the agreement on the termination of the co-ownership and the mutual settlement has already been made in writing.

§ 142

Termination and settlement of share co-ownership by court decision

(1) If no agreement is reached, the court shall dissolve the share co-ownership and settle it at the request of one of the co-owners. It will take into account the size of the shares and the appropriate use of the property. If the division of the property is not possible, the court shall order the property to be transferred to one or more of the co-owners in return for appropriate compensation, the court must consider the possibility of the property being used for its intended purpose and the violent behavior of the co-owner towards the other co-owners. If none of the co-owners wants the property, the court will order its sale and divide the proceeds according to the shares.

(2) For reasons of special consideration, the court shall not dissolve and settle the share co-ownership by assignment of the property for compensation or by sale of the property and distribution of the proceeds.

(3) In the event of termination and settlement of co-ownership by division of the property, the court may establish an easement in favor of the owner of another newly created real estate in respect of the newly created real estate. The termination and settlement of co-ownership may not be to the detriment of the persons to whom the rights attached to the immovable property belong.

§ 511

Joint commitments

(1) If it is provided by law or by a court decision or agreed by the parties or if it follows from the nature of the performance that more than one debtor is to discharge the debt to the same creditor jointly and severally, the creditor shall be entitled to demand performance from any one of them. If one debtor discharges the debt, the obligation of the others shall be extinguished.

(2) Unless otherwise provided by law or by a court decision or agreed by the parties, the shares of all debtors in the debt shall be equal in proportion to each other. A debtor against whom a claim has been asserted more than his share shall be obliged to notify the other debtors without undue delay and to give them an opportunity to object to the claim. He may require them to discharge the debt according to their respective shares or otherwise to discharge him to that extent.

(3) If the debtor has discharged the debt himself to the extent of the claim, he is entitled to claim compensation from the others according to their shares. If one of the debtors cannot fulfil his share, that share shall be divided equally among all the others.

§ 513

If the debtor owes the same performance to several creditors who are jointly and severally entitled to the same performance under the law, a court order or a contract,

any one of the creditors may demand the entire performance and the debtor shall be obliged to perform in full to the first creditor who so demands.

§ 602

Contractual pre-emption right

(1) Anyone who sells something with the reservation that the buyer will offer it to him if he wants to sell it has a right of pre-emption.

(2) Such a right may also be agreed in case of alienation of the thing other means than by sale.

§ 603

(1) The right of pre-emption imposes an obligation only on the person who has promised to offer the thing for sale.

(2) The right of pre-emption may also be agreed as a right in rem, which also operates against the purchaser's successors. The contract must be concluded in writing and the pre-emption right shall be acquired by entry into the land register. If the seller has not purchased the item offered by the buyer, the right of pre-emption remains with him against his successor in title.

(3) If the right of pre-emption has been violated, the beneficiary may either require the acquirer to offer the object for sale or the right of pre-emption shall remain with the acquirer.

§ 604

The pre-emption right does not pass to the heir of the beneficiary and cannot be transferred to another person.

§ 605

If there is no agreed time by which the sale is to take place, the person entitled must dispose of the movable property within eight days, the immovable property within two months after the offer. If this period expires in vain, the right of pre-emption shall lapse. The offer shall be made by announcing all the conditions; in the case of immovable property, the offer must be in writing.

§ 606

Whoever is entitled to buy a thing must pay the price offered by someone else, unless otherwise agreed. If he cannot buy the thing or if he cannot fulfil the conditions offered in addition to the price and if they cannot be compensated for even by an appraisal price, the right of pre-emption is extinguished.

SECTION E : RELEVANT COURT DECISIONS

Management of common assets:

The judgment of the Supreme Court of the Slovak Republic, Case No. 3 Cdo 162/2004: However, the management decision-making process cannot be carried out solely by the majority co-owner without the minority co-owner having the opportunity to participate in the decision-making process. A decision taken by the majority co-owner without any participation of the minority co-owner in the decision-making process is an absolutely null

and void legal act. This applies even if the minority co-owner has a minimum co-ownership interest and thus cannot de facto influence the decision of the majority co-owner.

Joint use of things

The judgement, Case No. R 54/1973: The following basic options are considered when regulating joint use: a) division of the use of the co-owned property, so that the individual co-owners will use certain parts of the common property allocated to him; b) one of the co-owners will use the whole co-owned property and the others will receive compensation (usually monetary); c) all co-owners will use the co-owned property alternately in certain periods of time (R 64/1973, p.205(4))**.** The possibility of cancellation and settlement of share co-ownership cannot be excluded or limited by contract (R 54/1973, p.212 para.2).

Investments to common property

The judgement of Supreme Court of the Czech Republic, Case No. 22 Cdo 599/99: If the investment was made for necessary repairs or maintenance, the amount of unjust enrichment would be determined by the share of the investment corresponding to the share of the common property, while the obligation to pay the unjust enrichment would arise from the investment made during the period of co-ownership.

The judgement, Case No. R 37/1982: If the investments were other than necessary repairs and maintenance, the obligation of the co-owner to pay the unjust enrichment would only arise in the event of the termination of his co-ownership, to the extent of the increase in value of his share as a result of the investment made, this increase in value being determined by the difference between the price of the share before and after the investment.
Use beyond the scope of the co-ownership share

The judgement of the Supreme Court of the Slovak Republic, Case No. 6 Cdo 184/2010: However, in assessing the extent of the use of the common property, it is not only the size of the part of the property used (the area of the part of the land) that may be decisive, but also the utility (economic) value of the part of the property used, if this value differs from one part of the property to another in the light of the particular circumstances.

The judgement of the Supreme Court of the Czech Republic, Case No. 22 Cdo 2624/2003: The unjust enrichment of a co-owner who uses an object of share co-ownership beyond the extent of his co-ownership share occurs regardless of whether such use was decided by a majority of the co-owners, calculated according to the size of their co-ownership shares, or was regulated by an agreement of the co-owners, or was decided by a court, unless the agreement of the co-owners implies otherwise, e.g. that they will not pay anything for the use beyond the extent of their co-ownership share.

The judgement, Case No. Rc 91/2012: The basic rights of a co-owner include the right to improve the common property by means of investments. If the other co-owners agree to an expense incurred by one or more co-owners on the common property (and it is irrelevant whether the expense is for necessary alteration or maintenance or for non-necessary repair and maintenance), this constitutes an agreement on the management of the common property, and the investing co-owner has a right against the other co-owners to reimbursement of the expense (Art.137 para. The same applies in the case of a decision of the majority co-owner made in accordance with §139(2) CC; if there is no agreement between the

co-owners as to how they will share in these investments, the size of the co-ownership shares is decisive. Such investments made by agreement of the co-owners or by a decision of the majority of the co-owners shall be due (unless otherwise agreed between them) during the life of the co-ownership and not after its termination, the time of incurring the costs being decisive for the commencement of the limitation period.

Pre- emption right

The judgement, Case No. R 57/2006: The right of pre-emption of a co-owner also applies to the transfer of a co-owner's share based on a gift agreement.

The judgement of the Supreme Court of the Slovak Republic, Case No. 2 Cdo 44/2008, R 49/2010: The effective acceptance of an offer to purchase a co-ownership interest in real estate occurs only with the payment of the purchase price for the offered co-ownership interest within two months of the receipt of the offer (§605 CC), unless a different time for payment has been agreed.

The judgement, Case No. Rc 72/2002: For the assessment of whether the sale of a co-owner's share of real estate violated the co-owner's pre-emption right, it is not decisive whether, at the time when the share was offered to him for purchase, a specific prospective buyer offered the purchase price to the co-owner. What is relevant is a comparison of the price or other conditions on which the sale to another took place with the price and other conditions at which the obliged co-owner had previously offered to sell to the beneficiary.

The consequences of violation of the pre-emption right

The judgement of Supreme Court of the Czech Republic, Case No. 22 Cdo 1875/05: If, on the basis of a violation of the pre-emption right, a beneficiary (co-owner) may demand, pursuant to § 603 (3) of the Civil Code, that the acquirer offer him the thing (co-owner's share) for purchase, and the acquirer does not make the offer for purchase voluntarily, the beneficiary co-owner may demand that this manifestation of the acquirer's will be replaced by a decision of the court. It means, by the action will request the court to rule that the defendant's expression of will, by which he is obliged to make an offer to the applicant as the entitled co-owner to purchase the co-ownership share, is replaced by the following wording: I propose to conclude a contract of the following content (hereinafter referred to as the text of the contract), or to conclude a contract, the text of which is annexed to this judgment. The petition of the action could also be worded in such a way as to replace the defendant's manifestation of intent to conclude a contract of the following wording: (and the text of the contract is set out below). The legal validity of the judgment replacing the will of the acquirer (defendant) to make an offer to the entitled co-owner (plaintiff) to purchase the co-ownership share must be regarded as perfect (§ 43a(2) of the Civil Code), i.e. that the will of the acquirer (defendant) replaced by the court decision has been communicated to the entitled co-owner (plaintiff) as the person to whom it was addressed.

Termination and settlement of co-ownership

The judgement, Case No. R 54/1973: The possibility of termination and settlement of the joint of property may not be excluded or limited by contract.

The judgement, Case No. R 51/1974: An agreement on the termination and settlement of the co-ownership cannot be replaced by the recognition of one co-owner as the sole owner by the other co-owner or the other co-owners.

The judgement, Case No. R 1/1970: The settlement may only concern the property which is the shared property of the parties. The object of the settlement must be the whole thing, not just the share of a particular co-owner. An accessory shall become the subject of the settlement if one of the co-owners expressly proposes it.

Division of the property

The judgement, Case No. R 61/1968: If the thing would not be divisible without costly modifications, the thing would have to be regarded as realistically indivisible.

The judgement, Case No. R 45/1991: If none of the co-owners were willing to contribute anything to the necessary structural alterations, the building would have to be considered indivisible from this point of view.

The judgement of the Supreme Court of the Czech Republic, Case No: 22 Cdo 2631/2005: There is no division by floors and their parts (horizontal), but only vertical division, which creates new separate cases. The division of a building plot by means of a geometric division plan is not sufficient for a real division of the building. The conclusion of real divisibility generally requires expert evidence, with the necessary existence of a geometric plan of separation.

Reasons worthy of special consideration

Judgement of the Supreme Court of the Slovak Republic, Case No. 6 Cdo 279/2012, R 136/2014: a reason of special consideration, for which the court does not annul and dispose of the co-ownership by assignment of the property or by its sale and division of the proceeds, may also be the fact that a minor child of the co-owners has established his/her home in the property in question.

The judgement, Case No. R 100/1999: The rejection of an action for the termination and settlement of a community of property on grounds of special consideration must reflect the factual uniqueness of the case. The grounds for rejecting an application for the termination and settlement of the community of property are circumstances of a predominantly subjective nature, both on the part of the debtor (in particular his state of health, age and social situation, the state of his dependence on the housing in the property in question) and on the part of the person liable, lack of possibilities to satisfy his housing needs elsewhere, personal ties to the property), as well as on the part of the entitled party (in particular if he is concerned only with the settlement of the use relations, the question of the termination of the co-ownership not being a priority for him, or that he intends to sell the property, or, in the case of the latter, to sell the property). it is a question of a fraudulent exercise of the right).

Establishment of easement

The judgment of the Supreme Administrative Court of the Slovak Republic, Case No. 4 Cdo 141/2005, R 19/2006: The court may establish an easement in proceedings for the termination of co-ownership, even if the easement is intended to serve another separate immovable property to which access was provided by a right arising from co-ownership.

CHAPTER 5

METHODS OF ACQUISITION AND TERMINATION OF OWNERSHIP

SECTION A : BRIEF SUMMARY

Methods of acquiring the right of ownership

We can distinguish between the various methods of acquisition of ownership. There are several theoretical divisions, depending on different criteria, from which we have chosen the following:

- The theoretical division according to whether the acquisition of the right of ownership takes place between living persons or in connection with death is called in Latin **"inter vivos"** or **"in mortis causa."**

Acquisition of ownership title "inter vivos"	**Acquisition of ownership title "in mortis causa"**
This group includes any acquisition of ownership rights not related to death. It includes the acquisition of the right of ownership: • by different type of contracts; • by creation of new thing; • by finding a lost item; • by finding a hidden item; • by appropriation of the thing; and • other ways.	This relates to process of inheritance.

- The theoretical division according to whether **ownership rights can derive from any predecessor or not**.

The original methods for the acquisition of the right of ownership	**Derivative methods for the acquisition of the right of ownership**
In the following cases, the acquirer does not derive his right from a previous owner: - acquisition of ownership by bona fide possession, so called usucapion or endurance; - acquiring ownership of things that do not belong to anyone, such as meteorites, forest fruits or new lands (in history); - acquisition of ownership to fish and animals caught under the Hunting and Fishing Act of Slovak Republic; - acquiring ownership of unreserved mineral resources (gravel, sand) -	In the following cases, the acquirer derives the right of ownership from the predecessor in title: • the acquisition of the right of ownership by different type of contracts such as donation contract, purchase contract or contract for the exchange of goods; • the acquisition of the right of ownership by inheritance; • the acquisition of the right of ownership by finding a lost item, and

other sources are exclusively state property according to Art. 4 of the Constitution of the Slovak Republic; - acquisition of ownership by creation of a new thing, such as a building; - acquisition of ownership by the increment of the thing, and - others.	• others.

- The theoretical division according to whether **it is the transfer of the ownership or transition of ownership**.

Transfer of ownership	**Transition of ownership**
The transfer of ownership requires an expression of will. In contractual relations, the basic Latin rule applies: *Nemo plus iuris ad alium transferre potest quam ipse habet*, which means that no one can transfer more rights than he has.	The transition of ownership is based on other legal facts than are an expression of will, such as law, decision of a public authority or inheritance.

The legal basis for the acquisition of ownership rights is enshrined in § 132 of the Civil Code *(see Section D)*. The provision in question sets out only **demonstrative calculation** of the ways, how ownership rights may be acquired. The implication of this is that there are other ways in which there can be acquisition of ownership.

1. Acquisition of the right of ownership by contract.

The acquisition of the right of ownership by contract represents the basic way of acquiring ownership rights. We can distinguish several types of contracts based on which ownership can be acquired, such as:

- Purchase contract.
- Exchange contract.
- Donation contract.
- Contract for work (when a new thing is being made).
- Loan agreement.
- Agreement on the termination and settlement of the share co-ownership(does not apply in the case of joint co-ownership of spouses).
- Succession agreement.
- An unnamed contract or other types of contracts.

It is any contractual change in the person of the owner, where the transferee derives his legal status from the previous owner. The basic condition for the transfer of property rights is the application of the principle that no one can transfer more rights to another than he has himself, well known in Latin as: *Nemo plus iuris ad alium transferre potest quam ipse habet*. This rule basically means that the acquirer acquires the right of ownership to the extent that the original owner had it. In addition, all restrictions on the property, which are of a substantive nature are also transferred to the acquirer (such as restrictions due to legal burdens in rem, rights of pledge and others).

The Slovak legal order recognizes **two stages of the transfer of ownership by contract**. The right of ownership is acquired on the basis of the **legal reason *(titulus)*** and **the method of acquisition *(modus)*** *(see Section D, § 133 of the Civil Code).*

1. The first stage is the "**creation of the title**," which means conclusion of the contract. The form of the contract depends on whether the object of the transfer is movable thing or immovable thing.
In the case of movables there is no specific form established by the Civil Code, unless otherwise agreed by the contracting parties.
Regarding immovables, there is specific form established by the Civil Code, under the § 46 of the Civil Code (see, Section D) and the Land Registry Act, such as written form of the contract, both signatures of the parties to the contract must be placed on the same page, the notarization of the signature of the transferor (e.g. seller, donor etc.) is required. The contract is the legal title of the property right.

2. The second stage is the "**specific method of acquisition of ownership modus."** The modus varies depending on whether the object of the transfer is movable or immovable.
In the case of **movables**, the modus constitutes **the transfer (traditio)** of the thing to another person. For example, someone sells mobile phone. A verbal contract (*titulus*) and the transfer of the mobile phone to the purchaser (*modus*), who pays the agreed purchase price is sufficient to acquire ownership. At the moment of handover, the ownership of the movable thing (e.g., mobile phone) is transferred to the purchaser.
A different regime applies to **immovables**. The transfer of immovables is not sufficient for the acquisition of ownership rights. Immovable property must be registered in the Land Register of the Slovak Republic in accordance with the Land Registry Act. The Land register is run by the cadastral department of the district office of the respective city (e.g., Bratislava, Trnava, Senec and others). A person acquires the right of ownership on the day of registration in the Land Register of the Slovak Republic. The registration has material effects, which means that the registration affects everyone. Everyone is obliged to respect the right of ownership and must refrain from any action that may negatively affect the exercise of any partial right of ownership. The Land Registry consists of two parts such the public and private part. The public one is accessible with limited scope of information - name of the owner, dates of birth, permanent address, object of ownership and encumbrance real estate with the rights of third parties. A private part consists of the special personal data of the contracting parties (birth numbers), purchase prices and other information not accessible to the public, etc.

2. Acquisition of the right of ownership by a decision of a state authority

The acquisition of the right of ownership by means of a decision of a state authority includes the following:

- Court decisions.
- Decisions of the administrative authorities.

The right of ownership shall be **acquired on the date specified in the relevant decision** and, if this date is not specified in the decision, on the date on which the decision becomes valid and effective. Court may issue, for instance:

- A decision on the termination and settlement of the share co-ownership(*§ 142 of the Civil Code, please see relevant part of publication, Section D).*

- A decision on unauthorized construction *(§ 135c of the Civil Code, see Section D).*

3. Acquisition of the right of ownership by other means

This category includes several ways of acquisition of property rights:

- Usucapion or endurance of ownership by bona fide possession *(§ 134 of the Civil Code, see Section D).*
- Acquiring ownership of lost, hidden and abandoned/derelict items.
- Acquisition of the right of ownership by creating a new thing.
- Acquisition of the right of ownership of the increments.
- Acquisition of a property right by processing a good that belongs to another person.
- Acquisition of the right of ownership by tapping the auctioneer.
- Acquisition of the right of ownership to unauthorized construction.
- Acquisition of the right of ownership directly by law.

Usucapion or endurance of ownership by bona fide possession.

Endurance of ownership by bona fide possession is a transfer of ownership. The legal regulation can be found in § 134 of the Civil Code. It is **an original way of acquiring the right of ownership or rights corresponding to easements** under the § 151 o (1) second sentence of the Civil Code. It is the possibility of transformation of long-lasting relations of rightful possession into the right of ownership. The owner does not derive his right of ownership from a predecessor and is therefore not subject to the above-mentioned Latin principle: *"Nemo plus iuris ad alium trasferre potest quam ipse habet."*

The main purpose of this type of acquisition of ownership is to unify the factual status in which the entitled holder of the thing or right corresponding to the easement believes that he is the owner in view of all the circumstances, with the legal situation. In addition, the retention of title removes the legal uncertainty associated with defects or deficiencies in title if, having regard to all the circumstances, the holder of the right could not have been aware of such defects or deficiencies.

The retention of ownership rights constitutes a certain exception to the timelessness of the right of ownership *(§ 100 (2) of the Civil Code, see Section D)* in the sense that the right of ownership is never extinguished by the non-exercise of the right of ownership itself. However if it is followed by the long-term exercise of the rightful possession of another person, the retention of possession leads to the termination of the right of ownership of the original owner and its emergence in the holder. **It follows that retention of title provides the holder with the legal possibility of converting the lawful possession into a right of ownership or a right equivalent to an easement.**

If the subject of the retention of title was immovable, the entry of the ownership right into Land Register of the Slovak Republic is required. However, in comparison to acquisition of ownership by contract, this has only **declaratory effect.**

By bona- fide possession a thing can be acquired into:

- Sole ownership (100% of ownership by one person),
- Share co-ownership(50 % + 50 %, shared ownership of at least two persons), or
- Joint co-ownership of spouses.

In the case of retention of title, the right of ownership is acquired **ipso facto** and **directly ex lege**, i.e. at the moment when all the substantive prerequisites for retention of title are fulfilled, namely at the moment of expiry of the retention period.

Until 2021, the acquisition of the right of ownership by bona fide possession was certified by notaries. From 2021, the acquisition of the right of ownership by bona fide possession is certified by courts in proceedings for the confirmation of possession *(§ 359a et seq. of the Procedure for confirming usucaption, see Section D*).
Based on bona fide possession, the ownership rights can be acquired by natural persons, legal entities and the State.

For the endurance of ownership rights, the following criteria must be met:

- **Eligible object of retention.** The object of retention can be anything that can be the object of ownership, except for things that belong to the State or to legal persons specified by law (*§ 134 (2) and § 125 (2) of the Civil Code, see Section D*). According to Article 4 of the Constitution of the Slovak Republic, the Slovak Republic is the owner of mineral waters, caves, underground waters, natural medicinal resources and watercourses. The object of retention may also be an easement.
- **Subject of retention.** Any natural or legal person, as well as the state, which is entitled to acquire the right of ownership, may be the subject of retention. If there is more than one person entitled to possession of a particular thing, and if the conditions for bona fide possession are fulfilled by all of them, they acquire the thing jointly by bona fide possession. In addition, if one of the spouses acquires the property by bona fide possession, the property becomes the subject of joint share co-ownership of the spouses. A minor can also acquire ownership by bona fide possession, but through his representative, such as his parents, who exercise the right of bona fide possession for the minor and not for themselves. They exercise it until the minor reaches the age of majority (*see Judgment, Case No. 4 Cdo 21/2004*).
- **Bona fide possession** *(see relevant chapter of this publication § 130 and § 131 of the Civil Code, Section D).* The person who has possession of the capable object must believe that the property right belongs to him. If, having regard to all the circumstances, the possessor believes in good faith that the thing or right belongs to him, he is the rightful possessor. In case of doubt, possession is presumed to be lawful.
- **The possession period**. Lawful possession must last for at least the period prescribed by law:
    - Movables, the minimum possession period is 3 years;
    - Immovables, the minimum possession period is 10 years;
    - Easements, the minimum possession period is 10 years.

  The period of possession begins when the thing is taken into lawful possession, or from the date on which the right corresponding to the easement is exercised for the first time. The period of possession is interrupted if the owner ceases to be bona fide or to hold the object as his own, or if the object becomes unusable. This period includes the period during which the thing or right was in the lawful possession of the predecessor in title. It follows that, if the rightful possession has been exercised by different holders, it must be continuous and not interrupted by any period during which the thing or right was wrongfully held or not held by any person.

Acquiring ownership of lost, hidden and abandoned/derelict items.

Loss of a items *(§ 135 (1), (2) of the Civil Code, see Section D)*

Ownership can be acquired by loss of the item. **Loss of the item means that an Involuntary event has caused its loss.** The subject of ownership does not change. If someone finds a lost object, he is obliged to return it to the owner. If the owner is

unknown, the finder is obliged to hand it over to the competent state authority (public authority). Only if the owner of the object does not claim it within 1 year after the handover, the ownership of the found object is acquired by the state (after 1 year). The finder is entitled to a finder's fee of 10% of the price of the object. Only the movables can be lost.

Hidden items *(§ 135 (3) of the Civil Code, see Section D)*
Hidden items are subject to a similar legal regime as lost items, but only if the owner is unknown. If the owner is known, they must be handed over to him. The State becomes the owner of a hidden item, the owner of which is unknown, at the moment of its discovery. In such a case, the expiry of the one-year period under § 135 (1) of the Civil Code will therefore not be necessary. However, depending on the circumstances of the particular case, it may not be clear whether the item found was hidden but lost. Therefore, if the owner of the thing subsequently applies and proves his ownership in an appropriate manner within the one-year period, it will be retained and the thing will be handed over to him. Only the movables can be hidden.

Abandoned items (dereliction) (§ 135 (3) of the Civil Code, see Section D)
Ownership can be acquired by abandonment. **Abandonment requires an expression of the owner's will, which includes an intention to relinquish ownership of the item**. The essence of abandonment is its permanence, because the owner does not abandon the thing "for a time" but "forever". The owner may abandon both movable and immovable property. As in the case of a hidden object with an unknown owner, the State acquires ownership of an abandoned object on the day it is discovered or it is established that the object has been abandoned. If it is subsequently established that there has been no abandonment, the owner of the object has the possibility of claiming ownership within a period of one year pursuant to Section 135(1) of the Civil Code. Otherwise, the same applies as in the case of a lost object.

	The Lost Thing	**The Hidden Thing**	**Abandoned Thing**
Will	Involuntary event has caused its loss, which means it has left the possession of the owner without his will.	We don't know how the thing left the owner's possession.	Left the possession by the will of the original owner.
			The essence of abandonment is its permanence, because the owner does not abandon the thing "for a time" but "forever".
Acquisition of ownership by the State	Only if the owner of the object does not claim it within 1 year after the handover, the ownership of the found object is	Ownership passes to the State after 1 year. The state becomes the owner of a hidden item, the owner of	The State acquires the right of ownership upon abandonment at the time of discovery, or at the time of discovery that it has left

	acquired by the State (after 1 year).	which is unknown, at the moment of its discovery. However, depending on the circumstances of the particular case, it may not be clear whether the item found was hidden, abandoned or lost. Therefore, if the owner of the object subsequently declares and proves his ownership in an appropriate manner within a period of one year, it shall be retained and the object shall be handed over to him.	the possession of the original owner. If it is subsequently established that there has been no abandonment, the owner of the property has the option of claiming ownership within the one-year period provided for in Section 135(1) of the Civil Code.
Type of item	Only a movables	Only a movables	Both a movables and immovables
Finder's fee	10 %	10 %	10 %

If the finder does not fulfil his obligation to hand over the object to the owner, but leaves it to its fate at the place of discovery, he shall be liable to the owner for the damage caused. If the finder retains the item, the owner is entitled to the return of the unjust enrichment and, if applicable, to compensation for damages. The retention of a found object of small value (§ 125 of the Criminal Code) gives rise to liability for the offence of concealment of an object pursuant to § 236 of the Criminal Code.

If the finder has handed over the thing to the competent state authority, he will be entitled **to the finder's fee and to reimbursement of the necessary expenses against the State**. That right arises from the moment of handing over the item to the competent State authority, i.e. it is irrelevant whether the owner of the object has missed the one-year period which made the State the owner of the discovery. However, if the owner claims ownership within one year, the finder's rights against the State subsequently pass to the owner.

Acquisition of the right of ownership by creating a new thing.
If someone creates a new thing from his own material, he acquires ownership of it at the moment of creation- a new building, flat.

Acquisition of the right of ownership of the increments *(§ 135 a of the Civil Code, see Section D).*

Acquisition of the right of ownership of the increments creates a specific legal regime when the owner has the right to the accretions of the thing. The owner of the fruit-bearing thing is entitled to the accretions and fruits which the thing brings, even if they are separated from the fruit-bearing thing. The increments and fruits may occur, in particular, in two forms:

- **the natural fruits of things,** such as the young of animals, the crops on the land, or the fruit on the tree; and
- **the civil fruits,** such as money interests.

The acquisition of title to the increments and fruits is also similar to the acquisition of title to something that has been subsequently added to the main thing. This is what is known as accession. For example, the conversion of a house.

Acquisition of a property right by processing a good that belongs to another person *(§ 135 b of the Civil Code, see Section D).*

If someone handles another's thing **in good faith (bona fide)**, the owner of the new thing becomes the owner of the new thing whose share in the thing is greater. The owner of the new thing so designated is obliged to pay to the other owner the price of what his property has been reduced by.

If the processor **is not in good faith (not bona fide)**, i.e. at the time of processing the alien thing he was aware that the thing does not belong to him, the owner of the thing is entitled to demand its return and restitution to its former state, regardless of the amount of shares in the new thing. If this is not possible or expedient, the court will decide who becomes the owner and the amount of compensation if no agreement has been reached.

Acquisition of the right of ownership to unauthorized construction *(§ 135 c of the Civil Code, see Section D).*

Respective provisions apply only to building connected to the ground by a solid foundation.

Unauthorized construction should be distinguished from unpermitted construction, although both are laconically called black building. **Unpermitted construction** is a building that has been constructed in contravention of the building regulations, in particular without a building permit. This situation results in the application of the administrative sanction, which is foreseen by the Building Act. **Unauthorized construction** is construction (immovable property), which has been established on someone else's land without having valid lease agreement, the right of easement or title to the land.

In resolving the situation described above, the court may come to one of the following conclusions. In the provision § 135c of the Civil Code, the "preferred order" of the decision-making process is determined by the respective paragraphs. However, the landowner is not bound by that order and may propose any method of settlement. The court is not bound by the proposals of the parties pursuant to § 216 (2) of the Code of Contentious Litigation.

- **Firstly, the court may order on the removal of the building at the expense of the unauthorized builder** *(§ 135c (1) of the Civil Code, see Section D)*:
    - It is the most severe method of court decision.
    - Such an arrangement of relations is justified if the builder has not acted in good faith and has committed a particularly serious breach of duty, or if it is still economically viable, both in terms of the economic importance of the construction and the amount of costs involved, to proceed to such a radical solution.

- Even if it does not explicitly follow from this provision, the court should first ask for an opinion of the building authority whether it will issue a permit for the removal of the building pursuant to the Building Code. The building authority is not bound by the court's decision on the removal of the building and it could happen that the decision would be materially unenforceable.

- **Secondly, if the removal of the structure would not be expedient, the court shall order it to be repossessed by the owner of the land for compensation, provided that the owner of the land agrees** *(§ 135c (2) of the Civil Code, see Section D)*:
    - If the court comes to the conclusion that it would not be expedient to remove the building in view of the above, and in particular the economic conditions of the building, it shall, with the consent of the landowner, impose on the builder a sanction consisting in depriving the builder of the right of ownership of the building.
    - In this way, the owner of the land acquires the right of ownership on the basis of a court decision, which has a constitutive character *(§ 132 (2) of the Civil Code, see Section D*).
    - At the same time, the court must decide on the amount of compensation to be paid by the owner of the land, and now also by the owner of the building, to the unauthorized builder. Otherwise, unjust enrichment will arise *(§ 451 of the Civil Code).*

- **Thirdly, otherwise arranges the relations between the owner of the building and the owner of the land, in particular by establishing an easement in favor of the owner of the building for compensation** *(§ 135c (3) of the Civil Code, see Section D)*:
    - In such a case, the right of ownership of the building remains with the builder and the court has the possibility of otherwise arranging the relations between the owner of the land and the owner of the building in such a way as to ensure an equitable arrangement of the relations.
    - The law expressly provides for the possibility of creating an easement for compensation, which is necessary for the exercise of the right of ownership of the building. This would be an *in rem* easement (e.g. right of way). However, this is to be distinguished from § 151 o of the Civil Code, where the court also establishes an easement.
    - In addition to the establishment of an easement, the creation of a lease could also be considered.
    - Czech jurisprudence has also allowed the land to be bequeathed to the owner of the building as an alternative solution, but only on the condition that the owner of the land pays compensation *(see Section E, the Judgement of The Supreme Court of the Czech Republic, Case No. Rc 42/2001).*

Acquisition of the right of ownership by tapping the auctioneer.
In a public voluntary auction, the entity acquires the right of ownership of the items auctioned by means of the auctioneer's touch, provided that the entity has paid the price obtained at the auction within a certain period of time; the granting of the touch is thus the only legal act that causes the acquisition of the right of ownership.

Acquisition of the right of ownership directly by law.
The amendment to the Civil Code, which came into force on 01.01.1992, the right of personal use of land, which existed on that date in accordance with the previous regulations, was changed into the right of ownership. In addition to this, the right of joint personal use of land on which a residential building with apartments owned by citizens was changed into the right of share co-ownershipof natural persons on the same date.

Brief introduction in principle of good faith in civil-law relations in the acquisition of the right of ownership
General bona fide acquisition of property from a non-owner

- Slovak legal order generally does not regulate the institute of acquisition of a thing from a non-owner.
- **General bona fide acquisition of property from a non-owner means that the person concerned pleads that he acquired the object in question from a non-owner in good faith that this person (the transferor) is the owner of the object.**
- It is an institute different from legal possession, since the bona fide possession lasting for the entire statutory period of possession cures the defect (invalidity) of the title of acquisition and the rightful possessor becomes the owner of the thing.
- The process of protection of a bona fide acquirer has evolved in the decision-making practice of the Slovak and Czech courts. The decision-making practice is divided into two groups:
    - **The first group includes decisions that persist on application of the principle of nemo plus iuris, and thus do not allow the acquisition of the right of ownership from a non-owner** - *e.g. decisions of the Supreme Court of the Slovak Republic, Case No. 1Cdo/146/2012, 2MCdo/20/2011, 3Cdo/144/2010, 3Cdo/223/2016, 5MCdo/12/2011 and 7Cdo/139/2019.*
      GRAND SENATE of the Supreme Court of the Slovak Republic, 27 April 2021, Case No. 1VObdo/2/2020: Acquisition of the right of ownership on the basis of an absolutely invalid legal act and others:
        1) *It is not possible to acquire the right of ownership on the basis of an absolutely invalid legal act, even if the entry of the right of ownership into the Land Register was made on its basis.*
        2) *Referring to the legal principle according to which no one can transfer to another more rights than he himself has (nemo plus iuris ad alium transferre potest quam ipse habet), the right of ownership to immovable property cannot be validly transferred to another person by one who is registered as the owner of immovable property in the Land Registry on the basis of an absolutely invalid legal act.*
        3) *The good faith of the acquirer that he acquires a movable or immovable thing from the owner shall affect the acquisition of the right of ownership only insofar as the law, in exhaustively specified cases, expressly provides for the acquisition of the right of ownership with reference to the good faith of the acquirer. In other cases, de lege lata legislation does not allow the acquisition of title from a non-owner by reference to the good faith of the acquirer.*
        4) *The provisions of § 70(1) the Land Registry Act, which regulates the credibility of cadastral data, do not correspond to an interpretation according to which the mere registration of ownership of immovable*

property in the cadaster of immovable property establishes the registered owner's good faith in the fact that he is the owner.

- **The second group includes decisions that allow breaking the principle nemo plus iuris, therefore allow the acquisition of the right of ownership from a non-owner** - e.g. Decision of Constitutional Court, issued on 16 March 2016, Case No. I. ÚS 549/2015, *Decisions of the Supreme Court of the Slovak Republic, Case No. 1Cdo/160/2018, 2Cdo/231/2017, 4Cdo/102/2017, 4Cdo/95/2019, 4Cdo/142/2019, 4Cdo/28/2020, 6Cdo/71/2011 and 6Cdo/792/2015 and rulings of the* of Constitutional Court of Slovak Republic, *Case No. I. ÚS 151/2016 and I. ÚS 460/2017*
- Constitutional Court of the Slovak Republic issued its ruling I. ÚS 549/2015-33 in which it recognized that in certain circumstances it is necessary to provide protection to the acquirer, regardless of whether the law explicitly provides for an exception to the nemo plus iuris principle in a given situation. The Constitutional Court stated that there are two protected interests - the property right of the original owner and the acquisition of the property right by the new acquirer on the basis of his good faith. These may conflict with each other. At the same time, however, it concluded that unless the maximum of both fundamental rights can be preserved, the principle of general equity must be taken into account when considering the general context of this type of conflict as well as the individual circumstances of the particular case decided. The negligent owner bears a greater risk than the bona fide transferee, since the latter has no way of knowing how the property left the owner's sphere and came to be registered in the transferor's title deed after the statutory administrative (cadastral) procedure.
  The court must always consider whether it will grant protection of the property right to a bona fide acquirer over the original owner. It should take into the account:
  - the good faith of the transferee,
  - general context of the conflict of fundamental rights,
  - the individual circumstances and context of the particular case being decided,
  - compliance with the principle of universal justice.

Statutory exceptions to the nemo plus iuris principle:

- § 446 of the Commercial Code;
- § 19 (3) of Act on Securities and Investments Services;
- § 485 and § 486 of the Civil Code;
- § 140 (2) (l) in connection with § 150 (2) of the Execution Procedure Code; and
- § 93 (3) of Act on Bankruptcy.

Methods of termination of ownership

The Civil Code does not provide for a specific regulation of the termination of the right of ownership, but it does provide for various legal situations whose legal consequence is the termination of the right of ownership. They can be classified according to suitable criteria of differentiation, i.e. according to the absolute or relative termination of the right of ownership, or according to whether the right of ownership is extinguished by the will of the owner or independently of it.

Absolute termination of the right of ownership occurs when the right of ownership of a particular thing is extinguished without anyone else acquiring it. Such termination of ownership is the termination of the thing itself (*e.g. by consumption or destruction*). **Relative termination** of the right of ownership is the transfer of the right of ownership to another entity (*by contract, by the death of the owner, etc.*).

SECTION B : TEORETICAL QUESTIONS

1. Give an example of the acquisition of the right of ownership between living persons.
2. Are there other ways of acquiring ownership rights recognized by the legal system in your home country?
3. Name the different types of contracts under which the ownership can be acquired.
4. Explain the essence of the two-step nature of the transfer of property by contract, separately for the transfer of movable property and separately for the transfer of immovable property? Support your opinion with a specific legal provision in Section D.
5. Explain difference between "*title or titulus*" and "*modus or method*" regarding acquisition of ownership?
6. What's the Land Register of the Slovak Republic used for? What public information is contained in the Land Register of the Slovak Republic?
7. How does the relationship of the processor to the thing processed have an effect on whether the processor was bona fide or not?
8. Does the principle *nemo plus iuris ad alium transferre potest quam ipse habet* apply in the case of acquisition of title by usucaption?
9. In the case of acquisition of ownership by usucaption, does the entry of the ownership right into the Land Register of Slovak republic have a constitutive effect? Explain.
10. Describe the conditions for retention of title (so called usucaption).
11. Describe the following terms: (a) Eligible object of retention, (b) Subject of retention, (c) Bona fide possession, (d) The possession period.
12. Can a thing be retained to the joint ownership?
13. Describe difference between lost, hidden and abandonment items.
14. Which moment is important regarding acquisition of the right of ownership by creating a new thing?
15. Describe acquisition of the right of ownership of the increments.
16. Describe acquisition of the right of ownership by processing something belonging to another person.
17. Describe acquisition of the right of ownership to unauthorized construction? How may the court solve this question?
18. Does Slovak legal order generally regulate the institute of acquisition of a thing from a non-owner?
19. Which statutory exceptions *to the nemo plus iuris principle* do we distinguish?
20. What are the methods of termination ownership?

SECTION C : PRACTICAL CASES

Case No 1

Describe how ownership can be acquired in following cases:

	Original or derivative nature of the acquisition of the right of ownership	Transfer/ transition of the right of ownership	Acquisition of the right of ownership between the living or in the event of death
Buying food in a hypermarket			
Birth of a animal			
Inheritance			
Court confirmation of the acquisition of the inheritance			
Assignment of the property to one of the co-owners in the event of division and settlement of the co-ownership pursuant to § 142 (1) of the Civil Code			
Theft of jewelry			
Fishing on the Orava river			
Usucapion right of ownership to the sport car			
Expropriation of real estate			
Finding a wallet and appropriating its contents (200 EUR + credits cards)			
Finding the wallet and handing it over to the competent state authority			
Forfeiture as a sanction under the Offences Act of Slovak Republic			
The making of a garment (woman´s dresses) from a fabric belonging to another person			
Authorization of the entry of the ownership right into the of Slovak Republic			

Acquisition of ownership rights by contract

Case No 2

Mr. John (purchaser) bought a building plot of 1000 m² from Mr. Thomas (seller). There were 6 fruit trees, 3 walnut trees and 2 cherry trees on the land at the time of the conclusion of the purchase contract. When the land was handed over, the trees were missing because they had been cut down by the Mr. Thomas (seller). The seller argued that he was only selling the land and the trees were not included in the purchase price. The purchaser, on the other hand, argued that the trees were part of the building plot and asked for a reasonable reduction in the purchase price.

Use relevant provisions in Section D and relevant Case law in Section E.

1. Judge the situation from a legal point of view.
2. Resolve a dispute between seller and purchaser.
3. Are the trees (mentioned in the case) eligible to be a separate object of the purchase contract? If yes, under which conditions?

Case No 3

Mr. Sebastian bought a house and land from Mrs. Karola for the purchase price of EUR 400 000. The purchase contract came into force and become effective on 10 February 2024. The same day Mrs. Karola received the purchase price of EUR 400 000. The application for entry into the Land Registry of the Slovak Republic was submitted on 15 February 2024 and the Land Registry authorized the entry on 22 February 2024.

Use relevant provisions in Section D and relevant Case law in Section E.

1. When did Mr. Sebastian acquire ownership of the property?
2. When did the purchase contract become binding on both parties?
3. Can the purchase contract between Mr. Sebastian and Mrs. Karola be concluded orally?
4. Would anything change if the gift contract instead of purchase contract was concluded?
5. Consider the following situation: Before the transfer to Mr. Sebastian, Mrs. Karola uses the property for 5 years. Mrs. Karola was not the owner of the property (e.g. due to the absolute invalidity of the previous transfer contract) and was not even registered as the owner in the Land Registry of the Slovak Republic. Consider the situation if the true owner will raise a claim for "determination of ownership" 11 years after the transfer of the property to the Mr. Sebastian. Assess the issue of endurance/usucapion of the ownership rights by Mr. Sebastian.
6. Consider the following situation: Before the transfer to Mr. Sebastian, Mrs. Karola uses the property for 5 years. Mrs. Karola was not the owner of the property (e.g. due to the absolute invalidity of the previous transfer contract), but she has no idea about it. Moreover, she was registered as the sole owner in the Land Registry of the Slovak republic. Consider the situation where the true owner makes a claim for "determination of ownership" 11 years after the property was transferred to Mr. Sebastian. Would the situation change if the true owner were to file a claim for "determination of ownership" in 2026? Assess the issue of endurance/usucapion of the ownership rights.
7. How should the transfer of money and property rights take place to best protect Mr. Sebastian?

Case No 4

In a purchase contract, Alex agrees to sell a road bicycle to Maxim for EUR 1 200. At the same time, they agreed in the purchase contract that Maxim will not acquire ownership title to the bicycle until the full purchase price has been paid. They concluded the purchase contract on 10 March 2023. On that day Maxim paid Alex EUR 1000 in cash and Alex handed over the bicycle to Maxim. Maxim did not pay the remaining EUR 200 until 10 January 2024. When did Maxim acquire the ownership title to the bicycle?

Other means of acquiring ownership rights:

Endurance/Usucaption of the ownership rights

Case No 5

Mrs. Lenka lent a children's car - BMW to Mr. John on 10. February 2019. John, without Lenka 's permission, sold the BMW car in his name to Karin on 10. April 2020. Karin's little son used the BMW for a few months, then it was sold to Ms. Milada on 10. October 2021. Mrs. Lenka found an advertisement at the bazaar where Ms. Milada was selling her child's car - BMW. Therefore, Mrs. Lenka filed a lawsuit against Ms. Milada on 10. July 2023. Consider Lenka's success in the upcoming trial.

Case No 6

Juraj stole a bicycle from a cyclist who had stopped to buy a Coke on the Bratislava diversion dam. He was incredibly pleased because that was exactly the kind of bicycle he wanted. He had been cycling stolen bicycle for one season when he discovered that the diversion dam "offers" better possibilities, such a more expensive bicycle. He sold the bicycle, which he had stolen at the beginning of spring, on an advertisement to an unknown person, a man named Jaroslav. Shortly thereafter, he got himself a better one on the diversion dam.

Use relevant provisions in Section D and relevant Case law in Section E.

1. Describe the legal position of Juraj in relation to the stolen bicycle.
2. Describe the legal status of Jaroslav to the purchased bicycle.
3. How the legal status of Juraj and Jaroslav, can determinate their ability to acquire ownership title to the bicycle "*pro futuro*"?
4. What options does a robbed cyclist have to protect his property rights?
5. Formulate the statement of claim.

Acquisition of ownership rights to lost, abandoned and hidden things

Case No 7

A meteorite landed in Veronika's yard. Veronika decided not to tell anyone about it and to keep it. Judge whether Veronika can become the owner of the meteorite and, if so, under what conditions.

Case No 8

Klara received a gold chain from a boyfriend for her birthday. After some time, Jan broke up with Klara. Klara was angry. She didn't want anything Jan had ever given her. So, she threw the gold chain from the bridge into the river. While swimming in the river, Martin found the gold chain and decided to keep it and sell it later. Evaluate the legality of the procedure.

Acquisition of ownership rights by creating a new thing or processing a thing or by increment

Case No 9

Mr. Charles had a huge plum tree at the edge of his fenced property. The branches of the tree were overhanging the fence onto Mr. Milan's land. Mr. Milan therefore decided to cut the branches off after the tree's growing season. There were still ripe fruits on the cut branches, which Mr. Milan decided to keep. However, Mr. Charles demanded the release of the fruit.

Deal with the situation. Use relevant provisions in Section D and relevant Case law in Section E.

1. Could Mr. Milan have cut the branches of the tree? If so, under what provision?
2. Whose property were the fruits on the cut branches?
3. Would it make any difference if the fruit itself fell from the branches onto Milan's land?
4. Could Mr. Charles enter Milan's property and go to pick the fallen plums?
5. Evaluate the situation if Mr. Milan has brewed a plum compote.

Mod.: Charles went to pick fruit on Milan's land. However, he destroyed rare varieties of herbs worth EUR 700. Milan demanded for compensation from Charles, but Charles refused to pay anything, saying that the herbs were not visible at all, and that Milan should have marked them properly. Consider the situation.

Acquisition of ownership rights of an unauthorized building

Case No 10

After 5 years in the UK, Mr. Adam returned home and decided to build a family home. He went to look at his building plot, which he had inherited from his mother. When he arrived at the land, he found that there was a house built on it, which belongs by Mrs. Elena, who told him that she had brought an action in court to claim ownership of the land in return for fair compensation. Deal with the situation. Use relevant provisions in Section D and relevant Case law in Section E.

1. Can such a situation arise under the current legislation of the Slovak Republic?
2. How do you think Mr. Adam should proceed?
3. Was Mrs. Elena actively entitled to bring the action?
4. Describe the difference between unqualified (not allowed) and unauthorized building.
5. What action would you take to remove the barbecue pavilion and portable storage unit she has placed on the property?

Case No 11

A landowner knows from the outset that a building being constructed on his land by another person is an unauthorized building under § 135c of the Civil Code but nevertheless does not in any way prevent the builder from doing so. Upon completion of the construction, he seeks its removal under the said provision of the Civil Code. Consider the action of the landowner. Should the request to remove the building be complied with or should it be rejected? Deal with the situation. Use relevant provisions in Section D and relevant Case law in Section E.

Case No 12

Peter built a tin garage on John's land. It was not fixed to the ground, so it did not meet the requirements of a building. John returned from abroad after a year and found Peter's

garage built on his land. Deal with the situation. Use relevant provisions in Section D and relevant Case law in Section E.

1. What legal action would you recommend John take?
2. What kind of lawsuit would be appropriate to resolve the situation?
3. Would an action under Article 135c of the Civil Code come into play? Substantiate your opinion.
4. Consider whether the garage could be classified as a building under § 119 (2) of the Civil Code.

Principle of good faith in civil-law relations in the acquisition of the right of ownership
Case No 13

Mr Ján, born. 22.01.1930, suffering from old age dementia and other serious mental disorders (without limitation of legal capacity) decided on 01.02.2000 to alienate his apartment No. 5, located at 120/5 Tichá Street, 811 08 Bratislava- Staré mesto (hereinafter referred to as the "Apartment"). He gave the Apartment to his carer Monika, who took care of him during the day. He did so for an unknown reason, allegedly "motivated" directly by his carer Monika. Ján died in 2010. During the inheritance proceedings, it was discovered that the apartment in question was not in the mass of the inheritance, and the heirs became interested in the circumstances of the case. After looking into the land registry, the heirs discovered that the title deed listed Katarína, who had acquired the apartment back in 2001. The heirs asked for your help. The apartment is worth EUR 400 000.

1. Please indicate what your initial legal research into the situation would lead to.
2. Could Monika have acquired ownership by virtue of good faith?
3. Who owns the property and under what title?
4. What claims do the heirs of the deceased John have and against whom?
5. Compare the conclusions of the court decisions of the Constitutional Court of the Slovak Republic, ruling I. ÚS 549/2015-33 and the Supreme Administrative Court of the Slovak Republic of 27 April 2021, case No. 1VObdo/2/2020.
6. Which lawsuit would you use?
7. Formulate the statement of claim.
8. Would the situation have changed if Jan had transferred ownership to ABS Ltd., which later dissolved?

Statutory exceptions to the nemo plus iuris principle
Case No 14

John died in 2015. He left behind a family house, an older car and 50 000,- EUR in a bank account. Jan had no children and therefore decided to bequeath his entire inheritance by will dated 04.03.2014 to Juraj (the family house) and Martin (the car and EUR 50 000,-). He knew both of them from the pensioners' club. They were volunteers there. The notary, in his capacity as court commissioner, confirmed the inheritance to the heirs by a decree of succession. The order became final on 05.02.2015. Without undue delay Juraj sold the family house to Mrs. Lydia, who became the owner on 05.06.2015. At the end of 2019, Lydia discovered a box in the attic containing a more recent will of Mr. Ján dated 06.06.2014, in which he named Katarina (his good friend's daughter) as his heir and revoked the original will in it. Mrs Lydia took the will to the notary.

1. Judge who owns the family home.
2. Could Lydia have retained ownership of the family home under the facts in question?

3. Could Lydia have acquired the right of ownership by virtue of good faith?
4. State what claims does Catherine have and against whom?
5. What is the difference between an action under § 126 CC and § 486 CC?
6. Would the situation have changed if Lydia had found a new will in a year in 2016?
7. What lawsuits would you use and against whom?

SECTION D : RELEVANT PROVISIONS OF ACT NO. 40/1964 CALL. CIVIL CODE, AS AMENDED

§ 39

A legal act is invalid if its content or purpose contradicts the law or circumvents it or goes against good morals.

§ 40

(1) If the legal act was not made in the form required by the law or the agreement of the participants, it is invalid.

§ 46

(1) Real estate transfer contracts, as well as other contracts required by law or by agreement of the participants, must be in written form.

(2) For a contract to be concluded in writing, it is sufficient for there to be a written offer and its written acceptance. If the contract concerns the transfer of real estate, the declarations of the parties must be on the same document.

+ The transferor's signature must be notarized under Land Registry Act.

§ 100

(1) The right is time-barred if it was not exercised within the period established in this law (§ 101 to 110). For statute of limitations, the court will only consider the debtor's objection. If the debtor invokes the statute of limitations, the statute of limitations cannot be granted to the creditor.

(2) All property rights, with the exception of the right of ownership, shall be extinguished. This is without prejudice to the provisions of § 105. Liens shall not be barred before the secured claim.

§ 119

(1) The things are movable or immovable.

(2) Immovable property is land and buildings connected to the ground by a solid foundation.

§ 120

(1) A part of a thing is everything that belongs to it according to its nature and cannot be separated without the thing being devalued.

(2) Buildings, waterways and groundwater are not part of the plot.

§ 127

(1) The owner of the item must refrain from doing anything that would annoy another person beyond a reasonable level or that would seriously threaten the exercise of his rights. Therefore, in particular, he must not endanger the neighbor's building or land by modifying the land or by modifying the structure established on it without taking sufficient measures to secure the building or land, he must remain to not disturb the neighbors with noise, dust,

ashes, smoke, gases, vapors, odors beyond a measure proportionate to the ratio, solid and liquid wastes, light, shading and vibrations, he must not let farmed animals enter the neighboring land and unsparingly, or at an inappropriate time of the year, remove tree roots from his land or remove tree branches extending onto his land.

(2) If it is necessary and if it does not interfere with the proper use of neighboring land and buildings, the court may, after hearing the opinion of the competent building authority, decide that the owner of the land is obliged to fence the land.

(3) Owners of neighboring land plots are obliged to allow access to their land plots, or to structures standing on them, for the necessary time and to the necessary extent, as long as maintenance and management of neighboring land plots and buildings necessarily requires it. If this causes damage to the land or the building, the person who caused the damage is obliged to reimburse it; he cannot get rid of this responsibility.

§ 132

Acquisition of ownership

(1) Ownership of a thing may be acquired by a contract of sale, gift or other contract, by inheritance, by a decision of a state authority or by other facts provided for by law.

(2) Where ownership is acquired by a decision of a state authority, ownership shall be acquired on the date specified therein and, if no date is specified, on the date the decision becomes legally valid.

§ 133

(1) If the movable property is transferred on the basis of a contract, ownership is acquired by taking over the object, unless otherwise established by law or agreed upon by the contracting parties.

(2) If immovable property is transferred on the basis of a contract, ownership is acquired by depositing it in the real estate register (Land Register) according to special regulations, unless a special law provides otherwise.

§ 134

Usucaption of ownership

(1) The rightful possessor shall become the owner of a thing if he has continuously held it for three years in the case of movable property and for ten years in the case of immovable property.

(2) Property may not be acquired in this way in respect of things which cannot be the subject of ownership or in respect of things which can only be owned by the State or by legal persons designated by law (§ 125).

(3) The period under paragraph (1) shall include the period during which the thing was in the rightful possession of the predecessor in title.

(4) The provisions on the running of the limitation period shall apply mutatis mutandis to the commencement and duration of the period referred to in paragraph (1).

§ 135

Lost thing, Hidden thing, Abandoned thing

(1) Whoever finds a lost thing is obliged to hand it over to the owner. If the owner is unknown, the finder is obliged to hand it over to the relevant state authority. If the owner does not apply for it within one year of its handover, the thing becomes the property of the state.

(2) The finder has the right to reimbursement of necessary expenses and to a finder's fee, which is ten percent of the price of the find. A special legal regulation may otherwise regulate the authorization of the person who found or reported the thing.

(3) The provisions of paragraphs 1 and 2 also apply mutatis mutandis to hidden things, the owner of which is unknown, and to abandoned things.

§ 135a

The thing increments

The owner of the thing also belongs to the accretions of the thing, even if they were separated from the main thing.

§ 135b

Processing of another's property

(1) If someone in good faith processes another's thing into a new thing, the owner of the new thing becomes the one whose share in it is greater. However, he is obliged to pay the second owner the price of what his property has diminished. If the shares are equal and the participants do not agree, the court will decide on the proposal of any of them.

(2) If the processor is not bona fide, i.e. at the time of processing the alien thing he was aware that the thing does not belong to him, the owner of the thing is entitled to demand its return and restitution to its former state, regardless of the number of shares in the new thing. If this is not possible or expedient, the court will decide who becomes the owner and the amount of compensation, if no agreement has been reached.

§ 135c

Unauthorized construction

(1) If someone establishes a building on someone else's land, although he has no right to do so, the court may, at the proposal of the landowner, decide that the building must be removed at the expense of the person who established the building (hereinafter referred to as the "building owner").

(2) If the removal of the structure would not be expedient, the court will order the landowner to take ownership and pay compensation, if the owner of the land agrees.

(3) The court can also arrange the relations between the owner of the land and the owner of the building in another way, in particular also establish a real burden for compensation, which is necessary for the exercise of the ownership right to the building.

§ 142

Termination and settlement of co-ownership by court decision

(1) If no agreement is reached, the court shall dissolve the co-ownership and settle it at the request of one of the co-owners. It will consider the size of the shares and the appropriate use of the property. If the division of the property is not possible, the court shall order the property to be transferred to one or more of the co-owners in return for appropriate compensation, the court must consider the possibility of the property being used for its intended purpose and the violent behavior of the co-owner towards the other co-owners. If none of the co-owners wants the property, the court will order its sale and divide the proceeds according to the shares.

(2) For reasons of special consideration, the court shall not dissolve and settle the co-ownership by assignment of the property for compensation or by sale of the property and distribution of the proceeds.

(3) In the event of termination and settlement of co-ownership by division of the property, the court may establish an easement in favor of the owner of another newly created real estate in respect of the newly created real estate. The termination and settlement of co-ownership may not be to the detriment of the persons to whom the rights attached to the immovable property belong.

SECTION D : RELEVANT PROVISIONS OF ACT NO. 161/2015 COLL. CODE OF EXTRA-CONTENTIOUS LITIGATION, AS AMENDED

PROCEDURE FOR CONFIRMING USUCAPTION

§ 359a

The subject matter of the proceedings

Proceedings for confirmation of usucaption are proceedings for confirmation of usucaption of the right of ownership of immovable property or proceedings for confirmation of usucaption corresponding to an easement.

§ 359b

Local court jurisdiction

The court with local jurisdiction for the confirmation of usucaption is the court in whose district the property is located.

§ 359c

Parties to the proceedings

(1) A person who claims to have acquired the right of ownership of immovable property or a right corresponding to an easement by possession shall be entitled to file a petition for the commencement of proceedings for the confirmation of usucaption of immovable property.

(2) A party to the proceedings is

(a) the claimant,
(b) the person who, at the time of initiating the procedure for confirming usucaption, has the right of ownership of the immovable property or the right in rem to the immovable property to which the procedure for confirming usucaption relates, entered in the title deed,
(c) the forest land manager; and
(d) the Slovak Land Fund.

(3) After the issuance of the order of summons, a party to the proceedings is also a party to the proceedings who has filed objections under § 359h (1) if he or she is not a party to the proceedings under paragraph (2) (b), (c) or (d).

§ 359d

Application for institution of proceedings

(1) Proceedings for confirmation of usucaption are only initiated upon request.

(2) In addition to the general requirements, the request for initiation of the procedure for confirmation of usucaption must contain a description of the facts showing that the claimant has fulfilled the conditions for acquiring the title to the immovable property or the right corresponding to the easement by usucaption, the description of the immovable property according to the land register data and the date on which the claimant acquired the title to the immovable property or the right corresponding to the easement by usucaption. The facts referred to in the first sentence must be certified by the claimant.

(3) The application for confirmation of usucaption shall be served on the other parties to the proceedings together with the order for summons under § 359g.

§ 359e

Decision on the application for initiation of the proceedings

(1) If the application for the commencement of proceedings for confirmation of usucaption is not dismissed in accordance with § 8 (1), the court shall examine whether the applicant has certified that he has acquired the ownership right to immovable property or the right corresponding to the easement by possession. The court may itself make the necessary enquiries to verify the accuracy of the applicant's allegations or may invite the applicant to identify further evidence to prove the facts from which it appears that he has fulfilled the conditions for acquiring title to the immovable property or the right corresponding to the easement by way of retention of possession.

(2) The court shall dismiss the application for the commencement of proceedings for confirmation of usucaption if it finds that the conditions for the issuing of a summons order under § 359f (1) are not fulfilled.

(3) The court shall decide on the dismissal or refusal of the petition to commence proceedings for confirmation of usucaption without hearing the other parties and without ordering a hearing; the court's decision on the dismissal or refusal of the petition to commence proceedings for confirmation of usucaption pursuant to paragraphs 1 and 2 shall be served only on the petitioner.

§ 359f

Summons resolution

(1) If the claimant has certified that he has fulfilled the prerequisites for the acquisition of the right of ownership of immovable property or the right corresponding to the easement by usucaption, the court shall issue a summons order.

(2) In the summons resolution, the court shall invite objections to the issuance of the order confirming the usucaption to be lodged with the court of first instance in the matter by a date to be determined at the same time.

(3) The period allowed for the lodging of objections shall not be less than six months from the publication of the calling order in the Gazette under § 359g (2) (a) to the date specified in the summons resolution under paragraph (2).

(4) In addition to the notice referred to in paragraph 2, the summons shall contain the description of the immovable property according to the data in the Land Registry of Immovable Property and a brief description of the facts proving that the claimant has acquired the right of ownership of the immovable property or the right corresponding to the easement by usucaption.

§ 359g

Delivery and publication of the summons order

(1) The summons order shall be served without delay:

(a) to the claimant,
(b) to the party referred to in § 359c (2) (b) by hand, together with a copy of the petition for confirmation of usucaption and its annexes,
(c) to the parties referred to in § 359c (2)(c) and (d), together with a copy of the petition for confirmation of usucaption and its annexes,

(d) the district office in the seat of the county in whose territorial district the immovable property which is the subject of the proceedings for confirmation of usucaption is situated, and
(e) to the district office competent in the field of the Land Registry of Immovable Property for marking a note on the conduct of the proceedings for confirmation of the usucaption.

(2)The summons resolution shall be immediately published by public notice:

(a) in the Commercial Bulletin; and
(b) on the official notice board of the municipality in whose cadastral territory the immovable property which is the subject of the proceedings for confirmation of the usucaption is located; the public notice may also be published by means of mass media.

(3) Service and publication of the summons order shall be affected by the court of first instance.

§ 359h

Objections

(1) Objections may be lodged by

(a) a party to proceedings under § 359c (2)(b) and his successor in title,
(b) the person who's right in rem to the immovable property may otherwise be affected by the claimed retention and his successor in title,
(c) a party to proceedings under § 359c (2)(c) or (d); or
(d) another person.

(2) Objections shall be lodged with the court hearing the case at first instance. An objection lodged by a person referred to in paragraph 1 (a) shall be deemed to have been lodged in time if it is received by the court of first instance not later than the date of the order confirming the retention of usucaption.

(3) In addition to the general particulars of the application, in the objections must the person:

(a) referred to in paragraph 1 (a) and (b), describe the facts attesting that he has a right in rem in respect of the immovable property which may be affected by the usucaption; if it is the legal successor in title of a person referred to in paragraph 1(a) and (b), in objection, he shall also describe the facts attesting that he is his successor in title,

(b) referred to in paragraph 1 (c), certify that the usucaption may affect the rights in the immovable property which that person administers under the special regulation or the rights of persons whom he represents under the special regulations; and

(c) referred to in paragraph 1 (d), to certify the facts which refute that the claimant has fulfilled the prerequisites for the acquisition of the right of ownership of immovable property or the right corresponding to an easement by usucaption.

(4) The court shall, without ordering a hearing, by order, reject objections which have been lodged late, or which do not contain the particulars referred to in paragraph 3.

§ 359i

Dismissal of an application for the commencement of proceedings

(1) The court shall, by order, dismiss the petition for confirmation of usucaption if the objections have not been dismissed and are well founded (§ 359h (3)).

(2) Before deciding on the objections, the court may make the necessary enquiries to verify the facts stated in the objections or may invite the person who has lodged the objections to submit further evidence to prove his allegations; for that purpose, it may order a hearing.

(3) A final order under subsection (1) shall forthwith be delivered by the court to the district office responsible for the Land Registry for the purpose of deleting a note made under § 359g (1)(e).

§ 359j

Confirmation of possession

(1) If the court has not dismissed the application for the commencement of proceedings for confirmation of the usucaption under § 359i (1), it shall make an order confirming the usucaption; this shall apply even if the time for filing objections has expired in vain or if the objections have been rejected.

(2) The order confirming the retention of usucaption shall contain an indication of:

(a) the parties to the proceedings,

(b) the immovable property, according to the data from the Land Registry of Immovable Property, which is subject to the usucaption of the right of ownership or the right corresponding to the easement of the claimant, and

(c) the date on which the claimant acquired the ownership right to the immovable property or the right corresponding to the easement by usucaption.

§ 359k

Effects of an order confirming possession

(1) A final resolution confirming the usucaption shall be binding on everyone.

(2) A final order confirming the retention of usucaption shall not preclude the person affected by the retention of usucaption from asserting his right in rem to the immovable property by way of an action if he proves that there are facts which, through no fault of his own, he could not have asserted by way of an objection under this Act.

(3) A person who in good faith has acquired a right in rem in immovable property from one to whom usucaption has been validly confirmed under this Act shall be protected as if he had acquired it from the owner.

SECTION E : RELEVANT CASE LAW

The judgement, Case No. RČ 87/2005: Part of the plot are not saplings of trees in the forest nursery, and this is for the simple reason that they are not vegetation.

The judgement, Case No. R 44/96: The invalidity of the legal act of transfer of ownership is not a circumstance precluding the acquisition of ownership by retention of possession.

The judgement, Case No. R 27/2005: A minor who, through the acts of his parents in the administration of his property, has entered and exercised possession in good faith, may also acquire the right of ownership by retention.

Retention:

The judgement, Case No. R 44/1996: The most common presumed title of possession **is an invalid legal act** (e.g. an invalid contract of sale) on the basis of which the holder took possession. **The invalidity of the legal act of transfer of ownership is not a circumstance that excludes the acquisition of ownership by retention of ownership.**

The judgement of the Supreme Court of the Czech Republic, Case No. 22 Cdo 1590/2001: The holder may also seize **the rightful possession on the basis of an absolutely invalid legal act**. Good faith is absolutely absent if the reason for the possession is a legal title which makes it clear that it is not possession, **but only detention** (e.g. in the case of use of the thing by the detente on the basis of a lease agreement).

The judgement of the Supreme Court of the Czech Republic, Case No. 22 Cdo 2065/2005: If someone acquires land and, as a **result of an excusable mistake** (caused, for example, by the previous owner handing over the land with the boundaries in which he used the land and taking possession also of part of the neighboring land), **he is a rightful possessor, and his possession may result in acquisition of ownership by possession**. In other words, whenever a person acquires land and, as a result of an excusable mistake (caused, for example, by the transferor's giving him the land with the boundaries as he himself used them), takes possession of part of the neighboring land, **he will be a rightful possessor and his possession will result in acquisition of ownership by possession- retention of a right**. Good faith may also be based on a presumptive title and the presumptive (putative) title must be given before the commencement of the period of possession.

The judgement of the Supreme Court of the Czech Republic, Case No. 22 Cdo 301/2000: A prerequisite for the retention of a right is the fact that the holder has a good faith belief in all the circumstances that the thing or right belongs to him. **The assessment of whether the holder is in good faith cannot come from the holder's subjective ideas alone.** Good faith must also be assessed from the point of view of whether, with all due care, the holder could or should have had doubts as to whether he was also using land of which he was not the owner. Where, by virtue of a legal fact giving rise to the acquisition of ownership, the acquirer also takes possession of a parcel of land to which that legal fact does not apply, he may, having regard to all the circumstances, have a good faith belief that he is also the owner of that parcel of land. If the acquirer of immovable property, by virtue of a legal fact capable of giving rise to the acquisition of title, takes possession of land to which that legal fact does not apply, he may, having regard to all the circumstances, be in good faith that he is also the owner of that land. **In such a case, one of the considerations for assessing the excusability of the holder's mistake is the ratio of the area of the land acquired and the land actually held.**

The judgement of the Supreme Court of the Czech Republic, Case No. 2 Cdon 568/1996: Where someone takes possession of immovable property on the basis of an oral contract for its transfer, he cannot, in all the circumstances, **be in good faith that he is the owner of the property, even if he subjectively believes that such a contract is sufficient for the original acquisition of title. Possession of immovable property based on an oral contract cannot lead to possession.**

The judgement, Case No. Rc 50/2008: The case law of the courts has concluded that in the same way as a share, **a business share and even a membership share in a housing cooperative may be subject to retention.**

The judgement, Case No. 3 MCdo 5/2013: The provision of § 132 of the Civil Code allows for the acquisition of ownership by relinquishing the thing. The right to abandon a thing is part of the content of the right of ownership and its essence is the expression of the owner's will

not to continue to be the owner of the thing. The legal act of abandonment must be freely, seriously, definitely and intelligibly performed. The abandonment of a thing by its owner therefore undoubtedly involves the intentional aspect of that unilateral act and must also involve the will to relinquish ownership of the thing and its physical abandonment. The manifestation of intent to abandon the right of ownership must therefore be unquestionable and, procedurally, the burden of proof is on the person who claims to have become the owner. In the event of doubt as to whether there has been abandonment of the thing and the right of ownership has been extinguished, the presumption of retention of title must be assumed.

The judgement, Case No. R 1/1979: Abandonment (dereliction) may occur with an owner who is known and who renounces his/her right of ownership in this way. Abandoned things become the property of the State at the moment when the owner has abandoned them, i.e. by dereliction itself, which, however (like any legal act) must have all the requisites prescribed by law for the validity of a legal act. In these cases, the State thus has the status of owner and may seek its return by an action in equity against anyone who retains the abandoned item. According to case-law (e.g. R 1/1979, p. 13), abandonment of the thing can only occur with an owner: a) who is known b) who has expressed the will to abandon the thing in such a way c) whose will to abandon the thing is either known or can be inferred from the circumstances of the case. From this it may be concluded that the difference between a hidden thing and an abandoned thing is that in the case of a hidden thing there is no will on the part of the owner to relinquish ownership (the owner here knowingly conceals his will from other persons), but in the case of an abandoned thing the owner, even if only tacitly, has expressed a will to relinquish his right of ownership. He may do so, for example, by abandoning the movable thing with the intention of disposing of it or by leaving the property in a situation which unquestionably indicates such an intention.

The judgement, Case No. 3 MCto 5/2013: The right to leave is part of the content of the right of ownership and its essence is the expression of the owner's will not to continue to be the owner of the thing. The act of abandonment must be freely and seriously made, certainly and intelligibly. Thus, the abandonment of the thing by its owner undoubtedly includes the volitional aspect of this unilateral legal act and must also fulfil the will to relinquish ownership of the thing and its physical abandonment (similarly, Supreme Court decision, Case No 4 Cdo 48/2008). The manifestation of intent to relinquish the right of ownership must therefore be unquestionable and, procedurally, the burden of proof is on the person who claims to have become the owner. In the event of doubt as to whether there has been abandonment of the property and the right of ownership has been extinguished, the presumption of the preservation of the right of ownership (Article 11 of the Charter of Fundamental Rights and Fundamental Freedoms) must be assumed. The mere non-use of an object does not in itself mean the termination of ownership in the manner provided for in Article 132(1) of the Civil Code.

<u>Processing the matters as the way of acquisition of ownership:</u>
The judgement, Case No. R 4/2006: Acquisition of the ownership right by **processing of a foreign immovable thing (building) is possible only in cases when the reconstruction of the building makes such changes to its basic building elements, which characterize the building, that this activity produces a new immovable thing (building)**. It follows from the

above that it is not possible to acquire ownership by processing only a part (attic, etc.) of another's building. (NS SR, Case No. 2 Cdo 22/2005)

The judgement, Case No. R 29/1999: The demolition of a building within the meaning of § 14 of Act on the Mitigation of Certain Property Injustices, when the thing ceases to exist in the sense of law, must be considered as such destruction of the original building, **after which the layout of the first floor ceased to be recognizable**. If a new building, even if identical in kind, has been created on the site of the building so demolished, in such a case it is not an improvement of the building within the meaning of Article 10(1) and (3) of Act on the Mitigation of Certain Property Injustices, **but the creation of a new building on the land in place of the original demolished building**.

The judgement of the Supreme Court of the Czech Republic, Case No. 22 Cdo 761/2001: Ownership of a building cannot be acquired by reworking it; ownership of a 'reworked building' can only be acquired if the original building has ceased to exist. Nor is the treatment of immovable property of another person involved if the new building elements merely become part of the original building. The previous owner of the building becomes the owner of these components.

Unauthorized construction of immovable object

The judgement, Case No. R 65/1972: A building on someone else's land does not refer only to the area on which the building stands, but in any case also to the area which is necessary for the use of the building, i.e. also to the access road and the adjacent and working or storage area, etc., or even to the entire plot, which may be of considerable size and its value may also exceed the value of the building.

The judgement, Case No. R 65/1972: The provision of § 135c CC addresses only the issue of ownership of a building constructed on someone else's land and not the issue of ownership of the land built on by someone else's building. Therefore, the court can only address the issue of ownership of the building by its decision. The wording of this provision does not allow the court to grant the builder also the ownership of the land. The existing owner of the land remains the owner of the land on which the unauthorized building stands even after the court decision. **This leads to the situation that the owner of the building and the owner of the land are not identical, which, however, is expressly allowed by the Civil Code § 120 (2).**

The judgement, Case No. Rc 32/2002: Establishment of easement - the law allows in exceptional cases to establish an easement on the land in favor of the owner of the building. The owner of the unauthorized building may also bring a separate action to regulate the relationship between the owner of the land and the owner of the unauthorized building other than as provided for in §135c (1) and (2) of the Civil Code, in particular to establish an easement which is necessary for the exercise of the right of ownership of the building (Rc 32/2002). This legal opinion follows from the text of Section 135c (3) CC, which, unlike the text of § 135c (1) and (2) CC, makes no mention of the landowner's application, but also from the fact that the law affords the owner of an unauthorized building greater protection than the owner of an unauthorized building who interferes with the landowner's right of ownership in a manner other than by means of a building. If the court concludes that the conditions for the

establishment of an easement are met, as the procedure under § 135c (1) and (2) CC would be appropriate, it dismisses the application.

The judgement, Case No. Rc 42/2001: If the owner of the land agrees, the land built on by the unauthorized construction may be assigned for compensation to the property of the builder, even against his will, when deciding pursuant to § 135c of the Civil Code.

The judgement, Case No. R 4/2006: Ownership of only a part of a thing cannot be acquired under § 135b (1) of the Civil Code.

CHAPTER 6

RESTRICTIONS ON PROPERTY RIGHTS IN THE PUBLIC AND PRIVATE INTERESTS

THE CONCEPT AND GENERAL CONDITIONS OF PROPERTY RIGHTS AND ITS LIMITATION

SECTION A : BRIEF SUMMARY

The current Slovak legal regulation allows every entity engaged in civil law relations, namely every natural person, legal entity, as well as the state, the **opportunity to act as a subject of property rights**. Such a defined subject of property rights may own any objects in a legal sense, meaning any items capable of being the subject of civil law relations. In this sense, we refer to the object or subject of property rights.
Being a subject of property rights signifies that the individual possesses certain property, thus being entitled to acquire and exercise ownership rights. The subject of property rights may consist of any objects in a legal sense. The currently valid Civil Code categorizes objects into movable and immovable. Practice has adhered to the concept of objects as defined in the Civil Code of 1950, which understood objects in a legal sense as controllable tangible items and natural resources serving human needs. Therefore, the subject of property rights may encompass any entities that are, by their nature, controllable and simultaneously serve the needs of human society. Among such defined objects, animals are included, for example. However, the subject of property rights may also extend to rights and other property values, provided that their nature allows for such categorization.
Every entity engaged in civil law relations may generally own any object capable of being a subject of civil law relations, primarily any movable and immovable property without any restrictions. From this perspective, it may appear that ownership of property is unlimited. However, this unlimited ownership is merely illusory.

BASIC TERMS
Ownership - refers to the legal right of an individual or legal entity to possess, use, and dispose of property. It encompasses full control over the property, subject to the limitations imposed by law.
Owner – a natural person or a legal entity that holds legal title to property, granting them rights over that property as stipulated by law.
Title of ownership – a legal document or assertion that evidences a person's right to own a property. It serves as proof of ownership.
Possession - the physical control or occupancy of property. In legal terms, possession may not necessarily imply ownership but indicates a person's ability to exert control over a property.
The right to possess the subject of ownership – this term describes the entitlement of an owner to retain and control their property. It signifies the legal recognition of the individual's claim to physically hold and utilize the property.
The right to use the subject of ownership, to enjoy its fruits and benefits - this right allows the owner to utilize their property for its intended purpose and to benefit from the revenue, resources, or any advantageous outcomes derived from the property.

The right to dispose of the subject of ownership - this legal right allows the owner to transfer, sell, lease, or otherwise manage the property according to their wishes. It encompasses the authority to decide the fate of the owned asset within the confines of applicable law.

THE CONTENT OF PROPERTY RIGHTS

The property rights of all owners possess an equivalent legal content. In accordance with the provisions of § 124 of the Civil Code, all owners are granted equal rights and obligations, and they receive the same level of legal protection. Thus, the content of property rights comprises, on one hand, a set of entitlements, and on the other, a set of duties associated with the exercise of ownership rights.

Regarding the rights associated with the exercise of property rights, the rights of ownership are characterized by the triad of property rights, as delineated in § 123 of the Civil Code. In accordance with this provision, which defines the rights of the owner - referred to as the property triad - the owner, within the limits of the law, is entitled to:

- **to possess the subject of ownership**
- **to use, derive, benefits from its fruits and benefits**
- **to dispose of it**

One of the fundamental rights of an owner, which is a necessary prerequisite for exercising other ownership rights (such as the right to derive benefits from the property), is the **right to possess the subject of ownership** (ius possidendi). The existence of the right to possession is contingent and inextricably linked to the presence of two additional rights of the owner, as it is inconceivable for an owner to use and dispose of property without having it within their control. The right of possession grants the owner the legal capacity to have the property effectively under their control.

The Civil Code regulates this specific legal regime of possession in § 129 and following. It is crucial to differentiate between possession as a right inherent to ownership, executed either directly by the owner or through a third party, and possession as a distinct relationship independent of the existence of ownership rights to the property in question.

Another right encompassed within the triad of ownership rights is the **right to use the property and enjoy its fruits and benefits** (ius utendi et fruendi). This right expresses the owner's entitlement to actualize the utility value of the property. The right to use the property has a dual aspect. Primarily, it pertains to the narrow sense of usage (ius utendi), which grants the owner the right to appropriate the essence of the property along with its utility characteristics. Thus, based on this right, the owner is entitled to utilize the intrinsic attributes of the property, modify it at their discretion, and, if the nature of the property allows, to consume it as well.

The second aspect of the right to use the property relates specifically to productive assets and encompasses the owner's **right to derive fruits and benefits from the property** (ius fruendi). For productive assets, we differentiate between natural fruits, such as the fruit from a tree or the offspring of animals, and civil fruits, such as interest derived from financial deposits. The right to enjoy the fruits and benefits thus allows the owner to appropriate the yields and advantages arising from their property.

The final right in the exhaustive enumeration of the owner's rights is the **right to dispose of the subject of ownership** (ius disponendi). This dispositional right enables the owner to manage their property according to their own judgment and decision-making. The owner

exercises this right not only through active disposal but also by refraining from such actions. The owner's right to dispose of property highlights the exchange value of the asset.
The most significant aspect of the owner's dispositional rights is the authority to transfer the property to another entity, thus **alienating it** (e.g., by selling, gifting, or exchanging it), which results in a change of ownership. It is essential to emphasize that when transferring ownership rights to another party, the principle applies that "no one can transfer to another more rights than they themselves possess." Therefore, ownership rights to property cannot be normally acquired from someone who is not the rightful owner of that property. A non-owner cannot validly transfer ownership rights to property they do not possess. However, the law does allow for several exceptions to this principle.
In addition to the aforementioned rights, the content of property rights also encompasses the obligations of the owner associated with the exercise of ownership rights. Just as the owner enjoys a broad array of rights regarding the subject of ownership, ownership rights simultaneously bind the owner to certain duties that they must observe according to the legal regulations in force in the Slovak Republic.
A more detailed discussion of the owner's duties in the execution of property rights and the various types of restrictions on ownership rights is provided in the section below. For the purposes of this instructional text, the restriction of property rights can be categorized into two main groups:

- **restrictions on property rights in relation to neighborhood relations** – provision of § 127 of the Civil Code
- **interventions in property rights in the public interest** – provision of § 128 (1) of the Civil Code
- **expropriation** – provision of § 128 (2) of the Civil Code

PROVISION OF § 127 (1) OF THE CIVIL CODE
Typical potential infringements of property rights within the legal framework of neighborhood relations are governed by § 127 of the Civil Code. In the second sentence of this relevant provision, the legislator provides an **illustrative** enumeration of prohibited infringements of neighboring rights, which constitute instances of interference with another owner's rights.
The owner of immovable property is prohibited from jeopardizing a neighbor’s building or land through modifications to their own property or the construction established thereon, unless adequate measures are taken to secure the stability of the building or land. Additionally, it is forbidden to remove tree roots or branches extending onto their property at inappropriate times of the year, and to burden neighbors with smoke, odors, ash, noise, vapors, liquid and solid waste, dust, gases, vibrations, shading, and light beyond what is reasonable in relation to the circumstances.

PROVISION OF § 127 (2) OF THE CIVIL CODE
An intriguing feature of the legal framework governing neighborhood relations pertains to the matter of property fencing, as addressed in § 127 (2) of the Civil Code. The existing regulations do not mandate property owners to erect a fence around their land.
That provision of the Civil Code delineates the court's authority to order the fencing of a property. The court will impose such a requirement provided that two conditions are satisfied: first, that the fencing is deemed necessary, and second, that it will not obstruct the effective utilization of adjacent properties and structures.

The determination of the necessity for erecting a fence will be conducted regarding the interests of the plaintiff, who seeks to protect their rights through this measure. This evaluation will, however, be carried out from an objective standpoint, primarily focusing on whether the plaintiff encounters any hindrances in fencing their property independently.
Additionally, the necessity for fencing must be assessed in terms of proportionality, evaluating whether the dispute could be resolved via a negative action, considering the costs associated with constructing the fence and the potential expenses related to surveying the property boundaries on-site.
When examining the impact of the proposed fencing on the effective use of neighboring properties and structures, the court will consider, based on the specifics of the case, whether the fencing might impede access to neighboring land or buildings, as well as public thoroughfares. In cases involving forested areas, considerations will also include whether the fencing could negatively affect the migration of wildlife and other relevant factors.
Upon the request of adjacent property owners, a court has the authority to require the landowner in question to construct a fence. However, the issuance of such an order hinge on meeting specific legal criteria, notably that the fencing is deemed necessary—particularly when it serves to protect against unauthorized intrusions—and that it does not impede the proper use of neighboring properties and their structures. Proper use refers to the intended utilization as classified in the real estate registry, such as for vineyards or gardens.
Moreover, the court is obligated to obtain and consider the perspective of the building authority during the decision-making process regarding fencing, although it is not strictly bound by that input. If the building authority provides a negative assessment, the court must still deliberate on whether to impose the requirement for fencing. A fence erected by the landowner on their property becomes their asset, and they are responsible for maintaining it in satisfactory condition.

PROVISION OF § 127 (3) OF THE CIVIL CODE

The ability to access another person's property can be derived from several legal grounds, such as **co-ownership, easements, contractual agreements, the property owner's consent, decisions from relevant authorities** or **statutory provisions**.
§ 127 (3) of the Civil Code specifies two reasons for entering another's property or structure:

- entry for the purpose of necessary maintenance of adjacent properties and structures
- entry for the purpose of necessary management of adjacent properties and structures

Maintenance is understood as **activities related to ensuring and preserving the land and structures in a good condition** (e.g., repairing the plaster of a house). Management refers to the **realization of the economic value of the affected properties and structures** (e.g., harvesting fruit from branches extending onto another's property or fallen fruit from a tree onto another's land). These reasons should be interpreted objectively rather than according to the subjective demands of the respective property owners.
Moreover, these grounds alone could suggest that access to another's property or structure under § 127 (3) of the Civil Code may occur almost without limitation. However, such an interpretation is excluded by the requirement that the entry **must be strictly necessary**, as opposed to being common maintenance and management, and that the law explicitly states that the owner **must permit access only for the necessary duration and to the necessary extent**. This means that the access provided under § 127 (3) should not be construed as granting a right to enter or cross to the same extent or intensity as what could be established through an easement or contractual agreement.

Access also includes the necessary duration of stay on another's property or structure, and this right extends to other individuals authorized to perform maintenance or management tasks with the consent of the entitled owner.

PROVISION OF § 128 OF THE CIVIL CODE

Within the framework of permanent restrictions on property rights, we highlight the institution of **expropriation** and **compulsory limitation of property rights**. These institutions constitute a fundamental intervention in the exercise of property rights, resulting **in permanent** and **irreversible legal effects**.

The legal framework precisely defines the conditions under which property may be expropriated and property rights may be limited. In general, property can only be expropriated or have its rights restricted if it serves the **public interest**, **cannot be achieved by other means**, and **is carried out strictly according to the law**, **solely for that purpose**, and **with compensation**. Thus, expropriation aims to limit property rights or facilitate the transfer of ownership of buildings and land, as well as the establishment, modification, or cancellation of easements related to those properties.

Upon expropriation, ownership of the buildings and land transfers to the expropriator. All other rights associated with the expropriated properties are extinguished unless otherwise specified in the decision. However, the right to use non-residential premises and apartments remains unaffected by expropriation.

In contrast to expropriation or the restriction of property rights, which necessitates the **existence of public interest**, the objective of these processes is to align a longstanding factual state with the legal status.

In the case of expropriation or compulsory limitation of property rights, it involves forced deprivation or restriction of ownership, which occurs for the common public good.

Typically, the ultimate consequence of implementing both expropriation and compulsory limitations results in the deprivation or loss of ownership rights of the current owner and their transfer to another owner. The limitation of property rights leads to a narrowing of the scope of subjective ownership rights. Therefore, expropriation is not merely a permanent restriction of property rights - it constitutes a complete loss or deprivation of ownership rights to a specific property (excluding the establishment, cancellation, or limitation of easements in connection with the processes of expropriation).

A typical example of a permanent restriction on property rights is the compulsory limitation of such rights, which is regulated alongside expropriation. The same conditions that apply to expropriation also govern compulsory restrictions, which can similarly occur only in the public interest, with the distinction that while compulsory limitations signify an infringement upon the owner's sovereignty, they do not result in a change of ownership.

COMPULSORY LIMITATION OF PROPERTY RIGHTS (PROVISION OF § 128 (1) OF THE CIVIL CODE

In the context of private law, expropriation and the compulsory limitation of property rights are addressed in § 128 (2) of the Civil Code, which functions as a general expropriation clause. This provision states that "property may be expropriated, and property rights may be restricted in the public interest, provided that the objective cannot be achieved through other means, and solely based on statutory authority, for that specific purpose, and with compensation."

The following civil law conditions for expropriation and compulsory limitations of property rights are outlined in this provision:

- **the requirement of public interest**
- **the impossibility of achieving the objective by alternative means**
- **the legal basis**
- **the restriction must be for a specifically defined purpose**
- **compensation must be provided**

EXPROPRIETATION (PROVISION OF § 128 (1) OF THE CIVIL CODE

Expropriation is a legitimate mechanism that allows state authorities to breach the principle of inviolability of property rights. It embodies a legally established option that highlights the state's ability to intervene in the fundamental freedom of ownership, as defined by law. The inviolability of property has been overridden by constitutional provisions concerning expropriation and the compulsory limitation of property rights, which represent the most serious, extensive, and extreme forms of intervention in ownership.

Any interference with property rights and the right to peacefully enjoy one's possessions requires a solid constitutional foundation. The constitutional basis for expropriation and compulsory limitations is articulated in Article 20 (4) of the Constitution, which asserts that "expropriation or compulsory limitation of property rights is only permissible to the extent necessary and in the public interest, on the basis of law and with adequate compensation."

From a constitutional standpoint, the critical features of expropriation and compulsory limitations on property rights include:

- **necessity**
- **public interest**
- **legal basis**
- **fairness of compensation**

The legal prerequisites for expropriation — including the conditions, process, purpose, and content — are enshrined in the fourth part of the Building Act, specifically in § 108 to 116.

> **The Constitutional Court of the Slovak Republic, in its decision under case number PL ÚS 30/95 dated April 2, 1996**, issued that all criteria specified in the Constitution, the Civil Code, and the Building Act must be simultaneously fulfilled in each individual case. Only the cumulative fulfilment of all legal requirements constitutes compliance with the legal criteria for expropriation or the limitation of property rights.

Another constitutional condition for expropriation or compulsory limitation of property rights is the **requirement of necessity**, although this condition is not explicitly stated in the Civil Code. However, it is addressed in Article 20 (4) of the Constitution and in § 110 (3) of the Building Act.

The fundamental basis for the expropriation process, or the process of compulsory limitation of property rights, is the **existence of a public interest**, which must be present. The existence of public interest is a necessary and essential condition for both expropriation and the limitation of property rights. If a public interest cannot be clearly established in a specific case, expropriation or limitation of property rights is not permissible. The essence of expropriation or other limitations on property rights rests on the premise that public interest outweighs private interests.

The term "public interest" is not legally defined and falls under the category of indeterminate legal concepts, requiring an individual assessment. According to interpretations from the Constitutional Court of the Czech Republic, public interest should be understood as an **interest that can be characterized as general or beneficial to the public**. Specific

delineation of this public interest is only found in § 108 (2) of the Building Act, which outlines various public utility purposes. According to this provision, expropriation may only occur in the public interest for purposes such as:

- the construction and maintenance of highways, roads, and local roads, including the establishment of protective zones as stipulated by specific regulations
- the construction of energy facilities for the production or distribution of electricity in accordance with specific regulations
- the purposes of extracting mineral resources according to specific regulations
- the preservation and proper utilization of cultural heritage sites in accordance with specific regulations

The implementation of the expropriation institution results in a **change of ownership**.
Expropriation constitutes a forced transfer of ownership rights from one owner to another. Therefore, if achieving the purpose of expropriation can be accomplished merely by restricting ownership within the framework of public interest, a transfer of ownership through expropriation is not feasible.
This leads us to conclude that the institution of limiting property rights, or compulsory limitation of property rights, takes precedence over the expropriation itself. The procedure for the compulsory limitation of property rights is the same as that for expropriation, as both involve the establishment of a permanent legal condition.
The exceptional institution of expropriation and the compulsory limitation of property rights represents an accepted societal intervention into one of the fundamental rights and freedoms. Without exception, it requires the unconditional fulfilment of all aforementioned conditions. This is a process in which the owner whose property is being expropriated cannot choose to retain ownership of the affected property. Thus, **expropriation and compulsory limitation of property rights are expressions of a state authority decision that leads to an absolute restriction of a fundamental human right with permanent consequences.**

SECTION B : TEORETICAL QUESTIONS

1. What are property rights?
2. Which rights belong to the so-called triad of property rights?
3. What does the owner's right to possess the property entail?
4. What does the owner's right to use the property, and to enjoy its fruits and benefits, mean?
5. What does the owner's right to dispose of the property include?
6. What is the difference between possession and ownership?
7. How is property rights exercised?
8. What must the owner refrain from concerning another owner?
9. What type of prohibited behavior by an owner toward another owner is subsumed under § 127 (1) of the Civil Code?
10. Under what conditions can a landowner be ordered to fence their property?
11. Under what conditions are owners of neighboring properties obliged to allow access to their land for a necessary duration and to a necessary extent?
12. What is the difference between expropriation and compulsory limitation of property rights?
13. What are the common characteristics of expropriation and compulsory limitation of property rights?

14. Under what conditions is it possible to impose a compulsory limitation on property rights?
15. Under what conditions is it possible to expropriate property?
16. Who becomes the owner of the expropriated property?
17. What are the legal consequences of expropriation?
18. What are the legal consequences of the compulsory limitation of property rights?
19. How do the principles of proportionality and necessity apply to expropriation and compulsory limitation of property rights?
20. What legal remedies are available to a property owner who believes their rights have been unjustly infringed upon during expropriation or compulsory limitation?

SECTION C : PRACTICAL CASES

Case No 1

During the harsh Slovak winter, Ján is using lacquered wooden benches for additional heating in his home. The combustion of these benches emits black smoke with a distinctive odour from the chimney of his family house, and ash falls onto the garden of his neighbor, Peter.

1. Define whether this case constitutes an unreasonable disturbance to neighbor Peter. Justify your answer.
2. What legal remedies are available to Peter?
3. What steps should Peter take before filing a lawsuit in court?

Case No 2

Katarína, a retiree and widow, finds herself bored during the long summer days and observes a young couple sunbathing, usually nude, on their property, separated by a fence from her garden. After repeated requests from the couple for her to cease this behavior, they decide to consult a lawyer to address the situation.

1. Define whether this case constitutes an unreasonable disturbance to the married couple by Katarína. Justify your answer using case law.
2. What types of conduct that constitute unreasonable disturbance are outlined in § 127 (1) of the Civil Code?

Case No 3

Jozef, returning home from work in the evening, noticed that a house at the beginning of his street was on fire. Without hesitation, he rushed into the burning house and managed to rescue a cat and cash amounting to one thousand euros. Since the hallway of the burning house was already engulfed in flames, Jozef decided to break a window in the house and exit along with the rescued items. The owner of the burned house, Marián, subsequently demands compensation from Jozef for the broken window, despite him having saved the cat and the cash.

1. How would you classify Jozef's actions?
2. Can Jozef's actions be considered unlawful?
3. What are Marian's chances of success in court with a lawsuit for damages?

Case No 4

On May 1, 2024, Katarína received a decision from the relevant administrative authority stating that her garden, located in an area designated for the extension of the D1

highway, has been expropriated and that she is no longer the owner. She is dissatisfied with this action taken by the state and wishes to consult a lawyer.

1. Does the expropriation of Katarina's land meet the legal conditions?
2. Does Katarína have options to contest the decision?
3. What general conditions must be fulfilled for lawful expropriation?

Case No 5

On September 5, 2025, the neighboring state declared war and began occupying certain parts of Slovak territory. Ms. Marianna, a resident of a village on the border between the warring states, listens to the local radio and learns that the administrative building she owns, which she leases to the municipality, can no longer be used because the army is establishing its headquarters there.

1. Did the army have the right to prevent Marianna from using the property in this situation?
2. What is the name of the institution applied by the state in this context?
3. What are the conditions for the application of this institution?

SECTION D : RELEVANT PROVISIONS OF ACT NO. 40/1964 CALL. CIVIL CODE, AS AMENDED

§ 127

(1) The owner of the property must refrain from any actions that would excessively disturb another person or significantly jeopardize the exercise of their rights. Therefore, they must not threaten a neighbor's building or land through modifications to their property or the structures erected thereon without taking adequate measures to secure the stability of the building or land. Additionally, they must not unreasonably burden the neighbor with noise, dust, ash, smoke, gases, vapors, odors, solid and liquid waste, light, shading, or vibrations. They must not allow their livestock to intrude onto neighboring land, and they must refrain from carelessly removing tree roots or branches extending onto their property, especially during inappropriate times of the year.

(2) If necessary and if it does not impede the effective use of adjacent properties and structures, the court may decide, upon obtaining the opinion of the relevant building authority, that the landowner is obliged to fence their property.

(3) Owners of adjacent properties are required to allow entry onto their land, and onto any structures thereon, for a necessary duration and to a necessary extent, when such access is essential for the maintenance and management of neighboring properties and structures. If this results in damage to the land or structure, the party responsible for the damage is obligated to compensate for it; this liability cannot be waived.

§ 128

(1) The owner is obliged to tolerate the use of their property for a necessary duration and to a necessary extent, with compensation, in situations of emergency or urgent public interest, if the objective cannot be achieved by other means.

(2) Property may be expropriated, or property rights may be limited in the public interest if the objective cannot be achieved by other means, and this can only be done based on law, solely for that purpose, and with compensation.

SECTION E : RELEVANT COURT DECISIONS

§ 127 (1) of the Civil Code

Judgment of the Supreme Court of the Slovak Republic, Case No. 5 Cdo 117/93, ZSR, 1994, No. 72: In assessing whether the conditions for protection under § 127 (1) of the Civil Code are met, the term "beyond what is reasonable in relation to the circumstances" should be understood as defining the boundary between permissible behavior (ranging from the optimal state to an acceptable condition) and impermissible behavior (beyond the acceptable level), not only in regard to specific conditions at a given time and place, but also concerning objectively desirable conditions.

Judgment of the Supreme Court of the Slovak Republic, Case No. Cpj 67/84: When deciding whether a property owner (or user) of an adjacent parcel should refrain from exercising their property rights or conversely, whether they should tolerate certain actions, it is essential to ascertain whether the exercise of the property right is in accordance with applicable regulations (such as health, construction, water management, etc.). If the criticized exercise of property rights is supported by permission granted by the relevant authority, it will be deemed justified (provided that no circumstances have changed since the granting of this permission). If there have been changes in circumstances that could justify a modification of the administrative decision, rectification must be sought through proceedings before the administrative authority. It is always necessary to examine whether the defendant has exceeded the scope of the rights stipulated in the permission (compare No. 65/1972, p. 247–248, Collection of Court Decisions and Opinions).

Judgment of the Supreme Court of the Czech Republic, Case No. 2 Cdon 330/1997, ZSR (Czech Republic), 2001, No. 6: According to Article 99, Clause One of the Constitution, the Czech Republic is divided into municipalities, which are fundamental territorial self-governing units. According to Article 100, Paragraph 1, Clause One, these territorial self-governing units are communities of citizens that have the right to self-governance. From these provisions, it follows that a municipality is a public-law corporation whose factual basis consists of its citizens [the personal substratum of this legal entity according to § 18 (2) (c) of the Civil Code]. Citizens can perceive the aforementioned disturbances, and if they are disturbed in the legitimate use of properties owned by the municipality, the municipality's exercise of its property rights is also disturbed. Therefore, the municipality may, in accordance with the conditions outlined in § 127 (1) of the Civil Code, rightfully demand that the owner of the property responsible for noise or vibrations refrain from such disturbances.

Judgment of the Supreme Court of the Czech Republic, Case No. 2 Cdon 330/1997, ZSR (Czech Republic), 2001, No. 6: According to Article 99, Clause One of the Constitution, the Czech Republic is divided into municipalities, which are the basic territorial self-governing units. Under Article 100, Paragraph 1, Clause One of the Constitution, these territorial self-governing units are communities of citizens with the right to self-governance. From these provisions, it follows that a municipality is a public-law corporation, whose factual basis comprises its citizens [the personal substratum of this legal entity in accordance with § 18 (2) (c) of the Civil Code]. Citizens can perceive the aforementioned disturbances, and if they are hindered in the legitimate use of properties owned by the municipality, the municipality's exercise of its property rights is also affected. Thus, provided the conditions outlined in § 127 (1) of the Civil Code are met, the municipality has the right to demand that the owner of the property causing noise or vibrations refrain from such disturbances. In this case, the plaintiff

is the municipality, whose citizens are disturbed by noise, at least from the aircraft operations of the defendant, while using the municipality's buildings and land. Therefore, the plaintiff is entitled to assert its right in court to protection against noise (and possibly vibrations) in accordance with § 127 (1) of the Civil Code.

Judgment of the Supreme Court of the Czech Republic, Case No. 22 Cdo 2296/2006: In matters concerning protection against noise disturbances, it is necessary to formulate the lawsuit and the judgment based on the principles outlined in the Supreme Court ruling of May 27, 2004, Case No. 22 Cdo 1421/2003, published under R 14/2006 in the Collection of Court Decisions and Opinions, which dealt with disturbances caused by bees; however, it can also be appropriately applied to other cases of protection against disturbances. When a plaintiff, as the owner of a property, seeks protection against noise, the lawsuit must be formulated such that the defendant is obliged to refrain from disturbing the plaintiff with noise from the (specified in the lawsuit) land of the defendant (or any other property belonging to the defendant) that encroaches upon the (specified in the lawsuit) property of the plaintiff. If the court finds that the disturbance exceeds what is reasonable in relation to the circumstances (or determines that it poses a serious threat to the exercise of the plaintiff's rights), it will grant the lawsuit; in the reasoning of the judgment, it will clarify the level of disturbance that is appropriate in the case at hand, as well as the level of disturbance identified in that particular case.

Judgment of the Supreme Court of the Slovak Republic, Case No. 5 Cdo 126/2007: For the establishment of a liability relationship stemming from an infringement of personal rights, it is sufficient that the infringement can threaten one of the personal rights; it is not a prerequisite for the emergence of this relationship that the personal rights have been harmed. Therefore, for the success of the lawsuit, it is not necessary for the health of the individual exposed to the disturbances to be harmed. It suffices that these disturbances are of such intensity or duration that they pose a risk of physical harm to the individual. The infringement of personal rights must be unlawful, meaning it must contravene objective law. In the case of noise, dust, and vibrations, the infringement will always be unlawful if these disturbances exceed mandatory health limits. However, an infringement may also be unlawful even if the health limits are met, provided that, considering the specific circumstances, the actions still conflict with objective law (e.g., under the provisions of § 127 (1), § 415, and § 420a of the Civil Code).

Judgment of the Supreme Court of the Slovak Republic, Case No. 1 Cdo 68/2008, ZSR, 2010, No. 38: Disturbances that involve direct interventions in property rights, such as the diversion of water from an underground spring located on the defendant's land to the land where the plaintiff has her family home, are fundamentally (without further qualification) inadmissible. Protection against this type of interference with property rights is not provided by a negative claim under § 127 (1) of the Civil Code (because it does not involve indirect interference), but rather under § 126 (1) of the Civil Code ("... the owner has the right to protection against anyone who unlawfully interferes with their property rights..."). Therefore, there is no reason to evaluate such disturbances based on the standard of reasonableness or the seriousness of the threat posed to the rights of the affected owner of the neighboring property. This important distinction regarding interventions was evidently overlooked by the lower courts, which applied § 127 (1) of the Civil Code to the matter in question. It should also be noted that the defendant is not the owner of the underground water surfacing on his

property, which he diverts to the plaintiff's land (compare this regulation in Article 4 of the Constitution of the Slovak Republic and in § 120 (2) of the Civil Code). The manipulation of this water, which constitutes an interference with the plaintiff's property rights, thus does not arise from the exercise of ownership rights by the defendant, as required by the cited provision of § 127 (1) of the Civil Code. Therefore, if someone unlawfully diverts underground water to another's property from a spring, the owner of that property can seek protection against such interference through a negative claim under § 126 (1) of the Civil Code.

§ 127 (2) of the Civil Code

Judgment of the Supreme Court of the Czech Republic, Case No. 22 Cdo 1614/2005: The purpose of § 127 (2) of the Civil Code is to prevent disturbances to neighbors and to avert potential damages. Fencing can refer to enclosing the entire property or erecting a fence only along a portion of its boundary. An obligation to fence the property may be imposed if it is not reasonable to require the plaintiff to fence their property themselves. The imposition of the obligation to fence is particularly warranted if the fencing provides protection against unauthorized interventions that cannot be prevented by other means (R 37/1985 of the Collection of Court Decisions and Opinions). Alternatively, if another form of protection is possible, but given the circumstances of the specific case, fencing appears to be the most reasonable and suitable means to safeguard the plaintiff's threatened rights. The proposed fencing must be described in the lawsuit so that the judgment is enforceable; thus, it is insufficient to merely propose that the defendant be obliged to fence their property—specific dimensions and type of the fence must be provided. In this case, the matter concerned the protection of the plaintiff's property rights and the disturbances caused by balls bouncing off the wall in connection with games held on the defendant's sports field. The field is intended by the defendant for playing sports and is designated for use by the public; therefore, the defendant is responsible under § 127 (1) of the Civil Code for ensuring that the operation of the field does not disturb the plaintiff beyond what is reasonable and that it does not seriously compromise the exercise of the plaintiff's rights. According to the findings of the first-instance court, which the appellate court did not expressly deviate from, the operation of the field disrupts the plaintiff's property rights and damages his property. In this situation, the plaintiff could either seek protection against the disturbance under § 127 (1) of the Civil Code or propose fencing off part of the defendant's property under § 127 (2) of the Civil Code (for the possibility of ordering fencing in cases of disturbances caused by ball games, see also the matter of the District Court in Spišská Nová Ves, Case No. 5 C 1076/82, referenced in R 37/1985).

§ 127 (3) of the Civil Code

Judgment of the Supreme Court of the Czech Republic, Case No. 22 Cdo 1000/2010, ZSR (Czech Republic), 2012, No. 51: The subject of the appeal is the legal question of whether, in the case that a part of a building extends without legal justification onto neighboring property, such an extension constitutes an unlawful interference with the property rights of the landowner. In deciding this issue, the appellate court conditioned its decision regarding the claim for access to the neighboring property for the purpose of maintaining the building (§ 127 (3) of the Civil Code), noting that the newly repaired portion would extend into the airspace above the neighboring land. According to § 297 of the General Civil Code from 1811 ("OZO"), it was stated that "immovable things include those established on the land with the intention of remaining there permanently, such as houses and other buildings with airspace directly above them." This principle also applies to the space above the property (see

Sedláček, J., Rouček, F. Commentary on the Czechoslovak General Civil Code and Civil Law in Slovakia and Subcarpathian Rus. Part II. Prague, 1935, p. 44); similarly, the proposal for a new Civil Code states that "the property includes the space above and below the surface." Moreover, neither balconies nor roofs could be built into the neighbor's airspace; for this purpose, an easement would need to be established according to § 475 OZO. Current law does not explicitly address this issue; however, it is beyond doubt that property rights still encompass the airspace above the land. This is further supported by § 127 (1) of the Civil Code, which limits the landowner's right to remove branches extending onto their property (thus encroaching into the airspace above the land). Extensions of roofs over neighboring properties are regarded by the courts as unlawful constructions see, for example, the judgment of the Supreme Court dated March 25, 2010, Case No. 22 Cdo 2500/2008, Collection of Civil Court Decisions and Opinions No. C 8291, against which a constitutional complaint was rejected by the Constitutional Court on November 4, 2010, Case No. II. ÚS 2977/10; judgment of the Supreme Court dated October 5, 2004, Case No. 22 Cdo 1342/2004, Collection of Civil Court Decisions and Opinions No. C 3098; order of the Supreme Court dated April 29, 2010, Case No. 22 Cdo 3953/2008, Collection of Civil Court Decisions and Opinions No. C 8315). The issue in dispute was not the use of airspace at such a height that is no longer within the control of the landowner; however, it should be noted that the use of airspace for aviation is governed by specific regulations (e.g., Act on Civil Aviation). Therefore, it can be concluded that encroaching parts of a building (such as wall insulation, balconies, etc.) into the airspace above neighboring property without legal justification is not permissible; thus, the claim for access to the neighboring property for such an encroachment cannot be granted.

§ 128 of the Civil Code

Judgment of the Supreme Court of the Slovak Republic, Case No. 3Sžk/3/2016, ZSR No. 13/2018: An order for the execution of flood mitigation or rescue operations involving the pumping of floodwaters by the Fire and Rescue Service onto private agricultural land, issued pursuant to § 44 (3) of Act No. 7/2010 Coll. on Flood Protection, as amended, does not require a written form. If the landowner is unaware of the originator of the order, the claim for compensation for damages must be submitted in writing to the municipality in which the land is located.

Ruling of the Constitutional Court of the Slovak Republic, PL. ÚS 38/95: Article 20 (4) of the Constitution of the Slovak Republic states: "Expropriation or compulsory limitation of property rights is permissible only to the extent necessary and on the basis of law and with fair compensation." This provision of the Constitution requires the existence of a law under which expropriation or compulsory limitation of property rights can be carried out. The Constitution of the Slovak Republic does not permit expropriation or compulsory limitation of property rights to occur directly by law (as is allowed by Article 14 (3) of the Basic Law of the Federal Republic of Germany from May 23, 1949, as amended: "Expropriation... may only take place by law or on the basis of a law that regulates the method and scope of compensation."); it must be conducted under the authority of a law.

Ruling of the Constitutional Court of the Slovak Republic, PL. ÚS 19/09: The public interest cannot be understood either arithmetically (as being in the interest of a larger number of inhabitants) or automatically (as in the case where every highway is in the public interest, and thus properties can be automatically expropriated). As expressed in its ruling by

the Czech Constitutional Court (I. ÚS 198/95, PL. ÚS 24/04), the public interest is not always identical to collective interests (satisfying the collective interests of specific groups may even conflict with the general interests of society). The public interest should be understood as an interest that can be characterized as generally beneficial. The public interest, which is the subject of assessment in expropriation proceedings, is, according to the current concept of expropriation, a matter of administrative discretion, determined during the process by weighing various particular interests, considering all contradictions and comments. The reasoning of the decision concerning the existence of the public interest must clearly indicate why the public interest outweighs other private or public interests (e.g., the construction of a highway on land where a school is located). The public interest is subject to proof in the context of decisions on specific matters, such as expropriation, and cannot be predetermined a priori. For this reason, determining the public interest falls within the jurisdiction of the executive power, not the legislative. Moreover, it is not possible to simplify the matter by arguing that the existence of a higher—supreme public interest (in the context of constitutional public interest) for the construction of highways permits radical, irreversible interference with the ownership rights of another landowner prior to discussions with the owner or potential expropriation. On the contrary, such a "constitutional" public interest cannot a priori outweigh the right to peacefully enjoy property. Constitutional endorsement of such a higher public interest would grant state authorities a license to construct highways wherever and whenever they choose, with expropriation proceedings being reduced solely to issues of compensation.

CHAPTER 7

RIGHTS TO FOREIGN THINGS – RIGHT OF LIEN, RIGHT OF RETENTION

SECTION A : BRIEF SUMMARY

Rights to Foreign Things (iura in re aliena) are a specific category of rights in rem that allow the use or exploitation of another's property in a particular manner.
The following are included among the rights to foreign things:

1. Right of Lien,
2. Right of Retention,
3. Easements.

RIGHT OF LIEN
The Right of Lien is a right to foreign things that serves to:

- **Secure the fulfillment** of the secured creditor's claim and its appurtenances,
- **Satisfy the secured creditor's claim** through the enforcement of the right of lien, during which the lien is monetized.

The parties to a lien relationship are the:

1. **Pledgee**
   - The creditor of the claim secured by the right of lien,
   - This is the person who holds the position of a creditor in relation to the obligational debtor.
2. **Obligational Debtor**
   - The party against whom the pledgee holds the claim,
   - Typically, the obligational debtor is also the owner of the lien (in which case they are referred to as the pledgor), but ownership of the lien is not a requirement.
3. **Pledgor**
   - The owner of the lien, meaning the party whose property is to be encumbered by the right of lien
   - It may be the obligational debtor, but also a third party providing security on behalf of the debtor,
   - The pledgor may therefore also be a third party (a person distinct from the obligational debtor) if they consent to the establishment of the right of lien on their property.

Conceptual Features of the Right of Lien
The fundamental conceptual features of the right of lien include:

a) **Existence of a Claim**
   - The right of lien is an instrument designed to secure the fulfillment of a claim held by the creditor against the debtor,
   - According to § 151c of the Civil Code, a right of lien may secure both monetary and non-monetary claims. For non-monetary claims, the law requires that their value be definite or determinable at any time,
   - A right of lien may also secure part of a claim (Rc 70/2006),

- It can secure an existing claim or a claim that will arise in the future (e.g., based on a future contract). However, if the secured claim does not arise, the right of lien will not be created,
- Under § 151a of the Civil Code, the right of lien secures not only the principal claim but also its appurtenances (for example interest, default interest and costs associated with claim enforcement),
- A right of lien does not automatically secure contractual penalties (Rc 58/2008),
- Multiple liens may be established to secure the same claim on different liens (so-called simultaneous liens).

b) Existence of the Lien (Subject of the Right of Lien)

- The lien is the object of civil law relations encumbered by the right of lien in favor of the creditor.
- According to § 151d(1) of the Civil Code, a lien may consist of a thing, right, other property value, an apartment, or a non-residential space, provided they are transferable,
- The lien must always be transferable to enable monetization. Upon enforcement, the lien is sold, and the proceeds are used to satisfy the creditor's claim,
- A lien may be individually determined, generically determined, or determined by other means, such as a collective asset (e.g., a library, warehouse of goods, flock of sheep),
- The owner of the lien must be the pledgor, but they may differ from the obligational debtor. An exception is provided by § 151d(4), which allows a right of lien to be established over property the pledgor will acquire in the future, will arise in the future, or whose existence depends on a condition.
- Multiple rights of lien may encumber the same lien.

c) The Proprietary Nature of the Right of Lien

- The right of lien is an absolute right, as evidenced by changes in the pledgee or pledgor,
- **(i) In the event of a change in the pledgee** (§ 151c(3) of the Civil Code), the right of lien is transferred to the acquirer of the secured claim. The original pledgee ceases to be the pledgee, and the new claimholder becomes the new pledgee. The right of lien is therefore not tied to the person for whom it was originally established but passes to any subsequent acquirer of the claim,
- **(ii) In the event of a change in the pledgor** (§ 151h of the Civil Code), the owner of the lien is free to dispose of the lien in any manner (e.g., sell, gift, or re-encumber the lien), as the right of lien applies against any subsequent acquirer of the lien. Thus, if the pledgor changes, the right of lien continues to encumber the lien in favor of the pledgee,
- Exceptions to the proprietary nature of the right of lien are governed by § 151h(3) of the Civil Code:
    1. If the pledgor transfers the lien in the ordinary course of business as part of their business activity,
    2. If the acquirer, acting with due diligence, was in good faith at the time of the transfer or assignment of the lien, believing that the lien was unencumbered by the right of lien. In this case, there is a rebuttable legal presumption that, if the right of lien is registered in the Notarial

Central Register of Liens, the acquirer of the lien is not acting in good faith. However, this presumption can still be disproven,

- In the two cases mentioned above, the person acquires the lien free from the encumbrance of the right of lien,
- These exceptions to the proprietary nature of the right of lien apply only to rights of lien registered in the Notarial Central Register of Liens, not to those arising from registration in a specific register, where such registration is required for the creation of the right of lien.

d) Accessory Nature of the Right of Lien

- The existence of the right of lien is conditional upon the existence of the secured claim,
- The right of lien exists only for as long as the secured claim exists; therefore, the termination of the secured claim results in the termination of the right of lien,
- The right of lien cannot be transferred independently but only together with the secured claim it secures,
- This principle is also reflected in the statute of limitations, as the right of lien does not expire earlier than the secured claim (§ 100(2) of the Civil Code).

e) Security Function

- The security function lies in the ability of the right of lien to compel the debtor to fulfill their obligation properly and on time,
- It manifests as a form of pressure or coercion on the debtor to voluntarily fulfill the obligation, thereby avoiding the sale of the lien through the enforcement of the right of lien.

f) Satisfaction Function

- The satisfaction function grants the pledgee the right to satisfy his claim from the lien,
- The pledgee has two options: (i) Self-satisfaction – the pledgee may enforce the right of lien independently, without judicial intervention, (ii) Enforcement through state authority – the pledgee may enforce the right of lien via state coercion, such as execution proceedings.

g) Principle of Subsidiarity

- The essence of this principle lies in the fact that the pledgee may enforce the right of lien (monetize the lien) only if the debtor has failed to fulfill their obligation properly and on time (§ 151j(1) of the Civil Code).

Establishment of the Right of Lien

The right of lien is established through:

a) Security Agreement

- In the case of a contractual right of lien, its creation requires registration in the relevant register, making the process two-phase,
- **The first phase** involves the execution of a written security agreement (title), **the second phase** involves the registration of the right of lien in the relevant register (modus), upon which the right of lien is created
- The security agreement must be in written form; otherwise, it is absolutely invalid (§ 40(1) of the Civil Code). An exception to the written form requirement applies to possessory liens (hand-held liens), which arise upon the delivery of a movable property to the pledgee or a third party,

- The security agreement must include:
- **(i) Identification of the contracting parties**, specifically the pledgee and pledgor. The pledgor may also be the obligational debtor. If the pledgor is different from the debtor, the debtor's consent to the security agreement is not required,
- **(ii) Specification of the secured claim**, ensuring it is precisely identifiable and not interchangeable with other claims. The claim may be existing or future, monetary or non-monetary. If the amount of a monetary claim is unknown, the maximum principal amount must be stated. For non-monetary claims, their monetary value must be agreed upon by the parties.
- **(iii) Specification of the lien**, which is an essential component of the security agreement. The lien may be specified individually, generically, or by other means (e.g., a collection of items). The pledgee is not obligated to accept a lien as security for an amount exceeding two-thirds of its value (§ 556 of the Civil Code).
- The pledgor and the pledgee may also agree in the security agreement on the method of sale of the lien, such as the direct sale of the lien to a third party by the pledgee. However, in consumer contracts, such agreements are absolutely invalid (see § 53(11) of the Civil Code).

b) Approved Agreement Among Heirs on Estate Settlement

- This option allows the heirs to agree that a specific asset will be allocated to one heir, who is then obligated to compensate the other heirs according to their shares. To increase the likelihood of satisfying their claims, the heirs may secure their mutual claims through an agreement during the probate proceedings,
- A right of lien may be established based on such an agreement only on assets forming part of the estate, in favor of an heir or a creditor of the deceased,
- The agreement must be approved by the court.

c) Court or Administrative Authority Decision

- A court may establish a right of lien, for example, as a security measure under the Code of Contentious Litigation,
- During the proceedings, the court issues a decision establishing the right of lien in favor of the creditor, even against the will of the debtor,
- A right of lien may also be established by the tax administrator in accordance with Tax Code.

d) Law

- This refers to rights of lien that arise directly from the Civil Code (e.g., § 672 of the Civil Code) or from special laws (e.g., Act on the Ownership of Apartments and Non-Residential Premises).

Creation of the Right of Lien

The creation of the right of lien is governed by § 151e of the Civil Code. It is necessary to distinguish between (i) a right of lien created by contract and (ii) a right of lien created by another legal fact (non-contractual right of lien).

A non-contractual right of lien arises from a legal fact other than registration, such as the approval of an agreement among heirs, a final and binding decision of a court/administrative authority, or by operation of law. The subsequent registration of the right of lien in the relevant register does not have constitutive effects, meaning that the right of lien does not

arise from registration. However, registration determines the priority of the right of lien (§ 151k of the Civil Code).

A contractual right of lien is created through a two-phase process:

1. **The right of lien is established** by a security agreement (title),
2. **The right of lien arises upon** registration in the relevant register (modus).

The general register is the Notarial Central Register of Liens. In addition, there are special registers, such the Land Registry, the Commercial Register, the Trademark Register, The Register of Vessels, The Aircraft Register, and others. Two principles apply: (i) the right of lien is registered in the general register (the Notarial Central Register of Liens), unless the law specifies that registration in a special register is required, and (ii) the right of lien may always be registered in only one register. An exception to this rule is provided in § 151f(1) of the Civil Code, which states that in the case of a collection of items (e.g., an enterprise), the right of lien must be registered in the Notarial Central Register of Liens for the collection as a whole and simultaneously in the relevant registers for the individual items constituting the collection (e.g., if the enterprise includes real estate, it is necessary to register the right of lien for the enterprise in the Notarial Central Register of Liens and the right of lien for the real estate, as part of the enterprise, in the Land Registry). The pledgee may sell the enterprise as a whole only if the rights of lien are registered for all its components.

An exception to the rule that a right of lien arises through registration in the relevant register applies in the case of the so-called possessory right of lien (pignus), also referred to as a hand-held lien. The possessory right of lien arises upon the delivery of the movable property to the pledgee or a third party. Its advantage lies in the certainty provided to the pledgee that the pledgor will not devalue or destroy the property. The disadvantage, however, is that if the right of lien arises solely through the delivery and the pledgor subsequently establishes another right of lien on the same item, which is then registered in the relevant register, the later-registered right of lien will have better priority in satisfaction, as priority is always given to the right of lien registered in the relevant register (§ 151k(2) of the Civil Code).

Registration of the Right of Lien and Changes to Registration

- A right of lien is registered either in the Notarial Central Register of Liens or in one of the special registers,
- The application for registration is submitted by:
    1. The pledgor, if the right of lien is established by contract,
    2. The pledgee, if the right of lien is established by an agreement among heirs or arises by operation of law,
- If the right of lien arises from a court or administrative decision, registration is carried out based on the decision of the respective court or administrative authority that established the right of lien,
- During the existence of the right of lien, changes may occur to the registered data, such as the identity of the pledgee or pledgor or the secured claim. In such cases, the person required by law, or the person affected by the change, is obligated to submit an application for a change of registration in the relevant register (see, e.g., § 151h(5) of the Civil Code),

- If the obligated person fails to submit the application for a change of registration in accordance with § 151g(2) and (3) of the Civil Code, they are liable for any damages caused by their failure to act.

Enforcement of the Right of Lien

The enforcement of the right of lien is governed by § 151j et seq. of the Civil Code. The principle of subsidiarity applies, meaning the pledgee may proceed with the enforcement of the right of lien only if their claim has not been properly and timely fulfilled.

The enforcement of the right of lien involves the legal ability of the pledgee to sell the lien in a manner prescribed by law in order to satisfy their claim from the proceeds. The enforcement process consists of: (i) Initiation of the enforcement of the right of lien, (ii) Sale of the lien, and (iii) Distribution of the proceeds obtained.

Conditions for Initiating the Enforcement of the Right of Lien

Once the creditor's claim becomes due, the creditor may begin enforcing the right of lien. The fundamental condition for initiating the enforcement of the right of lien is, therefore, the existence of a due claim. The advantage of the right of lien lies in the fact that the creditor does not need to initiate legal proceedings against the debtor but can satisfy their claim by selling the lien under the conditions set forth in the Civil Code. The right of lien may also be enforced even if the secured claim is time-barred (§ 151j(2) of the Civil Code).

The Civil Code, in § 151j(1), provides methods by which the pledgee may enforce the right of lien:

a) **Enforcement of the Right of Lien in a Manner Agreed in the Contract**
   - The pledgee may agree with the pledgor in the security agreement that the pledgee may sell the lien independently,
   - Even if the pledgee and pledgor agree on this method of enforcement, the pledgee still retains the right to sell the lien at a public auction or an auction under the Execution Code,
   - The agreement on the sale of the lien by the pledgee must specify the conditions under which the pledgee may sell the lien (e.g., price terms, restrictions on potential buyers, etc.).

b) **Enforcement of the Right of Lien Through Sale at a Voluntary Auction**
   - Governed by Act on Voluntary Actions,
   - This method involves the sale of the lien through an auctioneer or auction company based on a contract with the pledgee,
   - The lien is sold at a public auction,
   - Ownership of the auctioned item (lien) is acquired by the bidder who makes the highest bid at the moment the auctioneer awards the hammer. A further condition is that the bidder must also pay the highest bid,
   - This method cannot be used to auction real estate if the value of the claim secured by the right of lien (excluding appurtenances) does not exceed EUR 2,000 as of the date of the notice of initiation of enforcement.

c) **Enforcement of the Right of Lien Through Sale at an Auction Under the Execution Code**
   - The main difference compared to enforcement methods agreed in the contract or through voluntary auction lies in the requirement that the pledgee must possess an enforceable title (i.e., a final court decision recognizing the claim against the debtor),

- The auction is conducted by a judical executor in accordance with the relevant provisions of the Execution Code.

In all three methods of enforcement, the lien is sold, monetized, and the proceeds are used to satisfy the pledgee's claim. In the case of claims arising from consumer contracts secured by a right of lien, § 53(10) of the Civil Code allows enforcement only through a voluntary auction or an auction under the Execution Code, and not in a manner agreed in the contract. The law also regulates specific methods of enforcement of the right of lien (see §s 151mb and 151mc).

Forfeiture Lien

The concept of a forfeiture lien is governed by § 151j(3) of the Civil Code. It refers to an agreement between the pledgee and the pledgor whereby, after a certain period following the maturity of the secured claim, the pledgee becomes the owner of the lien, thereby satisfying their claim (R 61/2009).

If such an agreement is concluded before the maturity of the claim (before the debtor's obligation to fulfill their debt arises), it is deemed absolutely invalid under § 39 of the Civil Code. However, if the agreement on a forfeiture lien is concluded after the maturity of the claim, it is considered valid.

Priority of Rights of Lien

Multiple rights of lien may be repeatedly established on the same object in favor of different claims. Therefore, the order in which the claims of individual pledgees are satisfied upon the sale of the lien is crucial. The principle of priority applies, meaning that the right of lien registered earlier (older in terms of time) takes precedence over a right of lien established later (newer in terms of time), regardless of the legal basis for its creation. The time of registration of the right of lien in the relevant register is decisive for determining the order of rights of lien.

This rule also applies to rights of lien created by delivery (so-called possessory liens or pignus). Therefore, it is advantageous for the pledgee to register such a right of lien in the relevant register.

The maturity of the claim is not decisive for the priority of rights of lien.

Pledgees may also agree among themselves on the priority of rights of lien (§ 151k(3) of the Civil Code). Such an agreement must also be registered in the relevant register to be effective. If all pledgees conclude the agreement, it is binding and effective for all. If only some pledgees conclude the agreement, the agreement is ineffective against a pledgee not participating in the agreement if it worsens the enforceability of that pledgee’s claim during enforcement of the right of lien.

The priority of rights of lien is significant for:

1. **Satisfaction of the Pledgee's Claim**

- Proceeds from the sale of the lien are first used to satisfy the claim secured by the earliest registered right of lien. If any funds remain after satisfying this claim, they are used to satisfy claims secured by subsequently registered rights of lien in the order of their registration.

2. **Further Existence of the Right of Lien**

- It is important to distinguish between cases where the right of lien is enforced by the priority pledgee (the pledgee with the first registered right of lien) and cases where it is enforced by a pledgee with a later priority,

- **(i) If enforced by the priority pledgee**, the lien transfers to the acquirer (buyer, auction winner, etc.) free of encumbrance by subsequent rights of lien. In this case, later rights of lien are extinguished. Any remaining proceeds after satisfying the earlier claim are used to satisfy subsequent claims in the order of their registration,
- **(ii) If enforced by a pledgee with a later priority**, the earlier rights of lien remain unaffected. The lien transfers to the acquirer encumbered by all earlier registered rights of lien. The enforcing pledgee must inform the acquirer that the lien is being transferred subject to these encumbrances.

Initiation of the Enforcement of the Right of Lien

The fundamental prerequisite for the initiation of the enforcement of the right of lien by the pledgee is the maturity of the pledgee's claim. The pledgee must fulfill several obligations prescribed by the Civil Code as part of initiating enforcement.

The pledgee is primarily required to notify the pledgor in writing of the initiation of the enforcement of the right of lien and specify the method by which the right of lien will be enforced (so-called notification obligation). The pledgee may later change this chosen method but must inform the pledgor of such a change. In addition to notifying the pledgor, the pledgee is also required to notify the obligational debtor (if different from the pledgor) and pledgees with earlier registered rights of lien.

The pledgee must also register the initiation of the enforcement of the right of lien in the relevant register where the right of lien is registered.

The law attaches the following legal consequences to the fulfillment of the notification obligation:

1. From the moment of delivery of the notice, a 30-day protection period begins to run, starting either from the date the last of the entities to whom the pledgee must notify the initiation of enforcement receives the notice, or from the date of registration of the initiation of enforcement of the right of lien, whichever occurs later
    - During this period, the pledgee may not sell the lien (referred to as the protection period),
    - The Civil Code allows the pledgee and pledgor to agree to shorten the 30-day period,
    - Upon the expiration of this period without any action, the pledgee gains the right to sell the lien.
2. If the enforcement of the right of lien was initiated by a pledgee with a later priority, a priority pledgee or another pledgee with earlier priority may notify the initiation of enforcement within the 30-day period (§ 151ma(9) of the Civil Code)
    - The priority pledgee or earlier pledgee must have a matured claim to exercise this right; otherwise, they are not entitled to do so,
    - If the priority or earlier pledgee notifies the initiation of enforcement, the pledgee with later priority who had already initiated enforcement may no longer continue with the enforcement of their right of lien.

Sale of the Lien

During the enforcement of the right of lien, the pledgee acts on behalf of the pledgor (§ 151m(6) of the Civil Code). This provision serves as a statutory authorization for the pledgee to act on behalf of the pledgor in selling the lien. Consequently, the pledgee is authorized to sell an item (lien) he does not own.

If the lien is sold at an auction (either voluntary or under the Execution Code), special laws prescribe detailed rules for determining the value of the lien, which serves as the minimum bid. These laws also regulate the initiation and conduct of the auction and the legal effects associated with the hammer fall.
The pledgee and the pledgor may agree in the security agreement that the pledgee is entitled to sell the lien directly to a third party. In such cases, the Civil Code requires the pledgee to act with due diligence, ensuring the lien is sold for a price comparable to the market value under similar conditions, time, and place. Failure to do so may result in liability for damages caused to the pledgor.
After selling the lien, the pledgee must prepare a written report for the pledgor specifying the sale price of the lien, the amount used to satisfy the pledgee's claim, the expenses associated with the sale. Any remaining amount must be paid to the pledgor.
The proceeds from the sale of the lien are used to:

1. satisfy the claim of the pledgee enforcing the right of lien,
2. cover the expenses incurred by the pledgee in connection with the sale of the lien,
3. satisfy the claims of pledgees with later priority (in cases of multiple liens), and
4. pay any remaining amount to the pledgor.

According to the Civil Code, if a pledgee fulfills the debtor's obligation for which another pledgee has initiated the enforcement of the right of lien, they acquire all the rights of the pledgee whose claim they satisfied, including the priority ranking for lien satisfaction. Thus, the pledgee who fulfills the debtor's obligation steps into the position of the pledgee whose claim was satisfied, assuming their priority.

Termination of the Right of Lien
The termination of the right of lien under § 151md of the Civil Code does not involve a two-phase process, as the right of lien ceases based on a single legal fact. The deletion from the relevant register has only declaratory effect, as the termination occurs at the moment when a legal fact prescribed by the Civil Code arises. If the right of lien terminates, it is deleted from the relevant register retroactively to the date specified in the deletion request, as the deletion is merely declaratory.
The right of lien terminates in the following cases:

a) **Termination of the Secured Claim**
   - Due to the accessory nature of the right of lien, its termination coincides with the termination of the secured claim (e.g., by fulfillment, set-off, etc.).

b) **Termination of the Lien**
   - If the lien is lost, destroyed, or damaged to such an extent that it becomes worthless.

c) **Waiver of the Right of Lien by the Pledgee**
   - This requires an agreement between the pledgor and the pledgee, which must be made in written form.

d) **Expiration of the time for which the Right of Lien was established,**
   - If the duration of the right of lien is limited by a specific time, it ceases upon the expiry of that time.

e) **Return of the Object to the Pledgor if the Right of Lien was created by delivery**
   - This does not apply if such a right of lien was registered in the relevant register.

f) **Transfer of the Lien by the Pledgor in the ordinary course of business or acquisition by a bona fide Purchaser**

g) **Agreement allowing the Pledgor to transfer the Lien unencumbered by the Right of Lien**
h) **Other means agreed in the Contract or provided by special legislation**
    - Examples include the merger of the pledgee and pledgor into a single entity (e.g., if the pledgee becomes the owner of the lien), expropriation, etc.

RIGHT OF RETENTION

The right of retention is governed by §s 151s to 151v of the Civil Code. Unlike the right of lien, it serves solely to secure the creditor's monetary claim and can never be used to secure non-monetary obligations. Another distinctive feature is that it applies exclusively to securing an already due monetary claim, meaning the creditor's claim must be payable. Therefore, it is not possible to enforce the right of retention to secure a claim that is not yet due (except in cases where bankruptcy is declared on the debtor's property or if enforcement proceedings reveal the debtor's insolvency).

The subject of the right of retention can only be a movable asset owned by the debtor. However, some legal opinions suggest that the movable asset may also be owned by a third party, provided the debtor handed over the asset to the creditor based on a valid contract or other legal grounds.

To enforce the right of retention, the creditor must have the movable asset in his possession, and the asset must have come into their possession with the debtor's consent (indicating the existence of a contractual relationship or other obligational relationship between the creditor and the debtor). The creditor, therefore, acts as a legitimate detentor of the asset. The right of retention cannot be enforced against an asset obtained arbitrarily, without legal grounds, or deceitfully taken from the debtor.

The creditor can enforce the right of retention only at the moment he is obliged to return the movable asset to the debtor. If the creditor does not yet have such an obligation, the right of retention cannot be enforced.

Creation and Functions of the Right of Retention

The right of retention is created through a unilateral legal act by the creditor, namely, the factual retention of the asset.

The right of retention serves a securing function, while the satisfaction function is realized during enforcement proceedings against the debtor. The creditor is not authorized to dispose of the retained asset. Satisfaction of the claim can occur only within enforcement proceedings, and the creditor does not need an enforcement title; it is sufficient for the claim to be payable and for it to be duly and timely registered with the competent executor. The law grants the retaining creditor an absolutely privileged position in satisfaction from the proceeds of the retained asset's sale during enforcement proceedings. The retaining creditor is satisfied first, even before pledgees, regardless of when the lien on the asset was established.

Termination of the Right of Retention

The right of retention terminates upon the satisfaction of the secured claim or the provision of adequate security. Thus, it primarily terminates when the secured claim is fulfilled (due to the accessory nature of the right of retention). Before the secured claim is fulfilled, the right of retention may also terminate if the debtor provides sufficient security to the creditor or if the creditor returns the retained movable asset to the debtor.

SECTION B : TEORETICAL QUESTIONS

1. Define the term "rights to foreign things" and list the rights to foreign things recognized by the Civil Code.
2. Characterize the right of lien and describe its defining elements.
3. What claims can be secured by the right of lien?
4. What can be the subject of the right of lien?
5. Does the right of lien have an accessory nature? Justify your answer.
6. Explain the satisfaction and securing functions of the right of lien.
7. List the legal facts upon which the right of lien can be established or created.
8. Describe the process of creating a contractual right of lien.
9. Describe the process of creating a non-contractual right of lien.
10. Who is obligated to carry out the registration of the right of lien?
11. Describe the conditions for initiating the enforcement of the right of lien.
12. What methods can be used to enforce the right of lien under the Civil Code?
13. Define the term "foreclosed lien."
14. Describe the process of enforcing the right of lien.
15. On what legal grounds can the right of lien be terminated?
16. Characterize the right of retention as a right to foreign things.
17. Explain the manner in which the right of retention is created.
18. What functions does the right of retention serve?
19. By what methods can the right of retention be terminated?

SECTION C : PRACTICAL CASES

Case No 1

Mr. Štefan experienced a breakdown of his motor vehicle due to long-term use and took it to a car repair shop. Since it was an extensive repair, the repair shop issued Mr. Štefan an invoice with a due date of April 4, 2023. On April 7, 2023, Mr. Štefan went to pick up his car; however, the repair shop refused to release the vehicle because they had not yet received payment for the invoice. Mr. Štefan became upset and began shouting across the room, claiming that he is the owner of the car and that ownership rights are a constitutional right that cannot be restricted by anyone.

Give the answers to the following questions:

1. Did the repair shop act in accordance with the law??
2. Is the repair shop entitled to use the retained motor vehicle?
3. How can Mr. Štefan achieve the release of the motor vehicle?

Case No 2

Adam lends his friend Zuzana the amount of EUR 10,000. At the same time, they agree to establish a right of lien over Ms. Zuzana's real estate. They also agreed on a contractual penalty of EUR 500, which was likewise secured by the lien.

Give the answers to the following questions:

1. At what moment does the right of lien arise?
2. In which register is such a right of lien recorded?
3. Does the right of lien secure the contractual penalty in this case?

Case No 3

Dominik, a skilled farmer, suffered significant economic losses due to unfavorable weather conditions. To continue his business, he was forced to take out a loan of EUR 80,000. Given his difficult situation, he decided to offer next year's harvest as collateral, which is expected to be significantly better due to favorable forecasts.

Give the answers to the following questions:

1. Is next year's harvest an eligible subject of the right of lien?
2. At what moment does the right of lien arise in this case?
3. Which party will be authorized to submit a proposal for the registration?

Case No 4

Arrange the creditors for the satisfaction of their claims through the enforcement of the right of lien, where the collateral is a movable item (a men's watch) worth 30,000 Euros:

- Pledgee A – contractual right of lien – created by registration in the NCRL on 20 January 2022 – claim amount: 5,000 Euros – due: 1 October 2022,
- Pledgee B – contractual right of lien – created by transfer on 1 July 2022 – claim amount: 10,000 Euros – due: 8 August 2022,
- Pledgee C – contractual right of lien – created by registration in the NCRL on 15 July 2022 – claim amount: 8,000 Euros – due: 30 May 2023.

1. Which pledgee can begin the enforcement of the right of lien on 4 December 2022?
2. To whom must the Pledgee A notify the initiation of the enforcement?
3. To whom must the Pledgee B notify the initiation of the enforcement?

The right of lien was enforced by the Pledgee B.

4. Specify the consequences of the enforcement of the right of lien.

Case No 5

The pledgee (a legal entity, business entity) entered into a pledge agreement with the pledgor (a consumer) in which it was agreed that the pledgee would have the right to sell the collateral through a real estate agency. At the same time, the pledgor agreed to a clause in the agreement that the pledgee may "retain" the collateral if the pledgor fails to fulfill their obligation to the pledgee properly and on time.

1. Is the agreement to sell through a real estate agency valid?
2. Is the agreement allowing the pledgee to "retain" the collateral valid?

SECTION D : RELEVANT PROVISIONS OF ACT NO. 40/1964 CALL. CIVIL CODE, AS AMENDED

Chapter Three

RIGHTS TO FOREIGN THINGS

Right of Lien

§ 151a

A right of Lien serves to secure a claim and its appurtenances by granting the lienholder the right to satisfy or seek satisfaction of the claim from the object of the lien (hereinafter referred to as the "lien") if the claim is not duly and timely fulfilled.

§ 151b

(1) A right of lien is established through a written agreement, an approved agreement among heirs concerning the settlement of an estate, a court or administrative decision, or by law. A security agreement concerning movable property does not need to be in written form if the right of lien arises by the transfer of the item in accordance with this Act.

(2) The security agreement must specify the claim secured by the right of lien and the lien itself.

(3) If the security agreement does not determine the value of the secured claim, it must specify the maximum principal amount up to which the claim is secured.

(4) The lien in a security may be defined individually by quantity and type, or in another manner that allows the lien to be identified at any time during the existence of the right of lien.

§ 151c

(1) A right of lien may secure both monetary and non-monetary claims, provided the value of the claim is definite or determinable at any time during the existence of the right of lien.

(2) A right of lien may also secure a claim that arises in the future or whose existence depends on the fulfilment of a condition.

(3) The right of lien is transferred to the acquirer of the secured claim in the event of the transfer or assignment of the secured claim. This also applies in the case of any other change in the person entitled to the secured claim.

§ 151d

(1) A lien may consist of an object, a right, another property value, an apartment, or a non-residential space, provided they are transferable unless otherwise stipulated by law. A lien may also encompass a collection of objects, rights, or other property values, a business or part of a business, or another collective asset.

(2) A right of lien extends to the lien, its components, fruits, benefits, and accessories, unless otherwise provided by the security agreement or law. The right of lien applies to fruits and benefits until they are separated from the lien, unless otherwise agreed in the security agreement.

(3) A right of lien may be established over an object, apartment, or non-residential space owned by the pledgor, or over a right or other property value belonging to the pledgor.

(4) A right of lien may also be established over an object, right, other property value, apartment, or non-residential space that the pledgor will acquire in the future, including items, rights, or values that will arise in the future or whose existence depends on the fulfilment of a condition.

(5) A claim may be secured by a right of lien established over multiple separate liens.

(6) Any agreement prohibiting the establishment of a right of lien is ineffective against third parties.

§ 151e

(1) The creation of a right of lien requires its registration in the Notarial Central Register of Liens (hereinafter referred to as the "Register of Liens") established under a special law, unless otherwise provided by this Act or a special law.

(2) A right of lien to real estate, apartments, and non-residential spaces is created by registration in the Land Registry, unless otherwise provided by a special law.

(3) A right of lien to certain items, rights, or other property values specified by a special law is created by registration in a specific register unless otherwise provided by a special law.

(4) A right of lien registered in the Land Registry under subsection 2 or in a specific register under subsection 3 (hereinafter referred to as "registration in a specific register") is not subject to registration in the Register of Liens under this Act.

(5) A right of lien to movable property arises upon its delivery to the pledgee or a third party for safekeeping, as agreed between the pledgor and the pledgee. A right of lien established in this manner may be registered in the Register of Liens at any time during its existence; however, if the security agreement was not concluded in written form, a written confirmation of the agreement's terms signed by both the pledgor and the pledgee is required prior to registration.

§ 151f

(1) The creation of a right of lien over a collection of items, rights, or other property values, a business, or part of a business as a whole requires registration in the Register of Liens. The creation of a right of lien over individual components of the lien, for which this Act or a special law requires registration in a specific register, also requires registration in that specific register.

(2) A right of lien to an item, apartment, non-residential space, right, or other property value that the pledgor acquires in the future, which arises in the future, or whose creation depends on the fulfilment of a condition, is created upon the acquisition of ownership of the item, apartment, or non-residential space, or the acquisition of another right or property value by the pledgor. This does not apply if the right of lien, for which registration in the Register of Liens is required, has not been registered prior to the acquisition of ownership of the item, right, or property value by the pledgor.

(3) A right of lien to an item, apartment, non-residential space, right, or other property value that the plaintiff acquires in the future, which arises in the future, or whose creation depends on the fulfilment of a condition, and for which registration in a specific register is required under this Act or a special law, will be recorded in that register on the date the pledgor acquires ownership of the item, apartment, or non-residential space, or acquires another right or property value.

§ 151g

(1) An application for the registration of a right of lien in the Register of Liens or an application for registration in a specific register, where registration is required by this Act or a special law, must be submitted by the pledgor in the case of the establishment of a right of lien based on a written agreement; in other cases, the pledgee must submit the application, unless otherwise stipulated by a special law. If the right of lien arises from a court or administrative decision, the registration is carried out based on the decision of the competent court or administrative body that established the right of lien.

(2) If any data changes regarding the right of lien occur, the person required by law or the person affected by the change is obligated to request the change of registration in the Register of Liens or in the specific register. If the person affected by the data change cannot be determined, the pledgor is required to request the change of registration, unless otherwise provided by law.

(3) The obligation under subsection 2 must be fulfilled without undue delay from the date the fact leading to the change of the right of lien data occurs. If several people are required to submit an application for the registration of a data change, the obligation is considered fulfilled if one of them submits it, unless the law specifies that the application for the registration of a data change must be jointly submitted by these people.

(4) A person who fails to fulfil the obligations under subsections 2 and 3 is liable for the damage caused by such failure.

§ 151h

(1) In the case of the transfer or assignment of the right of lien, the right of lien applies to the acquirer of the lien unless the security agreement specifies that the plaintiff may transfer the right of lien or part of it free of the right of lien, or unless otherwise provided by this Act or a special law.

(2) Upon the transfer or assignment of the lien, all rights, and obligations of the pledgor arising from the security agreement pass to the acquirer of the lien. The acquirer of the lien, to whom the right of lien applies, is required to tolerate the enforcement of the right of lien and is subject to the same rights and obligations as the pledgor.

(3) The right of lien does not apply to the acquirer of the lien if the pledgor has transferred the lien in the ordinary course of business as part of their business activity. The right of lien also does not apply to the acquirer of the lien if, at the time of the transfer or assignment, the acquirers, acting with due diligence, were in good faith that they were acquiring the lien free of the right of lien. If the right of lien is registered in the Register of Liens, it is presumed that the acquirer of the lien was not acting in good faith, unless proven otherwise.

(4) The provision of subsection 3 does not apply to a pledge right that arises through registration in a specific register, if the creation of the pledge right requires registration in such a register under this Act or a special law.

(5) The pledgor and the acquirer of the lien are obligated to register the change in the pledgor's identity in the Register of Liens or in the specific register if the creation of the right of lien requires registration in such a register under this Act or a special law. They are jointly and severally liable for any damages caused by the failure to fulfil this obligation.

(6) Enforcement proceedings or enforcement through execution of the lien may only be conducted if the pledgee is the entitled party or if the pledgee consents to the enforcement or execution.

§ 151i

(1) The pledgor may use the lien in the usual manner; however, he is required to refrain from any action that would reduce the value of the lien beyond normal wear and tear, unless otherwise specified in the security agreement.

(2) If the lien is a movable item and has been transferred to the pledgee, the pledgee is obliged to protect the entrusted lien from damage, loss, and destruction. The entrusted lien may only be used with the pledgor's consent, unless otherwise provided by a special law.

(3) If the pledgee incurs costs because of fulfilling the obligations under subsection 2, they are entitled to request reimbursement from the pledgor for the necessary and purposefully incurred costs.

§ 151j

(1) If the debt secured by the right of lien is not properly and timely settled, the pledgee may initiate the enforcement of the right of lien. While enforcing the right of lien, the pledgee may satisfy the claim in the manner specified in the agreement, or through the sale of the lien at auction according to a special law[2], or may seek satisfaction through the sale of the pledge according to special laws[3], unless otherwise provided by this Act or a special law.

[2] Act on Voluntary Auctions, Notarial Code
[3] For example Execution Procedure Code

(2) If the debt secured by the lien is not properly and timely settled, the pledgee may still satisfy or seek satisfaction from the lien, even if the secured debt is time-barred.

(3) Any agreement made before the maturity of the debt secured by the lien, under which the pledgee may satisfy the debt by acquiring ownership of the lien, apartment, non-residential premises, or other right or asset, is invalid unless otherwise provided by law.

(4) If multiple separate rights of liens have been established to secure the same debt, the pledgee is entitled to satisfy or seek satisfaction from any of them that is sufficient to settle the debt, or, if necessary, from all of them.

(5) If the lien is a business or part of a business, the pledgee may only satisfy or seek satisfaction from the business or part of the business as a whole if the rights of lien apply to all components of the business or its part.

§ 151k

(1) If multiple right of liens is established on the same lien, the order of their satisfaction is determined by the order of their registration in the Register of Liens, counted from the date of their earliest registration or from the date of their registration in a special register.

(2) If multiple right of liens is established on a movable item, and some of them arise from the delivery of the item, the priority for satisfaction of the rights of lien is given to those registered in the pledge register, according to the order of their registration.

(3) If multiple right of liens is established on the same lien, the pledgees may agree on the order of their rights of lien regarding satisfaction. Such an agreement becomes effective when the agreed order is registered in the Register of Liens or in a special register, if the creation of the right of lien requires registration in a special register, based on a request by all the pledgees involved in the agreement. An agreement that would negatively affect the enforceability of the claim for a pledgee who is not a party to the agreement is ineffective towards that party.

§ 151l

(1) The pledgee must notify the pledgor and the debtor in writing when enforcement of the right of lien begins, if the debtor is not the same person as the pledgor, and for right of liens registered in the Register of Liens, also register the commencement of enforcement in this register, unless otherwise provided by this Act or a special law. In the written notice of the commencement of enforcement, the pledgee shall specify the method by which the right of lien will be satisfied or how satisfaction will be sought from the lien.

(2) After the notification of the commencement of enforcement, the pledgor may not transfer the lien without the pledgee's consent. A violation of this prohibition does not affect people who acquire the lien from the pledgor in the usual course of business, unless the acquirer knew, or could have known based on all circumstances, that enforcement had begun.

(3) The pledgee is entitled to reimbursement from the pledgor for the necessary and purposefully incurred costs related to the enforcement of the right of lien.

(4) If the right of lien is registered in the land registry, the pledgee is required to send one copy of the notice of the commencement of enforcement to the relevant district office, which will mark the commencement of enforcement in the land registry.

§ 151m

(1) The pledgee may sell the lien according to the method specified in the security agreement or at auction only after 30 days from the notification of the commencement of enforcement to the plaintiff and debtor, provided the debtor is not the same person as the

plaintiff, unless otherwise specified by a special law. If the pledge right is registered in the pledge register, and the registration date of the commencement of enforcement in the pledge register is later than the date of notification to the plaintiff and debtor, and the debtor is not the same person as the plaintiff, the 30-day period starts from the registration date of the commencement of enforcement in the pledge register.

(2) After the notification of the commencement of enforcement, the plaintiff, and pledgee may agree that the pledgee may sell the pledge in the method specified in the pledge agreement or at auction before the expiration of the period stated in paragraph 1.

(3) The pledgee, who has started enforcement of the pledge to satisfy their claim according to the method specified in the pledge agreement, may change the method of enforcement at any time during the process and sell the pledge at auction or seek satisfaction through the sale of the pledge in accordance with special laws. The pledgee is obliged to inform the plaintiff about the change in the method of enforcement.

(4) The plaintiff is required to tolerate the enforcement of the pledge and provide the necessary cooperation to the pledgee for the enforcement of the pledge. In particular, the plaintiff must hand over the pledge and documents necessary for the taking over, transfer, and use of the pledge and provide any other cooperation specified in the pledge agreement. The same obligation applies to a third-party holding the pledge or documents necessary for the taking over, transfer, and use of the pledge.

(5) Any person holding the pledge during the enforcement process is required to refrain from actions that would decrease the value of the pledge, except for ordinary wear and tear.

(6) During the enforcement of the pledge, the pledgee acts on behalf of the plaintiff.

(7) The pledgee is required to inform the plaintiff about the progress of the enforcement of the pledge, especially about any circumstances that may affect the value of the pledge when sold.

(8) If the pledge agreement specifies that the pledgee is authorized to sell the pledge in a manner other than at auction, the pledgee must exercise due diligence when selling the pledge to ensure it is sold at a price comparable to the price for which the same or similar items are typically sold under comparable conditions at the time and place of the sale.

(9) The pledgee is required to provide the plaintiff with a written report on the enforcement of the pledge without unnecessary delay after the sale of the pledge. The report must include details about the sale of the pledge, the proceeds from the sale, the costs incurred during the enforcement, and the use of the proceeds from the sale. The pledgee must provide evidence of the costs incurred.

(10) If the proceeds from the sale of the pledge exceed the secured claim, the pledgee is required to return to the plaintiff, without unnecessary delay, the value of the proceeds from the sale that exceeds the secured claim after deducting any necessary and purposefully incurred costs related to the enforcement of the pledge.

§ 151ma

(1) If multiple rights of lien have been established on the same lien, the pledgee is obliged to notify the commencement of enforcement to the other pledgees who have a priority claim for satisfaction over the pledgee performing the enforcement. The notification must specify the method by which satisfaction will be sought or pursued from the lien.

(2) The pledgee performing the enforcement can sell the lien only after 30 days from the notification of commencement of enforcement to all pledgees under paragraph 1.

(3) When enforcing the right of lien by the pledgee whose right of lien is registered first in the order of priority (hereinafter referred to as "preferred pledgee"), the lien is transferred free from the right of lien of the other pledgees. If the proceeds from the sale of the lien exceed the secured claim in favor of the preferred pledgee, the other pledgees have the right to have their claims, secured by the lien transferred, satisfied from the proceeds of the sale according to the priority order, after deducting the necessarily and reasonably incurred costs of enforcement by the preferred pledgee.

(4) The value of the proceeds from the sale of the lien, exceeding the secured claims after deducting the necessarily and reasonably incurred enforcement costs, must be returned to the pledgor.

(5) When enforcing the right of lien by the preferred pledgee under paragraph 3, the preferred pledgee must deposit with a notary public the amount of the proceeds from the sale of the lien, exceeding the secured claim, after deducting the necessary and reasonable enforcement costs, for the benefit of the other pledgees and the pledgor.

(6) In the enforcement of the right of lien by a pledgee who is not the preferred pledgee, the lien is transferred burdened with the rights of lien of the preferred pledgee and the other pledgees with priority claims. In relation to the other pledgees, paragraphs 3 to 5 apply accordingly.

(7) The pledgee enforcing the right of lien under paragraph 6 is obliged to inform the acquirer of the lien that the lien is transferred encumbered by the rights of lien. Both the pledgee enforcing the pledge under paragraph 6 and the acquirer are required to register the change in the pledgor's identity in the Register of Liens or in a special register, if the establishment of the right of lien requires registration in a special register. They are jointly and severally liable for damages caused by failure to comply with this obligation.

(8) If the claim of the preferred pledgee or any other pledgee with a priority claim is due at the time of enforcement, such pledgee may start enforcement or seek satisfaction from the proceeds of the sale of the lien.

(9) If the preferred pledgee or another pledgee with a priority claim starts enforcement under paragraph 8, they must notify the pledgee performing the enforcement. If the preferred pledgee or another pledgee with a priority claim notifies the pledgee of the commencement of enforcement before the expiration of the period under paragraph 2, the pledgee performing the enforcement cannot continue with the enforcement.

(10) A pledgee who, after the commencement of enforcement by another pledgee, satisfies the claim on behalf of the debtor for which the enforcement was initiated, acquires all the rights of a pledgee to that claim, including the priority order for satisfying the rights of lien. A pledgee who has initiated the enforcement of a right of lien cannot refuse the satisfaction of the claim by another pledgee.

§ 151mb

(1) A right of lien on a receivable also extends to overdue interest and other accessories related to the receivable.

(2) A rights of lien on a monetary receivable is effective against the debtor (extender) only if the pledgor notifies the extender in writing about the creation of the rights of lien, or if the pledgee proves the creation of the right of lien to the extender. A certificate from the Register of Liens is sufficient to prove the creation of the right of lien.

(3) Once the creation of the lien has been notified or proven to the extender, the extender is obliged to fulfil their due monetary obligation to the pledgee or another person designated

by the pledgee. The pledgee is required to notify the plaintiff in writing of the payment made by the extender.

(4) If the extender fulfils their monetary obligation to the pledgee, the pledgee is entitled to retain the payment. If the secured obligation is not duly and timely fulfilled, the pledgee is entitled to satisfy their claim from the extender's monetary payment, unless the pledge agreement specifies otherwise.

(5) If the payment made by the extender to the pledgee exceeds the secured claim, the pledgee must promptly return the excess payment to the pledgor, after deducting the necessary and reasonable costs incurred in the enforcement of the right of lien.

(6) If the extender fails to fulfil their obligation, the pledgee may also satisfy their claim through the enforcement of the right of lien according to § 151j to 151ma.

(7) If the extender is the same person as the pledgee, the provision of § 584 does not apply.

§ 151mc

(1) The pledgor is obliged to insure the lien only if this is stipulated in the security agreement.

(2) If the pledgor notifies the insurer in writing or the pledgee proves to the insurer the creation of the right of lien no later than before the payment of the insurance benefit, the insurer must pay the insurance benefit to the pledgee or another person designated by the pledgee in case of an insured event. A certificate from the Register of Liens or from a special register, if the creation of the right of lien requires registration in such a register, is sufficient to prove the creation of the right of lien. The pledgee must promptly notify the pledgor in writing of the receipt of the insurance benefit.

(3) If the insurer pays the insurance benefit to the pledgee, the pledgee is entitled to retain the payment. If the secured obligation is not duly and timely fulfilled, the pledgee is entitled to satisfy their claim from the insurance payment, unless the security agreement specifies otherwise.

(4) If the insurance benefit received by the pledgee exceeds the secured claim, the pledgee must promptly return the excess payment to the plaintiff, after deducting the necessary and reasonable costs incurred in the enforcement of the rights of lien.

§ 151md

(1) A right of lien expires:

a) upon the termination of the secured claim,
b) upon the termination of all objects, rights, or other assets to which the rights of lien applies,
c) if the pledgee waives the rights of lien,
d) upon the expiration of the time for which the rights of lien was established,
e) upon the return of the object to the pledgor, if the right of lien was created by handing over the object,
f) if the pledgor transferred the lien in regular commercial transactions as part of his business activities or if, at the time of transfer or transfer of the lien, the acquirer of the lien was acting in good faith with due diligence, believing that he was acquiring the pledge free from any rights of lien,
g) if the pledgor transferred the lien and the security agreement specifies that the pledgor may transfer the lien or part of it without encumbrance by the right of lien,
h) by any other means agreed in the security agreement or arising from a special regulation,
i) if enforcement has occurred regardless of the extent of creditor satisfaction.

(2) After the expiration of the right of lien, the right of lien will be deleted from the pledge Registry of Liens or from a special register, if the creation of the right of lien requires registration in a special register according to law. The deletion will occur on the date specified in the request for deletion of the right of lien, but no earlier than the date of the expiration of the right of lien.

(3) The pledgee is obliged to submit a request for the deletion of the right of lien without undue delay after the expiration of the right of lien. The provisions of § 151g (2) to (4) apply accordingly. If the right of lien was cancelled by a court or administrative body decision, the deletion will be carried out based on the decision of the relevant court or administrative body that issued the decision to cancel the right of lien. The pledgor is also entitled to submit the request for deletion of the right of lien; the pledgor must attach written confirmation of the fulfilment of the obligation or other documents proving the expiration of the right of lien issued by the pledgee.

(4) If the lien is a movable item and the lien was handed over to the pledgee according to the security agreement, the pledgee must return the lien to the pledgor without undue delay after the expiration of the right of lien.

§ 151me

Special Provisions on Rights of Lien to Claims from Accounts, Other Forms of Deposits, or Loan Claims

(1) A contractual right of lien to a claim from an account, deposit (excluding securities), another form of deposit, or loan claim between the persons listed in paragraph 8 arises upon the conclusion of a security agreement; a written form of the agreement is not required. The right of lien created in this way may be registered in the Register of Liens at any time during its duration; this does not apply to the creation of a contractual right of lien to a loan claim.

(2) If multiple rights of lien arise over the same lien, they will be satisfied in order of their creation, unless this law provides otherwise. If multiple rights of lien arise over the same lien and some of them are not registered in the Register of Liens, the rights of lien that are registered will be satisfied first, according to the order of their registration.

(3) If the claim secured by the right of lien is not duly and timely settled or if another event specified in the security agreement occurs, making it decisive for the enforcement of the right of lien, the pledgee may enforce the right of lien in a manner stipulated by law or agreed in the security agreement. Provisions in § 151l(1), §151m(1), (2), (3) (last sentence), (7), and (9), and §151ma(1) and (2) do not apply.

(4) The agreed method of enforcing the rights of lien may include offsetting against the secured claim or using the lien to settle the secured claim.

(5) If agreed in the security agreement, the pledgee is authorized to dispose of the lien within the limits of the agreement, acting in the name of the pledgor and for his account. If the pledgee has transferred the lien, the right of lien does not apply to the transferee.

(6) If the pledgee disposed of the lien before the event decisive for the enforcement of the right of lien occurred, they are required, at the latest by the last day of the maturity of the secured claim, to obtain for the pledgor and for their account an equivalent lien to replace the original lien, unless otherwise agreed with the pledgor. The assessment of the priority of the right of lien relating to the equivalent lien depends on the time of creation or registration of the right of lien. The equivalent lien, which replaces the original lien, is subject to the same right of lien. An equivalent lien is defined, unless otherwise agreed by the parties, as a claim from an account or other form of deposit for the same amount in the same currency against the same debtor. If the pledgee has disposed of the lien by creating a right

of lien on it, the entry of the equivalent lien into the place of the original lien transfers the original lien from the pledgor to the pledgee.

(7) If agreed in the security agreement, instead of the procedure in paragraph 6, the pledgee may offset the equivalent lien against the secured claim or use the equivalent lien to settle it.

(8) The provisions of paragraphs 1 to 7 apply only if the security agreement is concluded between the following parties:

a) public authorities of a European Union member state or other states that are parties to the Agreement on the European Economic Area,
b) the National Bank of Slovakia or the central bank of another state, the European Central Bank, the International Monetary Fund, the European Investment Bank, an international development bank, and the Bank for International Settlements,
c) a bank, foreign bank, securities dealer, foreign securities dealer, insurance company, foreign insurance company, insurance company from another member state, investment management company, foreign investment management company, electronic money institution, foreign electronic money institution, collective investment entity, and foreign collective investment entity,
d) any person not listed in point c) subject to prudent supervision, whose main business activity is one of the activities that a bank can perform under special regulations, or a foreign person with a similar business activity,
e) any person not listed in point c) subject to prudent supervision, whose main business activity is acquiring shares in assets under special regulations, or a foreign person with a similar business activity,
f) a central securities depository, payment system operator, clearing agent, clearing house, common representative of bondholders or other debt securities holders, or a foreign entity with a similar business activity, including entities whose activities involve the clearing and settlement of financial instrument trades or the activities of a central counterparty, even if not a foreign central depository,
g) any other person not listed in points a) to f), if the following conditions are met:
1. the other party to the agreement is one of the people listed in points a) to d) or f),
2. the pledge secures a claim from a final settlement agreement of profits and losses or a claim from transactions whose settlement may be subject to a final settlement agreement under special regulations.

(9) The provisions of paragraphs 1 to 8 do not apply to claims from consumer loans provided to a consumer under a special law, unless the security agreement involves a party listed in paragraph 8(b).

Right of Retention

§ 151s

(1) A person obliged to return movable property may retain it to secure their outstanding monetary claim against the person to whom they are otherwise required to return the property. However, property cannot be withheld if it was taken arbitrarily or deceitfully.

(2) The right of retention does not apply if, upon the delivery of the property, the entitled person instructed that the property be handled in a way that is incompatible with the exercise of the right of retention.

(3) If bankruptcy is declared or insolvency is determined during the enforcement of a decision, the creditor has a right of retention to secure a claim that is still unpaid, regardless of whether the creditor was instructed to handle the property in a way incompatible with the exercise of the right of retention.

(4) The creditor is obliged to notify the debtor without undue delay about the retention of the property and the reasons for it.

§ 151t

Regarding the safekeeping of the retained property and the costs associated with it, the person retaining the property is in the same position as a pledgee concerning the lien.

§ 151u

Based on the right of retention, the creditor is entitled to priority satisfaction from the proceeds of the retained property over other creditors, including pledgees, when enforcing a judicial decision.

§ 151v

The right of retention terminates when the secured claim is satisfied or when adequate security is provided.

SECTION E : RELEVANT COURT DECISIONS

Right of Lien – Existence of a Claim

Supreme Court of the Czech Republic, Case No. 21 Cdo 1918/2010: The law requires that the secured claim be specified in the security agreement for its validity, but it does not require the actual emergence of such a claim. Therefore, a security agreement is valid even if the secured claim never arises, if the secured claim ceases to exist before the conclusion of the security agreement, if the secured claim that is supposed to arise in the future does not materialize, if a condition upon which the emergence of the secured claim depends is not fulfilled, etc. The right of lien is an accessory right. This means that the right of lien validly arises based on a valid security agreement only if the claim it is meant to secure also validly arises. If the claim for which the right of lien was created does not validly arise (e.g., because the contract from which the claim was supposed to arise was not concluded, or the contract is invalid, etc.), the right of lien does not exist, even if the security agreement itself is flawless. Therefore, the absence of a claim to be secured by the right of lien does not render the security agreement invalid; rather, it results in the right of lien not arising under the security agreement—even if the agreement is a valid legal act and, in the case of real estate, the right of lien was entered into the land register.

Rc 70/2006: The right of lien arises (if all other conditions set by law are met) even if it secures only part of the claim.

Rc 58/2008: The right of lien, under § 153(2) of the Civil Code, does not apply to a contractual penalty agreed for the breach of an obligation arising from the agreement establishing the secured claim.

Right of Lien – Other

R 61/2009: An agreement whose actual purpose – regardless of its formal designation – is to establish a so-called forfeited lien (satisfaction of the pledgee's claim by transferring ownership of the collateral to the pledgee) contradicts the purpose and intent of the right of lien, making such an agreement void under § 39 of the Civil Code due to its conflict with the law's purpose. The right of lien serves to secure a claim and its accessories by entitling the pledgee, in the event of their proper and timely non-fulfillment, to seek satisfaction from the lien. The right of lien thus allows the pledgee to achieve satisfaction of their claim if the

debtor fails to properly and timely fulfill it, specifically from the proceeds of the collateral's sale. Consequently, a purchase agreement concluded with the intent that the creditor's claim be satisfied by the transfer of ownership of the lien to the creditor (a forfeited pledge) is invalid.

R 89/2000: If a creditor's claim is satisfied from the collateral of a pledgor who is not identical to the debtor, the pledgor may seek compensation from the debtor, applying the analogy under § 550 of the Civil Code.

Supreme Court of the Slovak Republic, Case No. 7 Cdo 222/2012: A breach by the pledgee of the duty under § 151m(8) of the Civil Code to act with due care in selling the collateral, ensuring the collateral is sold for a price at which an identical or comparable item is usually sold under comparable conditions at the time and place of sale, does not result in the invalidity of the sales contract for the collateral under § 39 of the Civil Code, but it may – if other conditions are met – lead to liability for damages under § 420 of the Civil Code.

Right of Retention

Supreme Court of the Slovak Republic, Case No. 6 Obdo 91/2007: The right of retention is an emergency security instrument that is not pre-agreed in the contract. The right of retention serves as a means of securing an obligation, whereby the party obliged to return an object may retain it to secure their claim until it is satisfied. Retention constitutes a unilateral legal act of the creditor. Therefore, the claimant's actions cannot be considered arbitrary. The purpose of the right of retention is to compel the debtor to voluntarily fulfill their obligation to the creditor under the threat that the creditor will exercise their right and retain the debtor's property in their possession. By retaining the debtor's property, the creditor creates a more favorable position for satisfying their due claim.

Supreme Court of the Slovak Republic, Case No. 21Cdo 694/2006: Given that a vehicle registration certificate is objectively incapable of fulfilling the satisfaction function of the right of retention and is not considered an (independent) object in the legal sense, it cannot be retained to secure a claim under § 151s of the Civil Code. The creditor does not acquire a right of retention in favor of their claim by merely retaining the certificate from the owner.

R 24/2005: The retention of a motor vehicle by a party who gained possession of it through towing in violation of the conditions stipulated in § 40 of Act No. 315/1996 Coll. on Road Traffic, as amended, constitutes an arbitrary act under § 151s(1) of the Civil Code if the person was aware that the towing was contrary to the aforementioned conditions. Subsequently conditioning the release of such a vehicle to the owner upon payment of towing fees, notarial acknowledgment of debt, or the provision of security constitutes an infringement on the freedom of decision-making by exploiting distress or dependency, thus fulfilling the elements of the offense of coercion under § 237(1) of the Penal Code.

CHAPTER 8

EASEMENTS

SECTION A : BRIEF SUMMARY

Easements are one of the rights to foreign things regulated by the Civil Code in §s 151n to 151p. They constitute a real property restriction on the exercise of ownership rights for the benefit of an entitled party.
The subject of easements may only be immovable properties or parts thereof. According to the Civil Code, immovable properties include land and buildings attached to the ground by a permanent foundation. Movable properties cannot be burdened by an easement.
We distinguish between the following parties to an Easement:

1. **Obligor of the Easement**
    - Always the owner (or co-owner) of the immovable property burdened by the easement,
    - The obligor cannot be the owner of a movable property.
2. **Entitled Party of the Easement**
    - The individual entitled to the right corresponding to the easement.
    - This can be either: (i) **The owner of a specific immovable property**, where the easement is established for the benefit of the owner of another immovable property, (ii) **A specific individual** who does not need to be the owner of immovable property

It is necessary to distinguish between an easement and the right corresponding to an easement. An easement is a burden, meaning it is always associated with the obligor, who is the owner of the immovable property burdened by the easement. In contrast, the right corresponding to an easement is an entitlement associated with the entitled party (the person who benefits from the easement).
Apart from the person entitled by the easement, tenants of the immovable property benefiting from the easement or other individuals (e.g., visitors) may utilize the right, but only as a derivative right from the entitled person. Such individuals, however, do not possess the rights corresponding to the easement (R 14/1988).

Types of Easements
The Civil Code recognizes two types of easements:

1. **Easement in rem:**
    - Established for the benefit of the owner of a specific immovable property, the right corresponding to the easement is tied to the property, not an individual,
    - The easement burdens the owner of one immovable property for the benefit of the owner of another (entitled party),
    - It is unlimited in its duration,
    - A change in ownership of the property benefiting from or burdened by the easement does not affect its existence. Similarly, a change in ownership of the immovable property burdened by the easement does not affect the continued existence of the easement,

- Such easements serve to facilitate the more beneficial use of the property owned by the entitled party (e.g., the right of passage across a neighboring lot).

2. **Easement in personam:**
   - Established for the benefit of a specific individual without identifying them as the owner of an immovable property,
   - The entitled party is always a specific person (not the owner of a particular immovable property),
   - A typical example is the right to lifelong use of an apartment,
   - Such easements are non-transferable and time-limited, terminating upon the death of the entitled individual.

Content of the Easement

The obligor of the easement may be restricted in various ways due to the easement. Restrictions may involve the obligor: (i) **Performing specific actions** (e.g., unlocking a gate at certain times, caring for the entitled party, providing meals), (ii) **Omitting specific actions** (e.g., refraining from constructing a building even if construction regulations permit it), (iii) **Tolerating certain actions** (e.g., allowing passage across their land). The content of the easement may combine multiple obligations but cannot include an obligation to provide something.

To establish an easement, it must involve recurring activities (e.g., the right to cross a plot) or continuous activities (e.g., the right to run electrical cables through a plot).

The entitled party is also obliged to bear reasonable costs for maintaining and repairing the property they utilize. However, this does not extend to improvements. If both the entitled and obligor use the property, costs are borne by the obligor proportionally to their usage (§ 151n(3) of the Civil Code). Different arrangements may be agreed upon, such as the entitled party covering all costs.

Establishment of Easements

§ 1510 of the Civil Code governs the establishment of easements. Easements can only arise based on legal grounds explicitly enumerated in the provisions:

a) **By Contract**
   - Must be in written form; otherwise, it is null and void (§ 40(1) of the Civil Code),
   - Only the owner of the property to be burdened can conclude such a contract.
   - For co-owned land, all co-owners must be parties to the contract since it involves disposition, not management (§ 139(2) of the Civil Code),
   - The contract must precisely identify the entitled party (either as the owner of a property benefiting from the easement or as a specific person). The entitled party of an easement may either be identified as the owner of a specific immovable property (easement in rem) or as a specific individual (whether a natural or legal person) without reference to any ownership relationship with a property (easement in personam),
   - Easements may be established in favor of a third party (R 50/1985),
   - Furthermore, precise identification of the encumbered property is required,
   - The contract must clearly define the content (e.g., the right to lifelong use of an apartment) and extent (e.g. which parts of the apartment are comprised in the right of easement) of the easement,

- Easements may be established for a definite or indefinite period. If the duration is unspecified, there is an irrebuttable presumption that it is perpetual,
- Easements can be established for consideration or gratuitously. Consideration may be a lump sum or periodic payments,
- A contract serves as the title for establishing an easement, but its creation also requires registration in the Land Register. The process of easement establishment is biphasic,
- The obligor's signatures must be officially verified (§ 42(3) of the Land Registry Act),

b) By Will in Combination with Probate Proceedings

- A will is a unilateral legal act disposing of the testator's property upon death,
- Easements arise upon the moment of the testator's death and may be in rem or in personam.

c) By Approved Agreement of Heirs

- An easement may be established based on an agreement on the settlement of inheritance only in favor of a person who is a participant in the inheritance proceedings (R 50/1985),
- The court will approve the agreement of the heirs if it does not conflict with the law or good morals.

d) By a Decision of the Competent Authority

- A court may establish an easement in specific cases outlined in the Civil Code, such as:
    1) **Termination and settlement of co-ownership** (§ 142(3) of the Civil Code) – The court may establish an easement only within proceedings for the termination and settlement of co-ownership if the co-ownership is being settled by dividing the jointly owned property (R 1/1989). In such a case, the court may also establish an easement if it is intended to serve another separate immovable property for which access was previously ensured by a right arising from the co-ownership relationship (R 19/2006).
    2) **Legalizing an unauthorized building** (§ 135c(3) of the Civil Code) - The court may establish an easement on the land where an unauthorized building has been erected, in favor of the owner of the unauthorized building, requiring the landowner to tolerate the use of a portion of the land by the owner of the unauthorized building.
    3) **Ensuring access to a building** (§ 1510(3) of the Civil Code) - This procedure is applicable in cases where the owner of a building is not also the owner of the adjacent land, and access to the building cannot be otherwise ensured. In such cases, the court may only establish a right of necessary passage, meaning the court cannot analogously establish any other type of easement. The court may establish the easement only in favor of the owner of the building, not in favor of the owner of the land. The easement is established on the adjacent land, which is not limited solely to the immediately adjoining plot of land but includes all plots that the owner of the building must cross to access their building from a public road or vice versa.

The court may proceed under § 1510(3) of the Civil Code only if access to the building cannot be secured in any other way. This condition is not fulfilled if the owner of the adjacent land has offered the owner of the building (i) the entire plot or a part of the adjacent plot for sale, but the owner of the building did not accept the offer; (ii) the establishment of an easement by contract for the usual price; or (iii) if the owner of the building can establish access to the public road by creating a new entrance. The right of passage cannot be established if, considering the circumstances of the case, it would not be reasonable to require the owner of the adjacent plot to tolerate the passage (judgment of the Supreme Court of the Czech Republic, Case No. 22 Cdo 2854/2010). Conversely, the court is authorized to establish an easement involving the right of passage even if the owner of the adjacent plot offered access to the building's owner solely based on a contractual relationship, such as a lease agreement (R 51/2022).

- In all three cases mentioned above, the court establishes an easement in rem, and such easements are always perpetual (R 50/1985),
- Easements may also be established by competent administrative authorities, but only based on specific public law regulations. Such a regulation is, for example, Act on Expropriation of Land and Buildings.

e) By Law

- Easements may arise ex lege in cases of public interest (e.g., under specific public law regulations),
- Typically, specific public law regulations govern various situations where an easement arises ex lege, with the reason for the establishment of such easements being the public interest,
- An easement arises by law, for example, under § 23 of Act on ownership of flats, § 4 of Act on Railways, or § 11 of Act on Energy.

f) By Prescription

- The same conditions for prescription of an easement apply as for immovable property (see the chapter on the acquisition of ownership rights),
- An easement may arise through prescription as either an easement in rem or an easement in personam,
- It is not possible to acquire the right corresponding to an easement through prescription if the right is exercised solely based on consent or a contractual obligation, i.e., if real property effects do not arise.

Termination of Easements

The termination of easements is regulated by § 151p of the Civil Code and may occur due to various legal circumstances:

a) By Written Agreement

- Easements may be terminated by a written agreement between the entitled and obligor parties, provided it is registered in the Land Register. Without registration, the termination is not legally effective,
- the obligor and the entitled might terminate any easement contractually (R 14/1988).

b) By Court Decision

- This option is regulated by §151p(3) of the Civil Code,

- A court may restrict or terminate an easement if changes in circumstances create a gross disproportion between the burden on the obligor and the benefit to the entitled party,
- Changes in circumstances may be caused by various factors of either an objective or subjective nature, and such changes may affect both the burdened property and the dominant property, as well as the obligor or the entitled party of the easement,
- The court may impose reasonable compensation as a condition for termination, either monetary or non-monetary (R 110/1967; R 65/1972). However, the court cannot establish a new easement in cases under § 151p(3), first sentence,
- If continued performance of the easement is unjust due to significant changes, the court may replace the easement with a monetary compensation, allowing the entitled party to procure an equivalent benefit.

c) By Law

- This situation is regulated, for instance, under § 151p(2) of the Civil Code,
- An easement terminates directly by law if permanent changes occur that render the property incapable of serving the needs of the entitled party or the more beneficial use of their immovable property,
- The permanent change must always affect the immovable property burdened by the easement,
- A permanent change includes, for example, the destruction of the immovable property burdened by the easement. Conversely, actions such as plowing or fencing a plot serving as the right of passage do not, by themselves, result in the termination of the easement by law (R 32/1999),
- Changes in circumstances affecting the entitled or obligor parties, which result in the easement not being exercised for subjective reasons, do not lead to its termination as long as the objective exercise of these rights remains possible,
- Temporary impossibility of exercising the right does not terminate the easement.
- An easement may also terminate by law through the merger of rights and obligations under § 584 of the Civil Code, among other reasons.

d) By Other Legal Facts

- Examples include the expiration of the period for which the easement was established, the fulfillment of a resolutory condition, or an agreement to waive the right.

The prescription of an easement does not cause its termination. However, in the case of prescription, the obligor may file a lawsuit against the entitled party, seeking an order to prevent the entitled party from exercising the rights corresponding to the easement (Rc 60/2008).

SECTION B : TEORETICAL QUESTIONS

1. What is an easement? Where are easements regulated in the Civil Code?
2. What can be the subject of easements?
3. List the parties to an easement.
4. What types of easements do we recognize? Provide the differences.

5. What can be the content of an easement?
6. Is the entitled party obliged to contribute to the payment of all costs related to modifications of the burdened property?
7. On what legal grounds can an easement be established?
8. Are the grounds for the establishment of easements exhaustively listed in the law?
9. Describe the process of establishing an easement based on a contract.
10. Must a contract for the establishment of an easement be concluded in writing? Provide additional content requirements for such a contract.
11. Can a court establish an easement by its decision? If so, under what conditions?
12. Can a court establish an easement in personam by its decision?
13. Can a court establish a time-limited easement by its decision?
14. State the period for the prescription of an easement.
15. On what legal grounds can an easement be terminated?
16. Are the grounds for the termination of an easement exhaustively listed in the law?
17. Can a court decide on the termination of an easement? If so, specify the conditions.
18. Can a court modify the content of an easement by its decision? If so, specify the conditions.
19. Comment on the termination of an easement by law.
20. Can the right corresponding to an easement become time-barred?

SECTION C : PRACTICAL CASES

Case No 1

David has been crossing the adjacent property owned by Romana to access his building for 12 years. One day, David and Romana have an argument. Subsequently, Romana forbids David from crossing her property.

Give the answers to the following questions:

1. Is David entitled to cross the property without further conditions?
2. Could David have acquired the right corresponding to an easement by prescription in this case??
3. Could David and Romana agree to establish an easement by agreement?

Case No 2

On October 10, 2022, Andrej and Marián concluded a contract for the establishment of an easement, the subject of which was the right of lifelong use of a family house owned by Mr. Andrej. The easement was registered in the real Land Register on November 5, 2022.

Give the answers to the following questions:

1. Was the easement established in rem or in personam in this case? Justify your answer.
2. Must the contract for the establishment of an easement be concluded in writing? If so, state the legal consequences of failing to comply with the written form.
3. At what moment was the easement established in this case?
4. State the date of creation of the easement.

Case No 3

Mr. Peter, born in 1940, donated his house to his granddaughter Petronela under the condition that he would use the rooms on the upper floor for the rest of his life. An easement was thus established in favor of Mr. Peter and registered in the Land Register. A few months later, Petronela became pregnant and gave birth to triplets. At the same

time, Mr. Peter's health rapidly deteriorated, and he began suffering from psychological disorders that frequently disturbed his granddaughter and all the occupants of the house.
Give the answers to the following questions:

1. Advise Ms. Petronela on the appropriate course of action in this case.
2. Explain the differences between the termination of an easement under § 151p (2) and (3) of the Civil Code.
3. Petronela and her entire family tragically died in a car accident. The only surviving relative was Mr. Peter, who became Petronela's sole legal heir. Does this situation affect the further existence of the easement?

Case No 4

Dominik and Sabina, after getting married, decided to become independent and build a family house. They found a suitable plot of land at a favorable price; however, there was one catch: there was no public road leading to the plot, although its construction had been planned for a long time and was supposed to start soon. The only somewhat suitable road for vehicles led through an adjacent property. However, the owner of the property was adamant—he agreed to grant the right of passage, but only for two years. The couple agreed and concluded a contract establishing an easement. After two years, when the family house was almost completed, the access road had still not been built, and the neighbor refused to continue allowing the right of passage, arguing that it had expired. The couple claimed the following: the Civil Code does not regulate the expiration of time as one of the reasons for the termination of an easement, and the only reason for the termination of the easement in this case would be a change in circumstances under § 151p (3) of the Civil Code. Since the access road had not been built, there was no change in circumstances, and it is not possible to consider the application of this provision.
Give the answers to the following questions:

1. Has the easement been terminated in this case?
2. Indicate how the termination of the easement could have been appropriately regulated in this case.
3. Advise the newlyweds on how they should proceed.

SECTION D : RELEVANT PROVISIONS OF ACT NO. 40/1964 CALL. CIVIL CODE, AS AMENDED

Easements

§ 151n

(1) Easements restrict the owner of real property in favor of another, requiring them to endure, refrain from, or perform certain actions. The rights corresponding to easements are either tied to the ownership of a specific real property or belong to a specific person.

(2) Easements associated with the ownership of real property pass to the purchaser of the property.

(3) Unless otherwise agreed by the parties, the person entitled to use someone else's property under the right corresponding to the easement is obliged to bear the reasonable costs for its preservation and repair; however, if the property is also used by its owner, the owner is obliged to bear these costs in proportion to the extent of the joint use.

§ 1510

(1) Easements arise from a written contract, a will in connection with the results of inheritance proceedings, an agreement approved by heirs, a decision by the competent authority, or by law. The right corresponding to an easement may also be acquired through the exercise of rights (by prescription); provisions of § 134 apply accordingly. A registration in the land register is required to acquire the right corresponding to an easement.

(2) A easement may be established by contract by the owner of the real property, unless a special law grants this right to other persons.

(3) If the owner of a building is not also the owner of the adjacent land and access to the building cannot be ensured otherwise, the court may, upon the request of the building owner, establish a easement in favor of the building owner, consisting of the right of way over the adjacent land.

§ 151p

(1) Easements terminate by a decision of the competent authority or by law. Termination of the right corresponding to easement by contract requires registration in the land register.

(2) Easement will cease if permanent changes occur such that the property can no longer serve the needs of the entitled person or the more beneficial use of their real property; temporary impossibility of exercising the right does not terminate the easement.

(3) If changes in circumstances result in a significant imbalance between the easement and the benefit to the entitled person, the court may decide to limit or cancel the easement for fair compensation. If, due to changes in circumstances, it is no longer justifiable to insist on the real obligation, the court may decide that a monetary payment replaces the real obligation.

(4) If the right corresponding to the easement belongs to a specific person, the easement terminates upon their death or cessation.

SECTION E : RELEVANT COURT DECISIONS

Establishment of an Easement by a Court Decision

R 50/1985: Easements established by a court decisions are always connected with the ownership of a specific immovable property or with the personal use of land. They are thus tied to specific immovable properties and transfer with the ownership of such properties (or with the right of personal use of the land) to their acquirer. They are not limited to specific individuals. Due to their in rem nature, they are not time-limited, and the court cannot predetermine their termination (e.g., by linking them to the fulfillment of a specific condition). Time-limited easements are only those where the corresponding rights are tied to a specific individual.

R 19/2006: The court may establish an easement in proceedings for the termination of co-ownership even if the easement is intended to serve another separate immovable property, to which access was previously ensured by a right arising from the co-ownership relationship.

R 52/2022: When assessing the justification of a claim for the establishment of an easement consisting of the right of way for the owner of a building (the plaintiff) across the adjacent land owned by the defendant, it should be considered that the case where "the owner's access to the building cannot be secured otherwise" does not apply if the defendant has offered the plaintiff the transfer of ownership of the land (or its part) or the contractual establishment of

an in rem easement consisting of the right of way. However, if the defendant has only offered the plaintiff the establishment of the right of way through a lease agreement, the case falls under § 1510(3) of the Civil Code.

Termination of an Easement

R 32/1999: Plowing or fencing a plot of land used for the exercise of an easement right of passage does not, by itself, result in the termination of the easement by operation of law.

Judgment of the Supreme Court of the Czech Republic, Case No. 22Cdo 346/2006: According to § 151p(2) of the Civil Code, an easement is terminated by operation of law due to the changes specified therein. However, if the changes specified in § 151p(3) of the Civil Code occur (including the expiration of the easement along with a raised objection of expiration), the court may be requested to terminate the easement. A comparison of both provisions makes it clear that not every change results in the termination of the easement by operation of law. The easement terminates when such permanent changes occur that the property can no longer serve the needs of the entitled person or the more beneficial use of their immovable property, provided that its exercise becomes impossible due to permanent (factual or legal) changes. However, if the exercise of the easement remains possible but becomes purposeless, or if another change in circumstances results in a gross disproportion between the easement and the benefit to the entitled party, the court may, upon request, terminate or limit the easement in exchange for compensation. In the case of a time-barred right, it may be considered, in light of § 3(1) of the Civil Code, to deny compensation.

R 37/1985: An easement is terminated at the moment when the rights and obligations arising from it merge in a single person.

Others

R 14/1988: The right corresponding to an easement (e.g., the right of passage) may also be utilized by individuals other than the person for whose benefit the easement was established, such as visitors of the entitled party. However, these individuals do not exercise the right of passage based on the easement itself; rather, their right is derived from the entitled party's right, for whose benefit the easement was established. The content of the right of passage usually implies that the owner of the burdened property is obligated to tolerate passage not only by the owner of the neighboring property but also by those who visit them. This does not, however, establish an easement for these third parties in the form of a right of passage; rather, it defines the scope of obligations of the owner of the burdened property. Furthermore, it should be noted in this context that the entitled and obligated parties to an easement may mutually agree to terminate virtually any easement by contract. Easements established by a decision of a competent authority (e.g., a court decision), by contract, or by prescription may thus be terminated in this way.

Judgment of the Supreme Court of the Slovak Republic, Case No. 5Cdo 39/99: A prerequisite for the good faith required for the acquisition of the right corresponding to an easement – the right of passage and driving across another's land – by prescription is the belief of the person crossing the land that they are exercising the right corresponding to the easement lawfully for themselves as the owner of the adjacent (dominant) property (rightfully possessing it).

Judgment of the Supreme Court of the Czech Republic, Case No. 22Cdo 431/2006: If the right corresponding to an easement is time-barred, the obligor of the easement may successfully file a lawsuit to compel the entitled party to refrain from exercising such a right.

CHAPTER 9

INHERITANCE LAW

THE CONCEPT AND GENERAL CONDITIONS OF INHERITANCE

SECTION A : BRIEF SUMMARY

Inheritance law constitutes a significant area of private law, regulating the transfer of property rights and obligations from a deceased person to his heirs.
The primary objective of inheritance law is to maintain the continuity of property relations upon the death of an individual.
The death of a natural person not only terminates his legal personality but also raises the question of what becomes of this rights, obligations, and property. Accordingly, inheritance law provides a mechanism by which the rights and obligations of the deceased are transferred to his heirs.

Inheritance law is an extremely complex of legal institutions that goes beyond property rights and obligations, regulating issues relating to personal and family relations, the law of obligations and procedural law (in particular notarial proceedings).

PRINCIPLES OF SUCCESSION
The principles of succession, which are neither law nor rules written, represent the fundamental rules and legal doctrines that guide the process of transferring the property, rights and obligations of a deceased person to his heirs. These principles form the theoretical and legal grounds of inheritance law and serve as a framework for the application of specific provisions in succession proceedings.
One of the main principles of the law of succession is the **respect of testamentary freedom of the testator.** This freedom allows him to decide who should inherit his property, to what extent and under what circumstances. The testamentary freedom is an expression of the autonomy of the individual in private law and is an effective instrument for the protection of his personal interests and relationships. However, this autonomy is limited, in particularly by the principle of the protection of forced heirs. This principle ensures that the children of the testator (forced heirs) must receive a certain minimum share of the inheritance, even if the testator excludes them in the will. **This combines respect for the testator's will with the protection of family and social values.**

The other main principles of inheritance law are:
- **the principle of delation:** the principle assumes that the heir is legally capable of inheriting at the moment of the decedent's death,
- **the principle of the universality of succession:** the principle means that entire property of the deceased (assets and liabilities) is transferred to the heirs as a whole,
- **the principle of representation –** this principle applies within the 1st and 3rd inheritance group and means that if an entitled heir doesn't inherit his share (a child of the deceased in the 1st inheritance group or sibling in the 3rd inheritance group) has predeceased the decedent or cannot inherit (e.g. due to disinheritance,

inheritance incapability), their share passes to their descendants (within the 3rd inheritance group its limited only to the nephews or nieces),

- **the principle of accretion:** this principle applies within the 2nd, 3dt and 4th inheritance groups and means that when an entitled heir doesn't inherit his share this free share is distributed among the remaining heirs of the same inheritance group.

BASIC TERMS

Deceased person – a person who has died and after whom one inherits.

Heir – is a person who is entitled to inherit the property of a deceased individual under the will or **intestate succession.**

Illegitimate heir - is an heir who acquired the inheritance without a legal basis (either they should not have inherited at all, or they acquired more than he was entitled to).

Legitimate heir - is an heir, who was entitled to inherit (based on one of the inheritance titles) but did not inherit because he was not included in the inheritance proceedings (e.g. an unknown heir or an heir whose location was unknown).

Putative heir - is a person who is supposed to inherit from a deceased person but does not necessarily have a guaranteed the inheritance until it is confirmed (e.g. is disinherited, refuses inheritance, is incapable to inherit) .

Succession (inheritance) - legal process through which ownership of the property, rights, or obligations passes from a deceased person to his heirs.

Title of inheritance - legal ground of inheritance. According to Art. 461 of the Civil Code, inheritance is acquired by intestate succession, will or by both. Inheritance by will has priority under the Slovak Civil Code.

Inheritance (Heritage) – is the property that belonged to the testator before his death. The Civil Code does not contain any definition of inheritance. Inheritance includes things (tangible and intangible), rights (receivables, rights in rem, rights of obligation), and other property values.

Deduction *(odúmrť)* - is the property of the testator that passes to the state for the reasons that (i) there has been no testamentary or intestate heir available, or (ii) that each heir has refused inheritance.

In the case of a death of testator, the transfer of following 3 types of rights and obligations are recognized :

1. Rights **that disappear by the death of the testator and do not pass to the heirs**, which are:
    - the personality rights referred to in § 11 of the Civil Code (the right to protection of one's personality, in particular life and health, civil honour and human dignity, as well as privacy, one's name and expressions of one's personal character),
    - certain rights and obligations arising from a family law relationships (maintenance, rights and obligations of spouses arising from marriage, etc.),
    - the rights and obligations under the power of attorney, that cease if the principal dies,
    - the rights of which the performance is linked to the person of the testator (pain and suffering, impairment of social life, does not pass to the heirs, even if it has been awarded by a final court decision but has not yet been paid R 31/1973),

- certain rights and obligations under employment law (termination of employment, obligations under an employment contract, etc.),
- obligations, which the testator had to perform personally.

2. Rights and obligations **that are transferred otherwise than by inheritance**:
- transfer of the lease of a flat not shared by the spouses after the death of the tenant (Art.706 CC), transfer of the lease of a flat shared by the spouses after the death of one of the spouses (Art.707 CC),
- certain financial claims arising out of an employment relationship,
- claims of the testator arising from restitution regulations, rights to insurance benefits from personal insurance (Art. 817 CC),
- financial claims under sickness, pension, accident, guarantee and unemployment insurance.

3. Rights and obligations **that pass to the testator's heirs**:
- the heirs acquire, in particular, ownership rights to the testator's property, intangible assets, claims and other assets of the testator, as well as co-ownership interests in the testator's estate or in various forms of deposits, but they are also liable for the testator's debts and obligations (but only up to the amount of the acquired inheritance)

CONDITIONS OF SUCCESSION

The succession is subject to the following conditions:

a) Death of a natural person
- the death of a natural person is an objective legal fact to which the creation, modification and termination of the civil law relations in which that person participated are linked,
- the death, it's time and cause are declared by:
  - **(i)** a medical examination of the deceased, the doctor, after examining the deceased, issues a certificate of examination, on the basis of which an entry is made in the register of deaths at the competent civil registry office, or
  - **(ii)** if it is not possible to determine death in the above manner and it is clear from the circumstances that the person is no longer alive, the court shall declare the person dead. This means that death is established by other means of proof, i.e. not by examination of the dead body and the civil registry document (death certificate), or
  - **(iii)** if it is probable that an individual is dead, but it's not certain as in the case described above, the court declares the person missing, taking into account all the circumstances. The minimum period for declaration of the person missing is one year, after this period the court declares the person death (stating the probable date of the death based on all evidence).

b) Existence of inheritance
- Inheritance is the ownership of the rights and obligations which do not cease on the death of the testator and do not pass to other subjects by means of other legal provisions, includes movable/ immovable property, rights in rem , debts. The existence of an inheritance is a basic requirement for the initiation of any succession proceeding.

c) Hereditary title

- **According to the Civil Code there are 2 hereditary titles:**
  1) **Intestate succession** (inheritance by legal groups) – means transfer of inheritance according to the legal inheritance groups/ hereditary groups.
  2) **Testamentary succession** – (inheritance by will) - is succession based on the will of the testator. Preference is given upon the testamentary inheritance.
- the combination of both titles is acceptable, in the cases that the will does not cover the whole part of the inheritance, or if the will is partially invalid.

d) Inheritance capability

- In order for succession to take place, there must be a capable heir, which can be a natural person or a legal person (a legal person only in the case of a will).
- **An heir (natural person) is qualified to inherit if:**
  (a) has acquired legal capacity (ability to hold rights and obligations), which is acquired at the moment of birth.
  (b) has not been disinherited (Art. 469a).
  c) does not have a ground of incapacity to inherit (Art. 469 CC).
- **A legal person** is entitled to inherit if has a legal capacity (legal person exists at the time of the testator's death).

DISINHERITANCE (§ 469A CIVIL CODE)

The law does not contain a definition of disinheritance, disinheritance can be characterized as a single legal action of the testator, by which he/she withdraws the inheritance from a descendant as an intestate heir, which he/she may do in whole or in part. The reason for the disinheritance must exist at the time of the disinheritance (R 10/2021).

According to the law, only a descendant may be disinherited for the reasons specified in the law. Disinheritance without a reason or for a reason other than that provided for in the law is absolutely null and void (R 50/1985).

Disinheritance must meet **i) formal** and **ii) substantive** requirements.

(i) By the formal requirements we mean the form in which disinheritance must be executed. By law, a disinheritance must meet the same formalities that a will must meet (written form, legal grounds, identification of disinherited heir, stating the reasons for disinheritance, signature, dated, witnessed or notarized, when legally required) . In a deed of disinheritance, the testator may specify that the consequences of the disinheritance extend to the descendants of the disinherited heir.

(ii) The material requirements of the disinheritance are the specification of the specific grounds for disinheritance, which are exhaustively defined in Article 469a(1) of the Civil Code, the extension or any modification of these grounds would be sanctioned by the absolute nullity of disinheritance.

Concerning the individual reasons for disinheritance under § 469a(1):

a) the descendant, contrary to good morals, has failed to provide the testator with the necessary assistance in sickness, old age or other serious cases.
For this ground of disinheritance to be fulfilled, it is necessary that the testator objectively needs assistance in sickness, old age or other serious cases and, at the

same time, that the descendant has failed to provide such necessary assistance and that this conduct is contrary to good morals.

According to the court decisions:

- not only the need for assistance on the part of the testator is being assessed, but also whether he was able by himself to provide it through other family members or on his own,
- if the testator needed help but refused it on principle, the ground for disinheritance would not be fulfilled and the disinheritance would be null and void,
- it is also examined on the part of the disinherited descendant whether he or she had the objective possibility of providing assistance to the testator,
- whether that ground of disinheritance has been met, a case-by-case examination is necessary in the light of the real possibilities of the descendant to provide assistance.

b) if the descendant does not consistently show the true interest in the testator that he or she is supposed to demonstrate as a descendant.

To meet this ground for disinheritance, it is required that the descendant continuously fails to demonstrate genuine interest in the testator. This means that the descendant must entirely refrain from visiting the testator, maintaining any form of contact with them, or showing any concern for their well-being.

According to the court decisions:

- The requirement of genuine interest must be assessed primarily on the basis of the actual intentions of the child. Such intentions may be evidenced by behavior which only pretends to be interested in the testator but does not correspond to the correct and expected behavior of the child towards the parent (judgment of the Supreme Court of the Czech Republic, Case No. 21 Cdo 688/2006).
- It must also be determined whether the descendant had an objective ability to demonstrate genuine interest in the testator. For instance, a descendant cannot reasonably be expected to demonstrate genuine interest if the testator themselves expressed no desire to engage with the descendant or maintain typical familial relationships (Case Law Report No. 23/1998).

c) if the descendant has been convicted of an intentional criminal offense and sentenced to a term of imprisonment of at least one year

To meet this requirement for disinheritance, it is required that the descendant has been legally convicted of an intentional criminal offense and sentenced to imprisonment for a term of at least one year.

d) if the descendant continuously leads a dissolute life

To fulfil this ground for disinheritance, it is required that the descendant of the testator continuously leads a dissolute life.

According to the court decisions:

- A continuous period of dissolute living is required, meaning that it cannot merely be a one-time occurrence of such behavior. Additionally, there must be no expectation of a return to a normal way of life for the descendant, as generally perceived by the majority of society (Case Report No. 66/2012).
- This ground is satisfied if the descendant, for example, is addicted to alcohol, drugs, or gambling, avoids employment, neglects their maintenance

obligations, squanders family property, engages in excessive gambling, or incurs debts that they are unable to repay.

Consequences of Disinheritance

Disinheritance applies only to the testator's descendants, the testator cannot disinherit other persons (e.g., children, grandchildren, or great-grandchildren). However, the testator may extend the effects of disinheritance to the descendants of the disinherited descendant (i.e., the testator's grandchildren) by explicitly stating so in the deed of disinheritance (Case Report No. 6/2005).

The effect of disinheritance is the removal of the inheritance rights of the disinherited descendant, meaning that the disinherited descendant does not inherit.

INHERITANCE INCAPACITY (§ 469 OF THE CIVIL CODE)

For an heir to be eligible in order to be entitled to inherit, an heir must not be considered legally incapable of inheriting. to inherit, he must not be deemed legally incapable of inheritance.

Inheritance incapacity applies only to natural persons and is defined by two legal grounds:

1) **If a natural person, who is supposed to inherit from the testator, commits an intentional criminal act against the testator, the testator's spouse, children, or parents during the testator's lifetime** (the criminal act must occur before the testator's death).
    - Examples include criminal acts against property (e.g., theft from the testator or their parents), offenses against freedom and human dignity, or false accusations. A conviction is not necessary, it suffices if the act was intentional.
    - If the intentional criminal act was committed but the individual was excused due to the amnesty or the offense became time-barred, the person is not considered inheritance-incapable (Case Law Report No. 99/2011).
2) **If the natural person who is to inherit commits a disgraceful act against the testator's last will** (either during the testator's life or after his death)

Hereditary incapacity may be forgiven by a unilateral act of remission on the part of the testator. No special form is prescribed by law for the granting of a forgiveness.

REFUSAL OF INHERITANCE (§ 463 - § 468 OF THE CIVIL CODE)

The refusal of inheritance is a unilateral legal act by which the heir declares that they do not wish to inherit. The effect of the refusal is that the heir is treated as if they predeceased the testator (i.e. they do not inherit).

A declaration of refusal must be made in writing or orally within one month from the day the heir was notified by the court or a notary about their right to refuse the inheritance. This time limit is substantive, meaning the declaration must be delivered to the court; it is insufficient if it is merely sent for postal delivery. Once the deadline has passed, the heir can no longer refuse the inheritance.

A representative may also refuse the inheritance on behalf of the heir, provided they have specific power of attorney for this purpose,

The inheritance can only be refused as a whole, without reservations or conditions, otherwise such a legal act is invalid. An heir who has once refused the inheritance cannot revoke this declaration and permanently ceases to be an heir to the testator (even if new inheritance assets are discovered). An heir cannot refuse the inheritance if, through their actions, he has

clearly demonstrated that he do not intend to refuse it (e.g., accepting money found in the testator's apartment after their death, moving into the apartment, etc.).

UNKNOWN HEIR (§ 468 OF THE CIVIL CODE) AND THEIR PROTECTION

An unknown heir is an heir:

a) **Whose location is unknown** (i.e. the testator's heir is known to exist, but his or her place of residence is unknown),
b) **An unidentified person** (i.e. it is known that the testator had an heir, but his identity is unknown).

In the case of an unknown heir a legal fiction applies whereby they are disregarded during the inheritance proceedings (i.e. the fiction that they are considered dead).

However, the unknown heir is entitled to protection under § 485, which means that if such a fact comes to light after the final conclusion of inheritance proceedings, the rightful heir may claim restitution of the property or part of the property from the wrongful heir who unlawfully acquired it from the inheritance.

The limitation period for claiming the restitution of such inheritance is, under § 105 of the Civil Code, a general three-year period of limitations, starting from the date the inheritance decision becomes final and binding.

TRANSFER OF DEBTS (§ 470 – § 472 OF THE CIVIL CODE)

An heir is responsible not only for the property of the testator but also his debts. However, the heir is not responsible for all debts, he acquires only those debts up to the value of the inherited estate. If there are multiple heirs, each heir acquires debts in proportion to the share of the inheritance they acquired.

If the debts of the inheritance exceed the value of inheritance, the inheritance is considered over-indebted (§ 471 of the Civil Code). In such cases, the heirs may reach an agreement with the creditors – referred to as a *"creditor conciliation"* – whereby the estate is assigned to satisfy the debts of the creditors. This is a written agreement that must be concluded by all heirs and creditors. If the heirs and creditors fail to reach an agreement, the notary declares the *liquidation of the estate.*

SECTION B : TEORETICAL QUESTIONS

1. At what moment is the inheritance acquired?
2. Who is the testator?
3. Who is the heir, putative heir, legitimate and illegitimate heir?
4. What is the principle of delation?
5. What is universal succession?
6. What is the principle of accretion?
7. What are the conditions for inheritance?
8. What constitutes the inheritance?
9. Enumerate the titles of inheritance.
10. What are the consequences of refusing the inheritance?
11. Under what conditions is the refusal of inheritance valid?
12. Who is an heir legally incapable of inheritance?
13. Whom can the testator disinherit?
14. Enumerate the grounds for disinheritance.
15. What is escheat?

16. What is over-indebted inheritance?
17. Who is an unknown heir?
18. Explain the principle of protecting a rightful heir.
19. Enumerate the reasons of inheritance incapacity.
20. Explain in what extend the heir acquires the debts of the deceased.

SECTION C : PRACTICAL CASES

Case No 1

The notary, acting as a court commissioner, informed Jan on March 31, 2020, that he is a testamentary heir and has the right to refuse the inheritance. The same notification was delivered to Jozef on April 1, 2020. On April 10, 2020, Jan informed Jozef that he refuses the inheritance.

Give the answers to the following questions:

1. Is such a refusal of inheritance valid?
2. Would the situation be affected if Ján was hit by a car on April 15 and remained in the hospital until May 5, 2020?
3. Would the situation be affected if Ján died in the car accident?
4. Two months later, Ján announced that he accepts the inheritance. Is such acceptance valid?
5. On April 5, 2020, Ján informed the notary that he accepts the inheritance only on the condition that he inherits the house, and Jozef receives the remaining inheritance.
6. What would be the consequence if Ján validly refused the inheritance?
7. Ján refused the inheritance because he thought his father left only debts. A week later, he learned that his father had significant savings in a bank. He consulted a lawyer, who told him that he could revoke the refusal if the one-month period had not yet elapsed.

Case No 2

Ján, tired on his way home from work, hit a pedestrian, causing severe injuries with permanent consequences, for which he was sentenced to two years of imprisonment. Unfortunately, the victim was the son of his uncle, who had left part of the inheritance to Ján in his will. The uncle became very angry and stopped speaking with his nephew.

Give the answers to the following questions:

1. Will this fact have any consequences for Ján?
2. Would the situation be affected if Ján intentionally hit the pedestrian after the death of his uncle?

Case No 3

Mrs. Marta, a 78-year-old widow, had two children: her daughter Lívia and her son Adam. Adam and Marta had a long-standing strained relationship because Adam was often rude and disrespectful toward his mother. In one of these conflicts, following an argument about family property, Adam, in a fit of rage, physically assaulted Marta by pushing her against a wall, causing her to be injured and hospitalized.

Give the answers to the following questions:

1. Can Adam be excluded from the inheritance based on his behavior, specifically the physical violence toward his mother?
2. What conditions must be met for inheritance incapacity under Slovak law?
3. What is the legal basis for inheritance incapacity in this case?

Case No 4

The inheritance left by the testator consisted of assets 500,000 euros and debts 200,000 euros. The testator had two heirs, and according to the will, Ján inherited a house worth 400,000 euros, and Jozef inherited a cottage worth 100,000 euros.

Give the answers to the following questions:

1. Specify who will be responsible for the debts of the testator and in what amounts.
2. What will happen if Jozef does not pay the debt to the creditors?
3. Would the resolution of the situation be affected if the inheritance consisted of liabilities worth 500,000 euros and assets worth only 100,000 euros?

Case No 5

Mr. Novák ignored his young and illegitimate son all his life. In his retirement, he demanded to take care of him. He refused, so John disinherited him. To make sure that Peter's mother would not inherit from him, John made a will in favor of his sister, to whom he left his entire estate.

Give the answers to the following questions:

1. What ground of disinheritance would apply in the above case?
2. Were the grounds for disinheritance of the descendant given by John in the particular case?
3. Who will inherit from John if the disinheritance of Peter is invalid?

SECTION D : RELEVANT PROVISIONS OF ACT NO. 40/1964 CALL. CIVIL CODE, AS AMENDED

PART SEVEN

INHERITANCE

Chapter One

Acquisition of Inheritance

§ 460

The inheritance is acquired upon the death of the testator.

§ 461

(1) Inheritance is acquired by intestate succession, testamentary succession, or a combination of both.

(2) If a testamentary heir does not acquire the inheritance, the intestate heirs shall assume their place. If only a portion of the inheritance is acquired through the will, the remaining portion shall be acquired by the intestate heirs.

§ 462

Inheritance that is not acquired by any heir shall pass to the state

Refusal of Inheritance

§463

(1) An heir may refuse the inheritance. The refusal must be made by oral declaration in court or by written declaration sent to the court.

(2) A representative of the heir may refuse the inheritance on their behalf only if they hold explicit authorization through a power of attorney.

§ 464

A declaration of refusal must be made by the heir within one month from the date they were informed by the court of their right to refuse the inheritance and the consequences of such refusal. For significant reasons, the court may extend this time limit.

§ 465

An heir who, through their conduct, has clearly demonstrated their intention not to refuse the inheritance cannot subsequently refuse it.

§ 466

An heir cannot attach conditions or reservations to the refusal of inheritance, nor can they refuse only part of the inheritance. Such declarations shall not be considered valid refusals.

§ 467

A declaration of refusal of inheritance cannot be revoked. The same applies if the heir declares that they do not refuse the inheritance.

§ 468

An unknown heir or an heir whose whereabouts are unknown, who has been informed of their inheritance rights through a court proclamation but has failed to respond within the prescribed period, is not considered during the inheritance proceedings. Their guardian cannot make a declaration of refusal or non-refusal of inheritance on their behalf.

Inheritance Incapacity

§ 469

A person who has committed an intentional criminal act against the testator, their spouse, children, or parents, or who has engaged in reprehensible conduct against the testator's last will, shall not inherit. However, they may inherit if the testator forgives them for the act.

Disinheritance

§ 469a

(1) The testator may disinherit a descendant if:

a) they failed to provide necessary assistance to the testator in illness, old age, or other serious circumstances, contrary to good morals,
b) they have continuously failed to show genuine interest in the testator, which they are expected to demonstrate as a descendant,
c) they have been convicted of an intentional criminal offense and sentenced to imprisonment for at least one year,
d) they continuously lead a dissolute life.

(2) If explicitly stated by the testator in the deed of disinheritance, the consequences of disinheritance may also apply to individuals referred to in § 473(2).

(3) The provisions of § 476 and § 480 on the requirements and revocation of a will apply similarly to the deed of disinheritance, which must include the grounds for disinheritance.

Transfer of Debts

§ 470

(1) The heir is liable, up to the value of the inherited estate, for reasonable funeral expenses of the testator and for the testator's debts that have passed to them upon the testator's death.
(2) If there are multiple heirs, they are liable for the testator's funeral expenses and debts in proportion to the share of the inheritance they have acquired relative to the total inheritance.

§ 471

(1) If the inheritance is over-indebted, the heirs may agree with the creditors to transfer the inheritance to satisfy the debts. The court shall approve such an agreement if it does not violate the law or good morals.

(2) If no agreement is reached between the heirs and creditors, the obligations of the heirs regarding these debts are governed by the provisions of the Civil Non-Contentious Code on the liquidation of inheritance. The heirs are not liable to creditors who fail to report their claims despite being invited to do so by the court upon the heirs' request, provided that the value of the inheritance is exhausted by satisfying the claims of other creditors.

§ 472

(1) The state, to which the inheritance has passed, is liable for the testator's debts and reasonable funeral expenses in the same manner as an heir.

(2) If a monetary debt cannot be fully or partially satisfied using the money from the inheritance, the state may use items included in the inheritance to settle the debt, provided their value corresponds to the debt amount. If a creditor refuses to accept these items, the state may propose the liquidation of the inheritance.

SECTION E : RELEVANT COURT DECISIONS

Inheritance Acquisition

R 32/2011: In proceedings where an heir seeks a determination that a particular item belongs to the inheritance estate of the deceased, the court must assess whether the deceased owned the item at the time of death. This determination pertains to the moment of the deceased's death, and circumstances arising after that moment cannot influence the court's decision.

R 60/2007: If a decision permitting registration in the Land Register did not become final during the transferor's lifetime, the real estate remained the property of the transferor at the time of their death and forms part of the inheritance estate. Any proposal to allow registration in the Land Register will not affect the property's status as an inheritance asset.

R 59/2007: The binding nature of participants' declarations of intent aimed at transferring ownership also applies to the heirs of a deceased participant. This means that if the deceased entered into a transfer agreement during their lifetime and the obligations under the agreement were not fulfilled, the heirs are obligated to adhere to the agreement, as it reflects the intent of their predecessor.

R 45/1986: The death of a party to a contract does not affect the character of a legal act as relatively invalid. Therefore, the heir may also invoke relative invalidity. For instance, if the

deceased entered into a legal act that was relatively invalid, the heir is entitled to assert this relative invalidity.

Supreme Court of the Slovak Republic, Case No. 6 Cdo 157/2012: From the moment of the deceased's death until the inheritance proceedings are concluded, the heirs are considered co-owners of the estate in proportion to their shares. Only upon the final resolution of the inheritance proceedings is it determined who, and in what proportion, has acquired the inheritance.

Refusal of Inheritance

Z IV s. 822: If an heir dies before expressing their intent to refuse the inheritance, this right passes to their heirs. However, the heirs can refuse the inheritance from the deceased only if they did not previously refuse the inheritance from their own predecessor.

R 37/1974: A capable heir is one who has not refused the inheritance. If an heir does not wish to inherit, they must formally refuse the inheritance. A refusal of inheritance, once made, is irrevocable and applies even to newly discovered property of the deceased.

NS ČR 21 Cdo 2149/2009: Missing the deadline to refuse the inheritance has the same legal effect as if the heir had declared they would not refuse the inheritance.

R 37/1974: Once an inheritance is refused, this decision is irrevocable, even with respect to newly discovered assets of the deceased.

R I 554: Actions taken by the heir that are necessary to avert imminent damage do not constitute acts indicating an intention not to refuse the inheritance.

Disinheritance

Z IV (s. 432): Disinheritance may deprive an heir of their inheritance rights either wholly or partially. No provision of the Civil Code excludes partial disinheritance.

Rc 23/1998: A descendant did not have a genuine opportunity to show genuine interest in the deceased if the deceased themselves did not wish to maintain contact with the child or engage in normal familial relations.

Rč 6/2005: The consequences of disinheritance extend to the descendants of the disinherited person if this is specified in the disinheritance declaration.

R 23/1998: To assess the grounds for disinheritance under § 469a(1)(b) of the Civil Code, it is also necessary to determine whether the descendant had a genuine opportunity to show proper interest in the deceased, as would be expected of a descendant. This includes assessing whether the deceased themselves sought to maintain contact and familial relations with the descendant.

ZSP, 1997, No. 61: A lack of genuine interest in the deceased under § 469a(1)(b) of the Civil Code cannot be attributed to the descendant if the descendant's lack of interest was significantly influenced by the deceased's own behavior.

Supreme Court of the Czech Republic, Case No. 21Cdo 3772/2007: For a disinheritance to be valid under § 469a(1)(a) of the Civil Code, it is essential that the deceased was in a situation where they required assistance due to health issues, age, or other difficulties arising from illness, natural disasters, fires, floods, or similar circumstances, making them unable to provide for their basic needs without external help. It must also be a situation where the deceased's needs were not otherwise provided for, the descendant had a real opportunity to assist the deceased, and the deceased did not reject the assistance offered. The failure of the descendant to assist the deceased must conflict with good morals.

Supreme Court of the Czech Republic, Case No. 21Cdo 2821/2006: Facts justifying the conclusion that the descendant failed to demonstrate genuine and sustained interest in the deceased, as expected of a descendant, may include the descendant's passive behavior (lack of interest) or actions that, while showing interest, are inconsistent with the proper conduct expected of a descendant towards a parent (or grandparent, etc.), such as behavior that consistently exceeds the bounds of socially acceptable conduct.

Other

Supreme Court of the Slovak Republic, Case No. 3 Cdo 197/2010: If the deceased leaves behind multiple heirs, these heirs are considered co-owners of the entire estate from the moment of the deceased's death until the inheritance is resolved by a final court decision. With respect to legal acts involving shared property or property rights within the estate, the heirs hold rights and responsibilities jointly and severally towards third parties.

R 50/1985: If the grounds for disinheritance are absent, the disinheritance is invalid.

R 33/1976: If the deceased, in their will, designated a specific immovable property to a named testamentary heir but later transferred this property to another person by contract, it generally cannot be assumed that the deceased intended for the designated heir to inherit a corresponding share of the estate in monetary terms when assessing the validity or effectiveness of the will or its provisions.

CHAPTER 10

INHERITANCE LAW

TESTAMENTARY INHERITANCE

SECTION A : BRIEF SUMMARY

A freedom of testation is guaranteed by the Slovak Constitution and is closely connected to the right of ownership, which is connected with the right to decide how the property will be distributed, in the event of death including.
Testamentary freedom refers to the right of a person to dispose of his property upon his death based on his free decision, i.e. the right to determine who shall inherit his property and to what extent. However, testamentary freedom is not entirely unlimited. It is restricted by the rights of **forced heirs**, who are the descendants of the testator. The limitation of testamentary freedom means that the testator cannot freely dispose of his property in the will without restrictions, and if he does so, his descendants have the right to challenge it. Their defense lies in the ability to challenge the relative invalidity of such a will.
The **limitation of testamentary freedom** therefore means that if the testator omits any of his forced heirs in the will or reduces their inheritance shares, this results in the **relative invalidity** of the will to the extent that it violates the rights of the forced heirs.

If an omitted forced heir challenges the relative invalidity of the will, he becomes an heir to the following extent:

- In the case that an adult forced heir has been omitted, he is entitled to an amount equivalent to half of his statutory share.
- In the case that a minor forced heir has been omitted, he is entitled to his full statutory inheritance share.

WHAT IS A WILL
Under the Slovak law, the legal definition of a will is missing. However, will can be defined as **a unilateral legal act of the testator by which he disposes with his property in case of his death.**
There is no possibility to make a joint will, Slovak law doesn't recognize the same sex partnership will or any other form of partnership wills, at the same time, divorce doesn't affect the validity of a previous will.

WHO CAN MAKE A WILL

- A **natural person** over the age of 15 who is capable of legal acts may draft a will.
- A 15-year-old may draft a will only in the form of a notarial deed.

WHAT ARE THE GENERAL REQUIREMENTS FOR A WILL TO BE VALIDLY EXECUTED?
Material requirements:

(i) Appointment of Heirs
A testamentary heir may be either a natural person or a legal entity.

- If the testator appoints as heirs his nephews, nieces, and sisters in the will without specifying their names, it is sufficiently determinable who the intended heirs are. Thus, all nephews, nieces, and sisters inherit (**R 54/1991**).
- If the testator specifies only a particular immovable property in the will to be inherited by a testamentary heir, but during his lifetime sells the property (i.e., they are no longer the owner of the property at the time of their death), the designated person does not become the heir to any other assets from the estate (**R 50/1984**).
- If the testator appoints in his will that heir inherits all of his assets located in his apartment, such an expression of will also include savings deposited in the savings passbooks stored in the apartment at the time of the will's creation (**R 44/1979**).

(ii) **Specification of the Property**

Under the Slovak inheritance law, the testator is obliged to clearly define and specify the property subject to succession in the will to ensure its validity and enforceability.

The specification of the property must contain the following legal particulars:

a. **Precise identification of the property, which means that the property must be described with sufficient precision so that it can be clearly identified. This includes:**
   - **Immovable property: The will must describe in detail the immovable property, such as land, houses or flats, by indicating their Land Registry (e.g. parcel number, registration number), geographical location and other identifying data as recorded in the relevant Land Registry).**
   - **Movable property: In the case of movable property, the will should indicate the specification of the object, to avoid confusion.**
   - **Financial assets: must be described by providing identifying details such as account numbers, issuing institutions or registration details in official records.**

b. **Determination of Shares**

   The will must specify the share in which each heir acquires a particular part of the property. In the absence of an explicitly stated share, if a specific item of property is to be acquired by a single heir, it shall be presumed that the heir acquires the entirety of the item. If the same item of property is to be acquired by multiple heirs and the share of each is not specified, it shall be presumed that their shares are equal.

FORMAL REQUIREMENTS OF THE WILL

- Written form.
- Specification of the date when the will was signed (day, month, and year).
- Handwritten signature of the testator.

CONDITIONS IN THE WILL:

Any conditions attached to the will have no legal effect, which means that they are not considered.

Conditions shall be understood as instructions, prohibitions, or restrictions intended by the testator to limit the heirs' free disposition of the inherited property. For example, a condition may include an instruction from the testator requiring the testamentary heir to use the inheritance, or part of it, in a certain manner, or to perform an act (e.g., maintaining a grave). The restriction may prohibit the testator from being able to become entailed by the property which has passed to him under the will. Such conditions do not invalidate the will, but they are not considered, which means that they have no legal effect against the testator.

WHO CAN MAKE A WILL AND WHO CAN BE A WITNESS TO THE TESTATOR?

Will can be made and revoked only by a person with a full capacity for legal acts.
Full capacity for legal acts is acquired:

- a natural person who has reached the age of 18, or
- by a natural person who has reached the age of 16 and has entered a marriage with the prior consent of the court.
- except of this provisions minor above 15 years old can execute a will in the form of notarial deed.

CHANGES OF WILL:

The testator may anytime revoke the whole will or any part of it, if a testator make a new will and did not state therein that he or she revoked previous will, only those provisions of the previous will that are contrary to the new will are revoked.

INVALIDITY OF WILL:

A will may be invalid either **a) absolutely**, or **b) relatively**.

a) Absolute Invalidity

Absolute invalidity under the Civil Code means that the will has no legal effect and is considered void from the beginning (ex tunc). This happens when the will does not meet legal requirements or breaks the rules set by law.
Examples of reasons for absolute invalidity include:

1) **Not meeting the formal requirements of a will:**
   A will must follow the legal form (§ 476 of the Civil Code). For example, if the will does not include the testator's signature, date, or was not signed in the presence of witnesses (if required), it is considered absolutely invalid.
2) **The testatorś lack of legal capacity:**
   If the testator was legally incapable at the time of making the will, or if he was not mentally or emotionally able to understand the consequences of his actions, the will is absolutely invalid
3) **Including prohibited conditions or clauses:**
   If the will includes conditions that violate the law, go against good morals, or restrict the personal freedom of the heir (e.g., requiring the heir not to marry to inherit), the will is considered absolutely invalid.
4) **Issuing the will under pressure or deceit:**
   If the testator was forced to make the will through threats, physical force, or trickery, such a will is considered absolutely invalid.

Consequences of absolute invalidity are:
A will that is absolutely invalid has no legal effect. In such cases, the inheritance is distributed according to the rules of intestate succession (inheritance by law) or based on another valid will if one exists.
There is no need to formally challenge an absolutely invalid will in court because courts automatically recognize its invalidity (ex officio).

b) Relative Invalidity

Relative invalidity occurs if the testator limits the inheritance rights of his children (forced heirs) who are legally entitled to a share of the estate, either by disinheriting them completely or by reducing their share (§ 479 of the Civil Code).
This applies specifically to forced heirs (§ 479 of the Civil Code), who are protected by law and must receive their legally guaranteed share of the estate.
Relative invalidity can only be claimed if the excluded heir files a request with the court. Courts will not address it on their own but only if the affected heir raises the issue.
The period of limitation for claiming the relative invalidity is three years starting from the date when the mandatory heir becomes aware of the violation of their rights (usually after the testator's death or when the will is disclosed).
If an omitted forced heir challenges the relative invalidity of the will, he becomes an heir to the following extent:

- In the case that an adult forced heir has been omitted, he is entitled to an amount equivalent to half of his statutory share.
- In the case that a minor forced heir has been omitted, he is entitled to his full statutory inheritance share.

TYPES OF WILL:

(i) Holograph Will

A holograph will be a will handwritten entirely by the testator, which must include the day, month, and year of signing and must also be signed by the testator personally.
The Text:

- A holograph will must be handwritten by the testator, signed, and dated.
- The use of computers, typewriters, or similar devices is prohibited.
- Failure to write the will by hand invalidates the will.
- The will must be signed by the testator.

The Date:

- A holograph will must include a date. Without a date, the will is invalid.
- The date must include the day, month, and year of the will's signature, not its execution.

The Signature:

- The signature must be placed at the end of the text, any text written below the signature is not considered part of the will and is disregarded.
- The signature must be attributable to the testator and should reflect the natural lines of the testator's handwriting.
- Normally, the signature is made by hand, however, in the case of a handicapped person, it may be executed by foot or mouth.

(ii) Allograph Will

An allograph will be not handwritten by the testator and may be drafted using a mechanical method (e.g. computer or typewriter). The testator must sign it personally in the presence of witnesses.

The Text:

- **If witnessed by two witnesses**:
  - The will must be read aloud, and the testator must declare that it represents their last will.
  - Both witnesses must sign the will personally.
- **If witnessed by three witnesses**:
  - Applies to wills made by individuals unable to read or write, such as blind or illiterate persons.
  - All three witnesses must be present simultaneously.
  - The testator must declare his intent in the presence of all three witnesses, and the document must be read aloud in their presence.
  - Witnesses must sign the will personally.

Restrictions on Witnesses (a witness cannot be):

- A person incapable of legal acts (e.g., minors or those without legal capacity).
- A blind or deaf person.
- A testamentary or statutory heir, or their close relatives.

The Date:

- An allograph will must include a date. Without a date, the will is invalid.
- The date must specify the day, month, and year of the will's signature, not its execution.

The Signature:

- The will must indicate that the testator was unable to read or write, state who drafted the document, and confirm who read it aloud, as well as the method used by the testator to confirm their intent.
- Witnesses must sign the document personally.

(iii) Notarial Will

This will may be executed in the form of a notarial deed, governed by the Act on Notaries.

If the will is executed by a notary, it has the legal quality of an official document, and the notary is responsible for its accuracy.

A notarial will may be created by any natural person aged 15 or older.

FORCED HEIR

The testamentary freedom of the testator is restricted by the rights of descendants as **forced heirs**, who cannot be entirely excluded (omitted) from inheritance in a will.

The protection of forced heirs ensures that, in the case of their omission, their inheritance is calculated based on the statutory share they would receive under intestate succession:

- **Minor Descendants**: Must receive at least the amount they would inherit under intestate succession.
- **Adult Descendants**: Must receive at least half of their statutory share under intestate succession.

If a testator omits his descendants, this results in **relative invalidity** of the will. The omitted descendant must claim the relative invalidity of the will. If successful, the omitted descendant becomes an heir to the following extent:

- **For a minor descendant**: They are entitled to at least the amount they would have received under intestate succession.
- **For an adult descendant**: They are entitled to at least half of their statutory share.

The statutory inheritance share is calculated based on the entirety of the estate, not just the portion distributed under the will.

SECTION B : THEORETICAL QUESTIONS

1. What is testamentary succession, and how does it differ from intestate succession?
2. What is the testamentary freedom?
3. What are the formal requirements for creating a valid will?
4. What are the material requirements for a valid will?
5. **Who is competent to make a will, and what conditions must the testator fulfill?**
6. **What forms of wills are regulated by the Civil Code?**
7. **What are the main features of holograph will?**
8. **What are the main features of allograph will?**
9. **What are the main features of notarial will?**
10. **What are the consequences of a missing signature by the testator on the validity of the will?**
11. **What is the revocation of a will, and what methods of revocation are recognized under the Civil Code?**
12. Explain the role of witnesses in the execution of a valid will.
13. Who cannot act as a witness in the drafting of a will?
14. When is a will relatively invalid and when is it absolutely invalid?
15. What is the principle of forced heirship, and how does it limit the testator's freedom to dispose of their property?
16. What rights do forced heirs have in testamentary succession? Can the testator fully disinherit them?
17. From what does the statutory inheritance share for forced heirs calculated?
18. What does the statutory inheritance share of a minor forced heir?
19. What does the statutory inheritance share of an adult forced heir?
20. **What are the consequences of including conditions in a will?**

SECTION C : PRACTICAL CASES

Case No 1

The testator left half of his estate to his wife through a will. The testator's son claimed the inheritance of the other half of the estate on the grounds that he is a statutory heir. However, the state's representative argued that if the testator did not dispose of his entire estate in the will, the remaining portion of the estate must either be inherited by the state or pass to the state as ownerless property.

Please answer these questions:

1. What are the legal rights of the son to claim the undisposed portion of the estate under intestate succession?
2. Under what circumstances can the state claim the remaining portion of the estate as ownerless property and does this conflict with the rights of statutory heirs?

3. What is the legal doctrine of forced heirship, and how might it apply to ensure the son's inheritance rights in this case?
4. How does the concept of partial intestacy apply when a portion of the estate is not disposed of through the will, and who has priority in such cases—the statutory heir or the state?

Case No 2

The person passed away without leaving a will. She was childless and lived alone. Surviving her were a niece and the children of a nephew. The notary determined inheritance under the third inheritance group, awarding the entire estate to the niece. The testatrix's nephew predeceased her, but he left behind two children.

Question: Who will inherit and in what shares?

Case No 3

Ján died and left a valid will, in which he left his entire estate to his brother, as he had no other family. In the will, he stated that he leaves his entire estate to "his brother," without specifying the brother's name.

Question:

1. Will this omission affect the validity of the will?
2. After Ján's death, it was revealed that he also had a half-brother. At the time of Ján's death, his brother had already passed away, leaving behind two children.
   Question: On what legal basis will these children inherit?
3. Additionally, it was discovered after Ján's death that he also had an illegitimate son.
   Question: Will the existence of this illegitimate son affect the inheritance of Ján's estate?

SECTION D : RELEVANT PROVISIONS OF ACT NO. 40/1964 CALL. CIVIL CODE, AS AMENDED

PART SEVEN

INHERITANCE

PART THREE

TESTAMENTARY SUCCESSION

§ 476

(1) A testator may either write a will in their own handwriting or create it in another written form in the presence of witnesses, or in the form of a notarial deed.

(2) Every will must specify the day, month, and year when it was signed; otherwise, it shall be deemed invalid.

(3) A joint will of multiple testators is invalid.

§ 476a

A holographic will must be entirely written and signed by the testator's own hand; otherwise, it shall be deemed invalid.

§ 476b

(1) A will that is not handwritten by the testator must be signed by the testator and expressly declared, in the simultaneous presence of two witnesses, to represent their last will.

(2) The witnesses must also sign the will.

§ 476c

(1) A testator who cannot read or write shall express their last will in the presence of three witnesses, simultaneously present, in a document that must be read aloud and signed by the witnesses. The testator must confirm before them that the document contains their last will.

(2) The document must state:

a. That the testator cannot read or write;
b. Who wrote and read the document aloud; and
c. How the testator confirmed that the document reflects their true will.

(3) The witnesses must sign the document.

§ 476d

(1) A testator may express their last will in the form of a notarial deed; specific laws establish when the action must be carried out in the presence of witnesses.

(2) Minors who have reached the age of 15 may express their last will only in the form of a notarial deed.

(3) Blind persons may express their last will before three witnesses, simultaneously present, in a document that must be read aloud.

(4) Deaf persons who cannot read or write may express their last will in the form of a notarial deed or before three simultaneously present witnesses.

§ 476c

The document must include a statement that the testator cannot read or write, identify who wrote and read the document aloud, and describe how the testator confirmed that the document contains their true will. The content of the document must also be interpreted into sign language, and this must be stated in the document. The document must be signed by the witnesses.

§ 476e

Only persons who are legally competent may serve as witnesses. Blind, deaf, mute individuals, those who do not understand the language in which the will is expressed, and persons who are named as heirs in the will are disqualified from serving as witnesses.

§ 476f

Neither testamentary heirs nor statutory heirs, nor their close relatives, may act as official persons, witnesses, writers, interpreters, or readers during the creation of the will.

§ 477

In the will, the testator shall appoint heirs and may specify their shares or identify particular items or rights to be inherited by them. If the shares of multiple heirs are not specified in the will, they are presumed to be equal.

§ 478

Any conditions attached to a will have no legal effect. However, this does not affect the provision of § 484(1), second sentence.

§ 479

Minor descendants must receive at least the portion of the inheritance to which they are entitled under intestate succession. Adult descendants must receive at least one-half of

their statutory inheritance share. If the will contradicts this, it is invalid in that part unless the descendants have been disinherited.

§ 480

(1) A will may be revoked by a subsequent valid will, provided it cannot coexist with the earlier will, or by express revocation of the will. The revocation must comply with the formal requirements necessary for creating a will.

(2) A testator may also revoke a will by destroying the document on which it is written.

Chapter Five

PROTECTION OF THE ENTITLED HEIR

§ 485

(1) If, after the settlement of the inheritance, it is determined that the entitled heir is someone other than the person who acquired the inheritance, the person who acquired the inheritance is obliged to surrender to the entitled heir the property derived from the inheritance, in accordance with the principles of unjust enrichment, so as to ensure that they do not gain an unjust financial benefit to the detriment of the entitled heir.

(2) A putative heir has the right to request reimbursement from the entitled heir for expenses incurred on the property derived from the inheritance. The putative heir is also entitled to any benefits derived from the inheritance. However, if the putative heir knew or could have known that the entitled heir was someone else, they are entitled only to reimbursement of necessary expenses and are obliged to surrender to the entitled heir, in addition to the inheritance, any benefits derived from it.

§ 486

A person who, in good faith, acquired something from a putative heir to whom the inheritance was confirmed shall be protected as if they had acquired it from the entitled heir.

§ 487

The provisions of § 485 and § 486 shall also apply in cases where the inheritance has devolved to the state.

SECTION E : RELEVANT COURT DECISIONS

R 33/2014: The fact that a will consists of more papers that are not physically bound together does not, by itself, render the will invalid. However, the validity of such a will is justified only if there is no doubt regarding the authenticity, accuracy, coherence, and connection between the individual sheets of the will.

R 77/2004: The date of signing the will must, under the threat of its invalidity, be stated directly in the will (at the beginning or end of the document). The will must also be signed by the testator.

R 51/1984: If the testator signed the will using at least their surname, this satisfies the requirement of a signature under § 476(2) of the Civil Code, provided there is no doubt about the identity of the signature belonging to the testator.

R 54/1991: Case law permits a testamentary heir to be identified, for example, by specifying their relationship to the testator. If there are multiple such individuals, such as nieces,

nephews, or siblings, it is sufficiently determinable who they were at the time of the testator's death, and all such individuals are considered heirs.

R 30/1982: If a will was revoked by a later will (§ 480(1) of the Civil Code), its validity is not restored by the revocation of the later will or the destruction of the document containing the later will.

Decision No. 4 Cdo 93/2009: A holographic will and a deed of disinheritance must comply with the formal requirements prescribed by law, failure to meet these requirements may result in the invalidity of these legal acts. The essential requirements include the identification of the parties involved, an expression of intent, the presence of witnesses, and other conditions stipulated by the legal regulations of the Slovak Republic.

CHAPTER 11

INTESTATE SUCCESSION

SECTION A : BRIEF SUMMARY

Intestate succession refers to the legal process by which a deceased person's estate is distributed if:

1. The testator did not execute any will prior to his death.
2. The testator executed a will but subsequently validly revoked it.
3. The testator executed a will but failed to dispose of his entire estate therein (§ 461(2) of the Civil Code).
4. The testator's will be, for certain reasons, invalid in whole or in part (§ 479 of the Civil Code).

Circumstances under which a statutory heir shall not inherit include the following:

a. The heir refused the inheritance (§ 463(1) of the Civil Code),
b. The heir predeceased the testator (§ 7(2) of the Civil Code),
c. The testamentary heir is legally incapable of inheriting (§ 469 of the Civil Code),
d. Following the execution of the will, the testator disinherited the heir (§ 469a of the Civil Code).

Intestate succession is a key part of inheritance law. It ensures that a person's property is passed on to his legal heirs when he dies without leaving a will or if the will does not cover his entire estate.
Slovak intestate law is based on a structured order of inheritance groups. These groups determine who inherits and in what order, starting with the closest relatives (children and the surviving spouse), and goes to more distant family members only if there are no closer heirs. If no relatives are found, the estate ultimately goes to the state.

INHERITANCE GROUPS
Under the Slovak Civil Code, heirs are divided into four inheritance groups. The following rules applies within these groups:

- The principle of **representation** applies in the **first inheritance group,** consisting of the descendants of the deceased (e.g., if a child of the deceased cannot inherit, their children inherit, and if they are unavailable, their children inherit) and in the **third inheritance group** of the siblings of the deceased (but this principle ends with nieces and nephews).
- The principle of **accretion** (adjustment of shares) applies when the inheritance share becomes vacant, in such a case, the vacant inheritance share is distributed among the remaining heirs within the respective inheritance group.
- If the individuals in an earlier inheritance group are unable to inherit (due to legal incapacity, disinheritance, or death), potential heirs are sought in the next inheritance group.
- The order of inheritance groups is mandatory and cannot be skipped, meaning each subsequent group is subordinate to the preceding group under the principle of subsidiarity.

The following are the characteristics of the individual inheritance groups under the Civil Code:

1. **FIRST INHERITANCE GROUP (§ 473 CIVIL CODE)**
   - Consists of the **children** of the deceased and **the surviving spouse,** both inherit in **equal shares**.
   - **Principle of representation** applies within this group: If a child of the deceased cannot inherit, his inheritance share passes to his children in equal shares. If the children, or some of them cannot inherit, the share passes to their descendants in equal shares.
   - The children of the deceased always inherit in the first inheritance group and can inherit independently within this group.
   - The surviving spouse cannot inherit independently within this group. For the inheritance rights of the surviving spouse, it is irrelevant whether they cohabited with the deceased at the time of death, the only relevant fact is that a valid marriage existed at the time of death.
   - The joint property of spouses must be first settled, and only the property determined as belonging to the deceased becomes the subject of inheritance.
   - The legal system makes no distinction between legitimate, illegitimate, or adopted children, and therefore all such children inherit equally.
   - A child includes a nasciturus (an unborn child conceived before the death of the deceased), provided the child is born alive.
2. **SECOND INHERITANCE GROUP (§ 474 CIVIL CODE)**
   - The **surviving spouse, the parents of the deceased and cohabiting individuals** are included in this group.
   - **Cohabiting individuals** are those who lived with the deceased for at least one year prior to their death in a shared household, contributing to its maintenance or relying on the deceased for support.
   - The surviving spouse is entitled to inherit at least **one-half** of the inheritance.
   - The principle of subsidiarity does not apply in this group, instead, the principle of accretion applies, meaning that vacant shares are distributed among the remaining heirs in the same group.
   - The surviving spouse may inherit independently. However, a cohabiting individual cannot inherit independently, if no other heirs exist, their claim falls into the third inheritance group.
3. **THIRD INHERITANCE GROUP (§ 475 CIVIL CODE)**
   - The deceased's **siblings** (and their children, i.e. nieces and nephews) and those **who lived with the deceased** for at least one year prior to their death in a shared household, contributing to its maintenance or relying on the deceased for support, inherit in this group.
   - The principle of equal shares applies within this group.
   - Pursuant to § 475(2) of the Civil Code, if one of the deceased's siblings cannot inherit, their inheritance share passes in equal parts to their children. However, the right to inherit ends at this level (i.e., no further subsidiarity applies).
4. **FOURTH INHERITANCE GROUP (§ 475a CIVIL CODE)**
   - The **grandparents** of the deceased inherit, and if none of them can inherit, **their children** inherit.
   - Each heir within this group inherits an equal share.

- The grandparents of the deceased include the deceased's paternal and maternal grandparents, making a total of four potential grandparents. The children of these grandparents are the uncles and aunts of the deceased.

These are the legal theories used on the interpretation of the Fourth Inheritance Group

1. **First Theory**: According to the first theory, if at least one of the four grandparents of the deceased inherits, that individual acquires the entire estate.
2. **Second Theory**: The second theory distinguishes between the grandparents on the paternal side (father's mother and father's father) and the grandparents on the maternal side (mother's mother and mother's father). If none of the grandparents from one side can inherit, their children inherit in their place. For example, if the mother's parents (mother's mother and mother's father) cannot inherit, but the father's father can, half of the estate would pass to the father's father. If the mother's parents had, in addition to the mother, two other children, those children would divide the remaining half of the estate equally, with each uncle/aunt of the deceased inheriting one-fourth of the estate.
3. **Third Theory**: Under the third theory, if any of the four grandparents cannot inherit, their children inherit in their place. This could result in a situation where, for example, the father's mother inherits one-fourth of the estate, the second son of the father's parents inherits another one-fourth, the mother's father inherits another one-fourth, and the remaining two children of the mother's parents inherit one-eighth of the estate each.

COLLATION (§ 484 CIVIL CODE)

In the case of intestate succession, the heir's inheritance share shall include the value of any voluntary benefits or gifts received from the deceased during his lifetime (except for customary gifts), provided the heir falls within the category of heirs described in § 473(2) of the Civil Code. This principle is called *collation* and also applies to benefits or gifts received by the heir's predecessor.

In the case of testamentary succession, collation must be carried out if the deceased expressly stated this or if an unjustified advantage would otherwise arise for the heir in relation to another heir specified in § 479 of the Civil Code (minor or adult descendant).

OWNERLESS PROPERTY

Ownerless property becomes when the deceased has no heirs, or all heirs have refused the inheritance.

- This does not constitute an inheritance in the strict legal sense.
- The state is obligated to take ownership of the estate and cannot refuse it.

PROTECTION OF THE ENTITLED HEIR

During the inheritance proceeding may the situation happen that the inheritance process is conducted and closed without the participation of a rightful heir. *Rightful heir* is an individual who is legally entitled to inherit property or rights from a deceased person by intestate succession or by the will.

In such a circumstances, the estate may be acquired by a person who is not entitled to inherit, or the rightful heir may be omitted from the proceedings because they were unknown to the court (or notary) and the other participants in the proceedings.

If such a situation arises after the final conclusion of the inheritance proceedings, the rightful heir may claim his inheritance rights within the three year period of limitation, which commences from the date on which the resolution concluding the inheritance proceedings was effective.
The rightful heir may demand the return of the property or a part of the property that was unlawfully acquired from the inheritance.
The period of limitation for claiming such a right is the general three-year period of limitation, starting on the date when the decision on the inheritance becomes final (§ 105 of the Civil Code).

SECTION B : TEORETICAL QUESTIONS

1. What does the term "intestate succession" mean, and what are its fundamental principles?
2. How many inheritance groups are recognized under Slovak inheritance law, and which individuals are included in each group?
3. What conditions must be met for an heir to inherit under the law?
4. Explain the principle of subsidiarity in inheritance law. In which inheritance groups does it apply?
5. What is the principle of accretion, and how does it affect the distribution of inheritance shares?
6. What conditions must a "nasciturus" meet in order to inherit?
7. How is the estate divided in the first inheritance group if the deceased's surviving spouse is the sole heir? Is this possible?
8. What is the difference between heirs by law and heirs by will?
9. Explain the process of inheritance in the second inheritance group when the surviving spouse, the deceased's parents, and a cohabiting individual are heirs. How is the estate divided?
10. Who can inherit in the third inheritance group, and what conditions must be met for nieces and nephews to inherit?
11. Who inherits in the fourth inheritance group, and what role do the deceased's grandparents play in this context?
12. What happens to the estate if there are no heirs? Explain the concept of "escheat" (or "ownerless property").
13. How does inheritance law treat legitimate, illegitimate, and adopted children?
14. Can the state refuse an inheritance in the case of escheat? If so, why? If not, why not?
15. Explain how gifts received by an heir are accounted for in intestate succession (§ 484 of the Civil Code).
16. What does it mean the protection of a rightful heir, and how can a rightful heir assert his rights after the conclusion of inheritance proceedings?
17. How are the inheritance groups divided under the law, and which individuals belong to each group?
18. In which inheritance group can cohabiting individuals inherit, and under what conditions?
19. What is the significance of the redistribution of shares (accretion) within inheritance groups, and how is it applied in each group?
20. Explain the meaning of rightful heir.

SECTION C : PRACTICAL CASES

Case No 1

Mr. John Novak passed away on September 15, 2023, at the age of 75. He was a widower and did not leave a will. Mr. Novak owned the following assets:

1. **A family house in Bratislava (valued at EUR 250,000).**
2. **Personal savings amounting to EUR 50,000.**
3. **A motor vehicle (valued at EUR 15,000).**
4. **An art collection (valued at EUR 20,000).**

Mr. Novak had two children—his daughter Jane and his son Peter. Peter predeceased his father in 2020 but left behind two minor children, Adam and Natalie. Mr. Novak had no other descendants, but his sister Martha and his brother Michael are still alive.

Please answer these questions:

1. Who are the intestate heirs of Mr. Novak according to the provisions of the Civil Code?
2. To which inheritance group does each heir belong, and what shares should each heir inherit?
3. Do the sister, Martha, or the brother, Michael, have a right to the inheritance? If so, in which inheritance group would their inheritance rights apply?
4. If Jane were to refuse the inheritance, who would be the next in line as intestate heirs?

Case No. 2

Jana Malá passed away without leaving a will. She was childless and lived alone. Surviving her are her niece, Maria, and the children of her nephew, Peter.

The notary determined inheritance under the third group according to § 475 of the Civil Code, and the entire estate was confirmed to the niece, Maria.

The nephew predeceased her, but he left behind two children.

Please answer these questions:

1. Who are the intestate heirs of Jana Malá, under the provisions of the Civil Code?
2. In which inheritance group does the niece Maria belong, and what rights does she have to inherit the estate?
3. What is the legal status of the children of the nephew, Peter? Are they entitled to inherit in the place of their father under the principle of representation?
4. Does the principle of subsidiarity apply to the third inheritance group in this case? If so, how does it affect the distribution of the estate?

Case No. 3

A childless deceased, who was unmarried, lived in a shared household with her partner before her death. She had one sister, who was alive at the time of her death, and one brother, who predeceased her. The brother left behind two children (a niece and a nephew of the deceased).

Please answer these questions:

1. Who will inherit, and in which inheritance group?
2. To which inheritance group do the sister and the niece and nephew (children of the predeceased brother) belong, and what are their respective rights to inherit?
3. Does the cohabiting partner have any legal claim to the estate, and if so, under which inheritance group and what conditions?
4. How should the estate be divided among the heirs in the third inheritance group based on their legal entitlement?

5. What role does the principle of representation play in this case regarding the niece and nephew inheriting in place of their deceased father?

SECTION D : RELEVANT PROVISIONS OF ACT NO. 40/1964 CALL. CIVIL CODE, AS AMENDED

PART SEVEN

INHERITANCE

Chapter One

Acquisition of Inheritance

§ 460

The inheritance is acquired upon the death of the testator.

§ 461

(1) Inheritance is acquired by intestate succession, testamentary succession, or a combination of both.

(2) If a testamentary heir does not acquire the inheritance, the intestate heirs shall assume their place. If only a portion of the inheritance is acquired through the will, the remaining portion shall be acquired by the intestate heirs.

§ 462

Inheritance that is not acquired by any heir shall pass to the state.

Refusal of Inheritance

§463

(1) An heir may refuse the inheritance. The refusal must be made by oral declaration in court or by written declaration sent to the court.

(2) A representative of the heir may refuse the inheritance on their behalf only if they hold explicit authorization through a power of attorney.

§ 464

A declaration of refusal must be made by the heir within one month from the date they were informed by the court of their right to refuse the inheritance and the consequences of such refusal. For significant reasons, the court may extend this time limit.

§ 465

An heir who, through their conduct, has clearly demonstrated their intention not to refuse the inheritance cannot subsequently refuse it.

§ 466

An heir cannot attach conditions or reservations to the refusal of inheritance, nor can they refuse only part of the inheritance. Such declarations shall not be considered valid refusals.

§ 467

A declaration of refusal of inheritance cannot be revoked. The same applies if the heir declares that they do not refuse the inheritance.

§ 468

An unknown heir or an heir whose whereabouts are unknown, who has been informed of their inheritance rights through a court proclamation but has failed to respond within the prescribed period, is not considered during the inheritance proceedings. Their guardian cannot make a declaration of refusal or non-refusal of inheritance on their behalf.

Inheritance Incapacity

§ 469

A person who has committed an intentional criminal act against the testator, their spouse, children, or parents, or who has engaged in reprehensible conduct against the testator's last will, shall not inherit. However, they may inherit if the testator forgives them for the act.

Disinheritance

§ 469a

(1) The testator may disinherit a descendant if:

a) they failed to provide necessary assistance to the testator in illness, old age, or other serious circumstances, contrary to good morals,
b) they have continuously failed to show genuine interest in the testator, which they are expected to demonstrate as a descendant,
c) they have been convicted of an intentional criminal offense and sentenced to imprisonment for at least one year,
d) they continuously lead a dissolute life.

(2) If explicitly stated by the testator in the deed of disinheritance, the consequences of disinheritance may also apply to individuals referred to in § 473(2).

(3) The provisions of § 476 and § 480 on the requirements and revocation of a will apply similarly to the deed of disinheritance, which must include the grounds for disinheritance.

Transfer of Debts

§ 470

(1) The heir is liable, up to the value of the inherited estate, for reasonable funeral expenses of the testator and for the testator's debts that have passed to them upon the testator's death.
(2) If there are multiple heirs, they are liable for the testator's funeral expenses and debts in proportion to the share of the inheritance they have acquired relative to the total inheritance.

§ 471

(1) If the inheritance is over-indebted, the heirs may agree with the creditors to transfer the inheritance to satisfy the debts. The court shall approve such an agreement if it does not violate the law or good morals.

(2) If no agreement is reached between the heirs and creditors, the obligations of the heirs regarding these debts are governed by the provisions of the Civil Non-Contentious Code on the liquidation of inheritance. The heirs are not liable to creditors who fail to report their claims despite being invited to do so by the court upon the heirs' request, provided that the value of the inheritance is exhausted by satisfying the claims of other creditors.

§ 472

(1) The state, to which the inheritance has passed, is liable for the testator's debts and reasonable funeral expenses in the same manner as an heir.

(2) If a monetary debt cannot be fully or partially satisfied using the money from the inheritance, the state may use items included in the inheritance to settle the debt, provided their value corresponds to the debt amount. If a creditor refuses to accept these items, the state may propose the liquidation of the inheritance.

INTESTATE SUCCESSION

§ 473
First Inheritance Group

(1) The children of the deceased and the surviving spouse inherit in equal shares.

(2) If any child cannot inherit, their share shall pass in equal parts to their children. If these children, or some of them, cannot inherit, the share shall pass in equal parts to their descendants.

§ 474
Second Inheritance Group

(1) If the descendants of the deceased do not inherit, the surviving spouse, the parents of the deceased, and individuals who lived with the deceased for at least one year prior to their death in a shared household, contributing to its maintenance or relying on the deceased for support, shall inherit.

(2) The heirs in the second inheritance group inherit in equal shares; however, the surviving spouse is always entitled to at least one-half of the estate.

§ 475
Third Inheritance Group

(1) If neither the surviving spouse nor any of the parents inherit, the siblings of the deceased and individuals who lived with the deceased for at least one year prior to their death in a shared household, contributing to its maintenance or relying on the deceased for support, shall inherit in equal shares.

(2) If any sibling of the deceased cannot inherit, their share shall pass in equal parts to their children.

§ 475a
Fourth Inheritance Group

(1) If no heirs inherit in the third inheritance group, the grandparents of the deceased shall inherit in equal shares.

(2) If none of the grandparents inherit, their children shall inherit in equal shares.

PART THREE
TESTAMENTARY SUCCESSION

§ 476

(1) A testator may either write a will in their own handwriting or create it in another written form in the presence of witnesses, or in the form of a notarial deed.

(2) Every will must specify the day, month, and year when it was signed; otherwise, it shall be deemed invalid.

(3) A joint will of multiple testators is invalid.

§ 476a

A holographic will must be entirely written and signed by the testator's own hand; otherwise, it shall be deemed invalid.

§ 476b

A will that is not handwritten by the testator must be signed by the testator and expressly declared, in the simultaneous presence of two witnesses, to represent their last will. The witnesses must also sign the will.

§ 476c

(1) A testator who cannot read or write shall express their last will in the presence of three witnesses, simultaneously present, in a document that must be read aloud and signed by the witnesses. The testator must confirm before them that the document contains their last will.

(2) The document must state that the testator cannot read or write, who wrote and read the document aloud and how the testator confirmed that the document reflects their true will. The witnesses must sign the document.

§ 476d

(1) A testator may express their last will in the form of a notarial deed; specific laws establish when the action must be carried out in the presence of witnesses.

(2) Minors who have reached the age of 15 may express their last will only in the form of a notarial deed.

(3) Blind persons may express their last will before three witnesses, simultaneously present, in a document that must be read aloud.

(4) Deaf persons who cannot read or write may express their last will in the form of a notarial deed or before three simultaneously present witnesses.

(5) The deed must state that the testator cannot read or write, who wrote the deed and who read it aloud, and how the testator acknowledged that the deed contains his true will. The contents of the deed must be translated into signed language after it has been drawn up; this must also be stated in the deed. The deed must be signed by the witnesses.

§ 476e

Only persons who are legally competent may serve as witnesses. Blind, deaf, mute individuals, those who do not understand the language in which the will is expressed, and persons who are named as heirs in the will are disqualified from serving as witnesses.

§ 476f

Neither testamentary heirs nor statutory heirs, nor their close relatives, may act as official persons, witnesses, writers, interpreters, or readers during the creation of the will.

§ 477

In the will, the testator shall appoint heirs and may specify their shares or identify particular items or rights to be inherited by them. If the shares of multiple heirs are not specified in the will, they are presumed to be equal.

§ 478

Any conditions attached to a will have no legal effect. However, this does not affect the provision of § 484(1), second sentence.

§ 479

Minor descendants must receive at least the portion of the inheritance to which they are entitled under intestate succession. Adult descendants must receive at least one-half of their statutory inheritance share. If the will contradicts this, it is invalid in that part unless the descendants have been disinherited.

§ 480

(1) A will may be revoked by a subsequent valid will, provided it cannot coexist with the earlier will, or by express revocation of the will. The revocation must comply with the formal requirements necessary for creating a will.

(2) A testator may also revoke a will by destroying the document on which it is written.

Chapter Four

CONFIRMATION OF INHERITANCE AND SETTLEMENT OF HEIRS

§ 481

If there is only one heir, the court shall confirm that the heir has acquired the inheritance.

§ 482

(1) If there are several heirs, they shall settle the inheritance among themselves by agreement before the court.

(2) If the agreement does not contravene the law or good morals, the court shall approve it.

§ 483

If no agreement is reached, the court shall confirm the acquisition of the inheritance by those whose inheritance rights have been proven.

§ 484

The court shall confirm the acquisition of the inheritance in accordance with the respective inheritance shares. In cases of statutory succession, the heir's share shall include anything they received gratuitously from the decedent during their lifetime, unless such gifts are customary. For heirs specified under § 473(2), this calculation shall also include gratuitous transfers received by the heir's predecessor from the decedent. In cases of testamentary succession, such calculations shall be made if the decedent directed so, or if failure to do so would result in the gratuitously gifted heir being unjustly advantaged compared to an heir specified under § 479.

Chapter Five

PROTECTION OF THE ENTITLED HEIR

§ 485

(1) If, after the settlement of the inheritance, it is determined that the entitled heir is someone other than the person who acquired the inheritance, the person who acquired the inheritance is obliged to surrender to the entitled heir the property derived from the

inheritance, in accordance with the principles of unjust enrichment, so as to ensure that they do not gain an unjust financial benefit to the detriment of the entitled heir.

(2) A putative heir has the right to request reimbursement from the entitled heir for expenses incurred on the property derived from the inheritance. The putative heir is also entitled to any benefits derived from the inheritance. However, if the putative heir knew or could have known that the entitled heir was someone else, they are entitled only to reimbursement of necessary expenses and are obliged to surrender to the entitled heir, in addition to the inheritance, any benefits derived from it.

§ 486

A person who, in good faith, acquired something from a putative heir to whom the inheritance was confirmed shall be protected as if they had acquired it from the entitled heir.

§ 487

The provisions of § 485 and §486 shall also apply in cases where the inheritance has devolved to the state.

SECTION E : RELEVANT COURT DECISIONS

Z IV (p. 810): If one of the heirs dies before the conclusion of the inheritance proceedings, their place is replaced by their heirs. If there are no heirs, proceedings should involve a representative of the state. The appointment of a guardian for the deceased heir is not supported by any legal provision.

R 12/1968: The term "shared household" under § 474 of the Civil Code is generally understood to require shared residence. Exceptions are possible in cases of temporary or transitional absence from the shared household due to hospitalization, visiting relatives, military service, etc. The concept also entails actual and lasting cohabitation of two or more individuals who jointly contribute to meeting common needs as defined in § 115 of the Civil Code. The one-year period is calculated backward from the date of the decedent's death, and the cohabitation must have existed at the time of death.

R 55/1952: The testator's partner, if she qualifies as an intestate heir, does not inherit at least half of the testator's estate as a spouse would. Instead, she inherits in equal shares with the other heirs.

R 86/1952: The fact that the testator spent several months in a hospital prior to their death does not disqualify individuals who lived with the testator in a shared household as members of their family and contributed to the upkeep of the household from asserting their inheritance rights, provided that the testator's stay in the hospital did not terminate the shared household.

R 99/1952: If an heir who would otherwise inherit under intestate succession also meets the conditions for inheritance as a person who lived in a shared household with the testator, their inheritance rights cannot be denied if the conditions of the latter category are more favorable to them (e.g., in the case of a cohabiting sibling).

R 34/1960: A "shared household" of the testator and other persons is understood as actual cohabitation in a consumer community where all members contribute to meeting shared

needs according to their abilities and resources. Within this community, each member procures what they need while assisting others. Members benefit from all advantages of the shared household, including joint housing, meals, clothing, recreation, outings, and more. Simply sharing an apartment with multiple people does not constitute a shared household, even if all individuals equally share the costs of rent, utilities, and other associated expenses, provided that each person lives independently and does not have a closer relationship of consumer solidarity typical of a shared household.

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ISBN: 978-80-7160-712-0