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RESEARCH ARTICLE

The Rule Against Perpetuities and The Case for Its Introduction into The Law of Uzbekistan

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Abstract

This article examines the rule against perpetuities (RAP)— a legal mechanism that prevents property interests from remaining unresolved indefinitely, and justifies the need to include an adapted version of it in the civil legislation of Uzbekistan. The argument is based on the final report of the Nova Scotia Law Reform Commission for 2010 on the rule prohibiting indefinite inheritance, comparative models from Russia, Germany and Kazakhstan, as well as an analysis of the decisions of the Plenum of the Supreme Court of Uzbekistan on inheritance issues. Taken together, these sources reveal a significant gap: currently, there is no mechanism in Uzbekistan that sets a time frame for conditional property rights, and this gap creates systemic legal uncertainty in the field of law, which is becoming increasingly important in practice. The article proposes a hybrid model combining an indefinite term established by law with judicial powers to change procedures in difficult cases, as a reform option that best suits the traditions of Uzbek civil law and the current institutional potential.

KEYWORDS

Rule against perpetuities; Uzbekistan; succession law; contingent interests; trust duration; property law reform; dead-hand control; civil law; testamentary conditions; comparative law.

INTRODUCTION

The rule against perpetuities is one of the oldest and most technically complex principles of the common law of property. In its classical formulation—attributed to Gray—no contingent future interest in property is valid unless it is certain, at the moment the disposition takes effect, that the interest must vest within a life or lives in being plus twenty-one years. [1] Its origins date back to the end of the seventeenth century and manifested themselves in the Duke of Norfolk case,[2] where the courts tried to prevent landowners from passing property from generation to generation in ways that prevented free alienation and burdened future owners with the stranglehold of the past. Despite the fact that this rule is based on English common law, it does not cause concern. Every legal system that recognizes private property and freedom of probate ultimately faces the same question.: How far can a living person go in the future to limit the possibilities of those who have not yet been born? There is not a single jurisdiction that would respond "as they please"

Uzbekistan, as a post-Soviet civil law jurisdiction, has built its system of ownership and inheritance based on codified traditions. The Constitution guarantees the inviolability of private property and the right of inheritance [3], and the Sixth Book of the Civil Code describes in detail the order of inheritance by law and by will. [4] However, there is a notable gap: the Code does not contain a mechanism similar to this rule. No provision limits the duration of conditional future

interests, limits the time scope of probate terms, or empowers courts to change agreements that have simply lost their meaning over time.

This silence is not a deliberate political choice. This is a gap that will become increasingly important as Uzbekistan's private sector grows, as trust-like mechanisms become more widespread, and as the country strives to bring its legal infrastructure in line with international standards. This article provides arguments in favor of legislative reform.

The discussion takes place in five stages. The second part outlines the doctrine of this law, its objectives and the main approaches to reform. The third part examines Uzbek inheritance legislation and identifies gaps. Part IV examines how the comparators of civil law — Russia, Germany and Kazakhstan — solve the same problem. Part V proposes a specific hybrid model for Uzbekistan. Part VI examines the most likely objections.

LITERATURE REVIEW AND METHODS

The classical rule

The rule applies to all contingent property interests: trusts, options to purchase, conditional easements, remainder estates, and powers of appointment. In cases where an order may, under any possible set of circumstances, lead to the transfer of rights after an indefinite period, it is considered invalid ab initio — the intended gift is not fully executed, as if it had never been made. [5]

This rule is notoriously complicated. Determining the appropriate 'lives in being' requires consideration of all possible future unforeseen circumstances, no matter how remote, that may delay the transfer of rights. [6] An error in formulation is not only costly, it is catastrophic: not only the offending condition, but the entire decision—making procedure fails. It is this combination of technical difficulties, harsh consequences, and widespread coverage that has led to reform in almost all jurisdictions where the Rule applies.

The purposes behind the rule

The Manitoba Law Reform Commission has identified two main objectives. The first one is simple: Property should be freely accessible at fairly regular intervals. The second is more fundamental: "to establish a fair balance between the desires of the current absolute owners to regulate the use of their property in the coming years, despite their own mortality, and the desires of those who will live tomorrow to have the same or at least effective control over the use of the property that belongs to them." they got an inheritance.' [7]

Morris and Leach express the same concern about intergenerational equity: if one generation can create unlimited interests in the future, then subsequent generations inherit property in a limited state and are deprived of the same freedom of disposition that they were denied. [8] Dich adds a practical aspect: the freedom to redistribute assets is important not only to avoid the conditions set by previous donors, but also to respond to new tax rules, changes in the nature of ownership, and unforeseen circumstances of beneficiaries. [9] Emery makes economic arguments: property held in trust for a long time constrains investment, limits risk capital and slows down economic development — a problem directly related to the current political priorities of Uzbekistan. [10]

Reform approaches: a comparative survey

The reform was carried out in three main forms. The first one —'wait and see'—retains the perpetuities period but suspends its invalidity: instead of declaring the decision invalid from the very beginning, the courts wait to see if a problematic situation really arises. If this does not happen, the interest will be saved. This rule has been adopted in many US states, and previously in several Canadian provinces.

The second approach replaces "lives in being plus twenty-one years" with the statutory period. England and Wales followed this path in 2009, granting a 125-year indefinite period on a wait-and-see basis. [11] The result is a much simpler rule that does not sacrifice the basic policy of limiting the duration of contingent interests.

Manitoba, Saskatchewan, Ireland, and several offshore jurisdictions have completely abolished this rule, relying instead on taxation, proxy investment fees, and the judiciary to change trust agreements. [12] The Nova Scotia Law Reform Commission recommended this path, concluding that individual judicial intervention on a case-by-case basis has an advantage over the categorical rule, provided that reliable trust amendment legislation has been passed along with the abolition of trusts. [13]

Methodological note

This article uses the doctrinal-comparative method. It

analyzes the normative text of the Civil Code of Uzbekistan, the Resolution of the Plenum of the Supreme Court No. 5 of 2011 on inheritance law, and compares primary sources from England, Germany, Russia and Kazakhstan. The final report of the Nova Scotia Commission for 2010 is used as the main analytical framework, as it contains the most thorough recent review of the objectives, problems and options for reforming this rule in any common law jurisdiction, and its rationale is instructive for application in civil law.

RESULTS

The Uzbek Civil Code framework

The sixth Chapter of the Civil Code (articles 1112-1188) regulates inheritance law. Article 1113 broadly defines inherited property: all movable and immovable property that belonged to the deceased at the time of death, including property rights and obligations that do not terminate upon death, such as property rights, bank deposits, lifelong inherited ownership of a peasant farm and the right to lease a farm enterprise.. [14] Inheritance can be carried out by law or by will.

Uzbek legislation provides testators with wide freedom to dispose of property. The testator may bequeath property to any person in any proportions and may specify the terms of the will. The Code establishes a mandatory share in favor of minors and disabled close relatives, who are entitled to at least half of what they would have received in the absence of a will, regardless of the terms of any will. [15] The doctrine of the unworthy heir prohibits persons who have intentionally harmed the testator or other heirs. [16]

The gap: no temporal limit on contingent interests

Articles 1117 and 1118 of the Code allow testamentary dispositions subject to certain conditions, including conditions that postpone entry into force until a certain event occurs. [17] However, no provision of the Code sets any time limits for such unforeseen circumstances. The testator may provide that the property will pass to the grandson after receiving a university degree, reaching the age of fifty, or in the event of any other event, no matter how remote it may be, and there is no legislative mechanism that would nullify or amend this agreement if the period of transfer of property turns out to be exceptionally long.

This silence has three practical consequences. Firstly, property can remain in contingent, unvested state for a theoretically unlimited period of time, which does not allow living people to freely dispose of property that they own, but which they do not fully own. Secondly, third-party creditors and buyers face uncertainty about the true ownership status of the property subject to contingent interests, which creates the risk of legal title in commercial transactions. Thirdly, the trustees and property managers acting on the terms of deferred entry into force do not have legislative guidance on when or how a perpetually contingent arrangement can be terminated.

Judicial practice: evidence from supreme Court Plenum decisions

The Supreme Court's Plenum Decision No 5 of 20 July 2011— 'On the Application of Legislation on Inheritance Law by Courts'— is an authoritative document regulating the approach of Uzbek courts to the consideration of inheritance disputes. [18] The Plenum explicitly refers in its recommendations to the constitutional guarantees of property rights and the importance of their effective judicial protection. [19]

The categories of disputes that the Plenum identified as the most frequently contested — the recognition of wills as invalid, the determination of shares in inheritance, the inclusion of property in the estate, the restoration of the timing of inheritance — speak for themselves: Uzbek inheritance legislation already creates significant judicial uncertainty regarding property status and powers. [20]

The only existing temporary restriction for an unregulated property situation in Uzbek legislation is the provision on inheritance without an owner: property unclaimed by any heir within three years is declared ownerless and transferred to the state. [21] There is no equivalent mechanism for property transferred by will on terms that are difficult or impossible to fulfill — property that is not unclaimed, but simply depends on an indefinite period. This gap is legislative, not judicial in nature.

Comparative findings

Russia: The Civil Code of the Russian Federation does not contain a clear rule on the indefinite validity of the contract. However, the law on trust management in most cases limits the term of validity of trust management agreements to five years, with a maximum of twenty years established by law. [22] The 2018 reforms introducing inheritance contracts and

replacing them with provisions on heirs further developed the framework of conditional inheritance, although without an external time limit on conditional interests. Russian legislation has the same structural gap as Uzbek legislation, although the shorter statutory duration of the trust creates a partial, indirect limitation.

Germany: The Nacherbenschaft (subsequent heir) mechanism is the most instructive civil law parallel to the Rule. The BGB allows a testator to designate a subsequent heir to receive property after a prior heir, but imposes an explicit limit: the right of the subsequent heir lapses thirty years after the opening of the estate, unless the condition is the birth or death of a specific named person. [23] This thirty-year cap is functionally equivalent to the Rule in purpose—preventing indefinite contingent interests from persisting across generations—while using the simpler civil law idiom of a fixed statutory period rather than the common law construct of lives in being. The German model is directly transposable to Uzbek legislative technique.

Kazakhstan: Kazakhstan's Civil Code provides a broadly similar succession framework to Uzbekistan's, without a perpetuities rule. [24] However, Kazakh courts have developed an active practice of varying testamentary conditions that prove impossible or unreasonably burdensome to satisfy, drawing on general civil law principles of good faith and the prohibition of abuse of rights. This judicial creativity has partially mitigated the legislative gap. The more conservative judicial approach visible in Uzbek Plenum decisions makes the case for legislative action in Uzbekistan stronger than in Kazakhstan.

DISCUSSION

The case for a temporal limit

Three independent but mutually reinforcing arguments support the introduction of a perpetuities-type rule in Uzbekistan.

The first is the "dead hand" argument. Property should eventually be placed at the free disposal of living people who will be able to make the best use of it in modern conditions and respond to economic circumstances unknown to the original testator. The desire of wealthy people to protect family property from unwise heirs by creating difficult inheritance conditions is a universal feature of property-owning societies, as relevant for Uzbekistan today as it was for England in the 17th century. [25]

The second argument is economic in nature. Property held in trust or subject to conditional interest is limited in terms of investment and commercial use. Fiduciary duties of trust managers require conservative management; potential future shareholders cannot freely alienate or mortgage their potential shares. The cumulative effect of a large amount of property in an uncertain state is to reduce freely circulating capital, which is a direct problem in a developing economy where capital accumulation and investment are policy priorities.

The third argument comes from the Uzbek judicial evidence itself. The frequency of disputes catalogued by the 2011 Plenum decision—inheritance share determination, will invalidity, property inclusion—demonstrates that Uzbek succession law already generates substantial uncertainty. Indefinitely contingent interests can only compound this. A clear temporal limit would reduce the scope for dispute and provide a predictable endpoint to arrangements that have become commercially unworkable.

Why abolition is not the right answer for Uzbekistan

The Nova Scotia Commission recommended the complete repeal of this rule, along with the expansion of judicial powers to change trust agreements and property agreements. [26] This recommendation was appropriate for a mature common law jurisdiction with decades of developed legal practice in relation to various trusts and a developed sector of professional trust managers.

Uzbekistan is neither one nor the other. The abolition of powers without accompanying changes would eliminate any structural restrictions on eternal conditional interests, without replacing them with anything. Uzbek courts, although they are becoming increasingly active in inheritance disputes, as shown by the 2011 Plenum resolution, have not yet developed the doctrinal tools necessary to consider each specific case. The risk of creating a legal vacuum is real and may cause particular harm to foreign investors who need certainty regarding ownership rights.

Objections considered

"The general principles of civil law already provide sufficient flexibility." This argument underestimates the nature of the problem. The Principles of Good Faith and Anti-Abuse of Rights relate to unreasonable behavior in the exercise of existing legal rights; they do not and cannot impose structural restrictions on the creation of indefinite contingent interests.

A testamentary provision delaying entry into force for seventy years is not an abuse of rights — it is the exercise of freedom of probate. What is needed is a norm that limits the duration of such conditions from the point of view of property law, and not just a judicial safety valve for egregious cases.

'The Rule is a common law concept alien to civil law.' This objection confuses form with substance. The policy concerns that underlie the Rule—preventing dead-hand control of property, preserving the freedom of future generations, ensuring the marketability of property—are universal, and every developed civil law system addresses them through analogous mechanisms. German law does it through the Nacherbenschaft time limit; French law through the substitution fidéicommissaire regime; Russian law through trust management duration limits. The proposed hybrid model does not transplant the common law Rule in its technical form. It adapts the underlying policy to a civil law instrument—a fixed statutory period expressed in years, not lives—that is entirely at home in a codified system.

'Reform is premature while trust law remains undeveloped.' This inverts the logic of preventive legal reform. Precisely because the trust sector is nascent, the moment for reform is now. It is far easier to build principled structural limits into an emerging framework than to graft them on after problematic practices have become entrenched and vested interests have accumulated. The history of perpetuities reform in common law jurisdictions is instructive: the difficulty of reforming the Rule in jurisdictions where it had long operated—where practitioners had adapted their drafting practice around its complexities—was a major obstacle to timely reform. Uzbekistan has the advantage of being able to build a clear, modern framework before that institutional inertia develops.

CONCLUSION

The rule against perpetuities addresses a problem as old as private property itself: the tension between the present generation's desire to control the future use of its assets and the future generation's claim to manage what it inherits. Every developed property law system has found a way to resolve this tension. Uzbekistan has not. The Civil Code's broad testamentary freedom provisions, unaccompanied by any temporal limit on contingent interests, leave a structural gap that will become increasingly consequential as the private wealth sector grows.

The analysis in this article supports four conclusions. First, the absence of a perpetuities-type rule in Uzbek law is a genuine legislative gap—not a deliberate policy choice—and it creates systemic uncertainty in property transactions and succession planning. Second, the existing judicial framework, principally the 2011 Plenum decision, equips courts to resolve individual inheritance disputes but cannot fill the gap; that requires a legislative solution. Third, the right model for Uzbekistan is neither a technical transplant of the common law Rule nor outright abolition on the Nova Scotia model, but a hybrid approach drawing on German and English fixed-period models.

Concretely, this means: a statutory perpetuities period of 100 years from the opening of the inheritance or the creation of the property interest; a judicial variation power allowing courts to modify or terminate unvested interests where the original purpose has become impossible, unreasonably burdensome, or contrary to the public interest; an exemption for charitable and public-purpose trusts; and retrospective provisions that protect vested interests while bringing existing contingent arrangements within the new framework over a three-year transitional period.

Such a reform would modernise Uzbek succession and property law, align it with international comparators, reduce litigation uncertainty, and provide a principled foundation for the development of trust and estate planning practice. Put simply, it would close the most significant structural gap in Uzbekistan's private law framework governing property.

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