

LAW AND THE DISTRIBUTION OF CONSUMER GOODS IN THE SOVIET UNION

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I. INTRODUCTION

TO CONCEDE THAT in the Soviet Union production for further production continues to take precedence over production for consumption is not to say that the consumption aspect of the Soviet economy is insignificant. Recent reports from the Soviet Union are virtually unanimous in asserting that the Soviet consumer is better off today than at any time since the revolution.

General amelioration of conditions began almost immediately upon the little-lamented passing of Stalin on March 5, 1953. Already in the second quarter of that year the volume of retail trade increased by 23 per cent. The turn was so sudden as to suggest, at first, that stocks of consumer goods were released purely for political ends—presumably to preserve popular stability in the short run.¹ But even after the struggle for power and leadership had subsided, trade in consumer goods continued to expand, albeit at a somewhat lower rate. A pattern of progressive improvement has remained. Instead of being held to fixed low consumption norms, the Soviet consumer is now given a chance to participate in a relatively constant share of a growing national product.² In 1962 the retail turnover in state and cooperative trade amounted to 86,300,000,000 rubles or 6 per cent over the previous year. The total was slightly more than 50 per cent of the national income, which also had added a 6 per cent increment over the same period.³ Furthermore, the people have an opportunity to spend their incomes on consumer goods of an ever-increasing variety.

The current Soviet policies of resource allocation still give an edge to heavy industry, and recently the consumption of several basic necessities (especially foodstuffs) has been curtailed. Still, there is no evidence that the relative position of consumers is being deliberately subverted. Khrushchev has promised “to achieve in the coming 20 years a living standard

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¹ Goldman, *The Soviet Standard of Living, and Ours*, 38 FOREIGN AFFAIRS 625, 626 (1960).

² HEARINGS TOGETHER WITH COMPILATION OF STUDIES PREPARED FOR THE JOINT ECONOMIC COMM., 87th Cong., 2d Sess., DIMENSIONS OF SOVIET ECONOMIC POWER 351-52 (Comm. Print 1962).

³ Pravda, Jan. 26, 1963, p. 2.

higher than that of any capitalist country and to create the necessary conditions for achieving an abundance of material and cultural values.”⁴ And although at times it seems that in the Soviet Union the magnitude of future promises is directly proportional to the depth of present failures,⁵ one can nonetheless discern a strong ideological commitment to raising the people’s standard of living. There are also weighty practical reasons that militate against indifference toward the levels and patterns of consumption. Ever since the early “left-wing” notion of uniform rewards for all participants in the economic process was scrapped as unfeasible, the Soviet economy has functioned with the help of a system of incentives based on sharp disparity between the distributed shares of the social product. Nothing indicates that a system of this kind has ceased to be indispensable under Soviet-type socialism. In fact, instead of talking of its abandonment, the Soviet leaders extol its virtues and advocate its further expansion in those areas of economy where performance has been poorest, notably in agriculture. Of course, incentive pay without opportunities for converting the hard-earned rubles into desired goods and services would be mere ostentation. Finally, quite aside from any doctrinal tenets or pressure of economic realities, it is not inconceivable that the present Soviet leaders wish to be not only feared but also liked and accepted as beneficent rulers. Perhaps they too feel an occasional urge to bestow on their people gifts that can be enjoyed today and are not mere assurances of a good life generations from now.

When consumption was confined to the barest necessities and transactions between distributors and buyers were conducted on a simple cash-and-carry basis, there was little room for the development of a law of consumer trade. The Civil Code,⁶ to be sure, contained numerous articles brooding over the intricacies of offer and acceptance, passage of title, incidence of fortuitous losses, and many other problems, but they intrigued neither the sellers nor those who were queuing up before the stores. How-

⁴ Khrushchev, *Report on the Program of the Communist Party of the Soviet Union*, published as 2 DOCUMENTS OF THE 22ND CONGRESS OF THE CPSU 83 (1961).

⁵ Erro, *And What of the Consumer?*, 12 Problems of Communism No. 6, p. 34 (1963).

⁶ The USSR is a union (federation) of 15 union republics (states). The republics have their own codes of civil and criminal law and procedure. Since the codes vary little from republic to republic, it is customary to cite the codes of the RSFSR as representative “Soviet” codes. In this article, unless otherwise indicated, all references to codes are to the codes of the RSFSR: Civil Code (1922), Code of Civil Procedure (1923), Criminal Code (1960). The high degree of uniformity is achieved through federally enacted guiding “Principles” of law. This article cites the Principles of Civil Law of the USSR and the Union Republics (1961). At present, the civil codes of the 1920’s are being rewritten to conform to the 1961 Principles.

As this issue was going to the printer, the RSFSR adopted its new Civil Code and the Code of Civil Procedure, which will go into effect on October 1, 1964. A quick examination of some of the provisions relating to trade in consumer goods did not reveal any striking innovations.

ever, the recent changes in the economic climate and the greater emphasis on the consumption aspect have shown a need for new institutions and procedures. As a result, a body of consumer trade law has been in the making over the past decade. A good part of it concerns the organization and internal functioning of an expanding network of planning, distribution, and service agencies and is thus, to use a Western category, essentially "public law." At the same time, several revitalized or newly introduced devices of "private law"⁷ have accompanied the coming of durable consumer goods—guarantees of quality, sales on installment credit, and rentals of automobiles, to name a few. Judging by what has happened so far under the new policies, any further advances in the direction of consumer prosperity should necessitate a still greater reliance on legal regulation of the relationships between agencies which distribute and service the goods and the people who acquire and use them, as well as the relationships between the consumers themselves. A simple increase in the numbers of available items, for instance, should be expected to lead to more disputes over quality; a greater volume of credit sales should entail more defaults; sales and rentals of progressively more complex mechanical and electrical gadgets should lay the groundwork for something along the lines of products liability.

The Soviets disagree. As a rule, they vehemently deny any inability on the part of their system to reduce drastically (if not to eliminate completely) the relative share of defective goods. Consequently, they do not envision a greater role for "private law" on account of mushrooming contract and tort liability traceable to defects in design and manufacture or failures properly to warn and instruct. Furthermore, they challenge the proposition that the defaults on credit sales would probably remain at least at the present rate and that, therefore, they would be more numerous in absolute terms. They insist that dishonesty and irresponsibility in meeting just obligations are alien to the Soviet people, and that the infrequent manifestations of such conduct are being effectively eradicated from the Soviet scene as "pernicious vestiges of the past."

Occasionally the same ultimate conclusion is reached by a different course of reasoning, as the Soviet legal theoretician, Alekseyev, has done in a recently published monograph.⁸ It is a pity that this otherwise fascinating piece of work too is an exposition of faith rather than a product of

⁷The use of these terms in Soviet context can be misleading. Soviet legal doctrine denies the dichotomy of public and private law. In the civil law sense, private law governs relations between private persons *inter sese*. Such relations in the Soviet Union are relatively insignificant. I have expanded the concept of private law to include all relations in which at least one of the parties directly involved is an individual.

⁸ALEKSEYEV, *GRAZHDANSKOYE PRAVO V PERIOD RAZVERNUTOGO STROITEL'STVA KOMMUNIZMA (CIVIL LAW IN THE PERIOD OF ALL-OUT CONSTRUCTION OF COMMUNISM)* (1962).

responsible research into social and economic facts. According to Alekseyev, law, as a means of controlling consumer relations, will not rise in stature. Indeed, it is bound to lose much of its present limited function. He reiterates the promise of affluence but stresses that it will not be enjoyed through personally owned property. The growth of personal property will be kept "within reasonable bounds," lest it become an end in itself. Eventually, declares Alekseyev, individuals will own, besides some provisions and wearing apparel, only a handful of attributes of the good communist life, such as, books, barbells, and balalaikas.⁹ Of course, during the current phase of "all-out construction of communism" material incentives will remain intact, and consumer goods will be supplied in ever greater quantities. He predicts, however, that simultaneously vast segments of civil law relationships will fall into disuse, as various needs are met through central allocation. In one way or another, things capable of producing income and thus not fitting comfortably within the category of personal property,¹⁰ will be removed from personal ownership. Alekseyev intimates that the very extensive "private law" relations which surround personally owned housing will perhaps be the first to fall victim to massive socialization. As more and more public housing is provided, the various transactions relative to construction, leasing, and transfer of personal houses will wither away. Moreover, when the new apartments are equipped with such innovations as built-in closets,¹¹ kitchen appliances and other conveniences, including furniture, purchases of these items (as well as arrangements for moving and servicing them) by individual citizens will drop. The enjoyment of most other major consumer items will likewise be based on principles of rental rather than ownership. By implication, the bulk of civil law relations involving individuals will take the form of sundry leases with the state.

For these reasons, one who sets out to examine the legal machinery of Soviet consumer trade is confronted with an ambiguity. The increased activity of Soviet lawyers in dealing with problems concomitant to the increased flow and wider use of consumer durables is presented by doctrinal diatribes as a mere prelude to an inevitable atrophy of law. However, the available evidence does not support a conclusion that speculations about life under communism are actually backed by conscious deeds.

⁹ Alekseyev includes "books, musical instruments and personal sporting equipment" among "articles of importance for individuals." *Id.* at 193.

¹⁰ "Citizens may personally own property intended for the satisfaction of their material and cultural needs. . . . Property that is personally owned by citizens may not be used for the derivation of unearned income." PRINCIPLES OF CIVIL LAW art. 25. The Principles are translated in 7 *LAW IN EASTERN EUROPE* 263 (Szirmai ed. 1963).

¹¹ It is not clear whether the decision to have built-in closets was made before or after discovering that the old bulky wardrobes could not be lugged into the new tight apartments.

Soviet consumers continue buying things and calling them their own. Undoubtedly they expect to go on doing the same indefinitely. Alekseyev himself warns that

“[T]he question of personal property cannot be resolved in isolation from the actual economic conditions. A premature banning of personal property may hamper the efforts at satisfying the citizens’ needs and undermine the principle of material incentive. Inasmuch as over the next twenty years compensation in accordance with [quantity and quality of] work will remain the principal means for raising the level of citizens’ well-being, there should be no experimentation with unjustified constraints in the area of personal property law.”¹²

This paper presents a description and analysis of the organizational structure of Soviet trade in consumer goods, transmission of consumer demand to producers, devices for shaping consumer demand, protection of buyers’ interests, in particular with respect to the quality of service and merchandise, and the extent and function of illicit private trade.

II. THE ORGANIZATIONAL STRUCTURE OF SOVIET TRADE IN CONSUMER GOODS

The main branches of Soviet economy, including trade, are hierarchically organized, with the government and the party constantly endeavoring to strike a politically and economically acceptable balance between direction from the top and initiative at the lower levels. The individual hierarchies, of course, do not exist as isolated organisms, but function in coordination with other hierarchies to the tune of a single national economic plan. Description of these hierarchies and their interrelationships is an especially ungrateful task for at least two reasons. The component agencies possess both governmental and nongovernmental powers and responsibilities, so that any attempt to discuss their economic operations thoroughly is destined to be overwhelmed by details regarding state bureaucracy and party machinery. Secondly, the organizational structure is overhauled so often that it is almost impossible to come to comprehend the impact of a series of previous changes before new variations are announced.

Partly out of timidity to face the difficult task squarely and partly because of a preconceived analytical framework, I have decided to present the material on the organizational structure in two segments. This section provides only a rather formal view of trading by the state and tells something about the status and peculiarities of cooperative and private trade. A further look at the socialist (*i.e.*, state and cooperative) sector in action

¹² ALEKSEYEV, *op. cit. supra* note 8, at 199-200.

is postponed to the section on "Transmission of Consumer Demand to Producers."¹³

After a series of recent reorganizations, the State Committee of Trade of the Council of Ministers of the USSR is, at the moment, the top agency in the area of consumer commodity circulation.¹⁴ It coordinates the work of all other agencies engaged in the distribution of consumer goods: ministries of trade of the 15 union republics, other ministries and departments conducting trade,¹⁵ and the Central Union of Consumer Cooperatives (*Tsentrosoyuz*). The Committee investigates consumer demand, makes suggestions concerning output of needed goods and discontinuation of lines for which there is no demand, studies modern merchandising techniques and promotes their adoption, and proposes legislation on matters of domestic trade. Through its Chief Administration of Interrepublic Deliveries, the Committee plans and supervises shipments of selected important goods across republic boundaries, in accordance with the national economic plan, to satisfy certain countrywide needs.

Distribution of goods produced within a republic and not destined to points outside its territory, as well as goods received by a republic from the outside, is, as a rule, the responsibility of the ministry of trade of the republic.

A. State Trade

Most of the trade network is state-owned and operated.¹⁶ In 1962 state trade accounted for 66.8 per cent of the total volume of retail trade.¹⁷

Typically, a republic organizes¹⁸ its trade network into trading systems (*torgovyye sistemy*), each specializing in related lines of products. A system, in turn, is made up of wholesale trading organizations (*optovyye torgovyye organizatsiyi*) and retail trading organizations (*roznichnyye torgovyye organizatsiyi* or *torgy*). Wholesale trading organizations, sometimes called offices (*kontory*) or administrations (*upravleniya*) of whole-

¹³ See text pp. 230-40 *infra*.

¹⁴ Edict of Dec. 7, 1962 (U.S.S.R.), [1962] *Ved. verkh. sov. S.S.S.R.* text 520, approved by Law of Dec. 13, 1962 (U.S.S.R.), *id.* text 529, art. 1. Struyev was appointed to head the Committee. Edict of Dec. 26, 1962 (U.S.S.R.), [1963] *Ved. verkh. sov. S.S.S.R.* text 5.

¹⁵ Pharmacies and medical supply stores are run by the Ministry of Health; bookstores, by the Ministry of Culture; and newsstands, by the Ministry of Communications. There are also workers' stores (*orsy*) attached to some industrial plants and the "red PX system" of the Ministry of Defense.

¹⁶ Including both wholesale and retail facilities.

¹⁷ PAVLOV, *SOVETSKAYA TORGOVLYA V SOVREMENNYKH USLOVIYAKH* (SOVIET TRADE UNDER CONTEMPORARY CONDITIONS) 37 (1962).

¹⁸ The description of Soviet state trade network is taken mainly from PAVLOV, *op. cit. supra* note 17, at 66-68 and *EKONOMIKA SOVETSKOY TORGOVLI* (ECONOMICS OF SOVIET TRADE) 55-59 (1962).

sale trade, are in the main directly subordinate to the ministry of trade of the republic; some are under the wings of various ministries or committees of procurement and the councils of national economy (*sovmarkhozy*).¹⁹ They operate shipping (*vykhodnyye*) and purchasing warehouses (*torgovozakupochnyye bazy*) located in the proximity of centers of production, and sales warehouses (*torgovyie bazy*) located in districts of consumption. In addition to channelling goods to retail outlets within their geographical areas and trading systems, the republic offices of wholesale trade engage in exchange of goods between regions and republics, make goods available for export, allocate imported goods, etc. Unlike the wholesale trading organizations, only relatively few retail organizations are directly subordinate to the republic ministry of trade.²⁰ The soviets of territories, regions, districts, and cities have set up administrations or sections of trade within their executive committees. Most retail trading organizations are adjuncts of these lower echelon administrative units.²¹ Ordinarily a retail trading organization embraces several outlets, or stores, which actually conduct business with customers. Organizations whose outlets engage in public catering are known as dining-room trusts (*trasty stolovykh*) or restaurant trusts (*trasty restoranov*). Both stores and catering establishments go under the generic name of "trading enterprises" (*torgovyie predpriyatiya*).

Each state trading organization has a charter defining the scope of its activities (e.g., trade in foodstuffs, manufactured goods; wholesale, retail) and endowing it with a juristic personality.²² As a juristic person it is entitled to possess separate property, acquire rights and assume obligations and sue and be sued.²³ An organization so constituted must operate in accordance with the principle of economic accountability (*khozraschyot*). Having been originally allocated certain fixed and working capital, the organization is expected subsequently to work so as to make its income exceed the outgo. It answers for its obligations with its own resources. The state is not responsible for the obligations of state organizations which are juristic persons and, conversely, the organizations cannot be held for the obligations

¹⁹ *Sovmarkhozy* are responsible for the operation of workers' stores at industrial plants. Cf. note 122 *infra*.

²⁰ Thus the Ministry of Trade of the RSFSR has Chief Administrations for trade in resorts (*Glavkurorttorg*), railway restaurants (*Glavdorrestoran*), and mail order sales (*Posyltorg*). Two wholesale outfits conduct retail trade as well—*Roslesstroytorg*, in forest products and building materials, and *Rosyuvelirtorg*, in jewelry.

²¹ E.g., R.S.F.S.R. CONST. arts. 92, 96, 99; UZBEK S.S.R. CONST. arts. 90, 93, 96. "The chief officials of the trade organizations serve as the commercial representatives in the regular governmental body at each administrative level. The city trade organization is represented by its director on the municipal council or city soviet." GOLDMAN, SOVIET MARKETING: DISTRIBUTION IN A CONTROLLED ECONOMY 28 (1963).

²² State trade organizations are still formally regulated by Decree of Aug. 17, 1927 (U.S.S.R.), [1927] Sob. zak. i rasp. S.S.S.R. text 502.

²³ PRINCIPLES OF CIVIL LAW art. 11.

of the state.²⁴ One should be cautious, though, not to carry the private enterprise analogy too far. Whereas the principle of economic accountability encourages businesslike management of an organization, the opening of a new establishment is not necessarily prompted by business considerations. A local soviet is not to be likened to a group of potential investors scanning the economic horizons for an opportunity to make a killing. Their decision to open a store, a restaurant, or a repair shop will not be an economic one. They may do it because they are genuinely conscientious, or because they simply execute a mandate of the party or the government, or because they wish to impress their superiors.²⁵

While the legal status of trading organizations is, on the whole, uniform, the same cannot be said about trading enterprises.²⁶ Some of them are fully on economic accountability and enjoy juristic personality, others use only a system of internal cost accounting and are not juristically independent participants in the economic process. The enterprises which are not juristic persons do not, for instance, conclude contracts in their own name. Such contracts, when needed, are made by the juristic person which comprises them.²⁷

A trading organization or enterprise is headed by a single person—a director, who combines the functions of a representative of a juristic person with those of a state official. By transactions within the charter powers of the organization or enterprise its director creates and extinguishes various rights and duties on behalf of the entity. On the other hand, his managerial activities must conform with directives of the superior governmental units as well as all general laws and regulations in force. As a state official, an “organization man, filling a slot in an industrial bureaucracy,”²⁸ the director is personally responsible for the administration of the sector of the economy entrusted to him through the device of economic accountability,²⁹ and may incur civil, administrative, or even criminal liability for any acts of mismanagement.³⁰

²⁴ *Id.* art. 13.

²⁵ Cf. BUDARAGIN, *EKONOMICHESKIYE SVYAZI TORGOVLI S PROMYSHLENNOST'YU* (ECONOMIC TIES BETWEEN TRADE AND INDUSTRY) 130 (1963).

²⁶ Genkin, *Aktual'nye voprosy pravovogo regulirovaniya sovetskoy gosudarstvennoy trgovli* (Current Problems of Legal Regulation of Soviet State Trade), *Sov. gos. i pravo* No. 8, p. 39, 40-41 (1961).

²⁷ PRAV. REG. GOS. TORG. SSSR (LEGAL REGULATION OF STATE TRADE IN THE USSR) 34-36 (1957).

²⁸ GRANICK, *THE RED EXECUTIVE* 318 (1960).

²⁹ “In the modern Soviet system, the establishment is indeed a separate unit and feels itself to be such, even though it has very few powers of independent decision. This is largely because, although deprived of such freedoms, it has had responsibility squarely thrust upon it.” WILES, *THE POLITICAL ECONOMY OF COMMUNISM* 34 (1962).

³⁰ PRAV. REG. GOS. TORG. SSSR 40-41.

B. Cooperative Trade

The statistics for 1962 show that cooperative trade accounted for a substantial portion—28.8 per cent—of the total volume of retail trade.³¹ But the figure is really quite meaningless. As a result of a series of restrictive enactments,³² the consumer cooperative system has been reduced virtually to the status of the rural branch of the state network of retail trade. In urban centers, the outlets of consumer cooperatives are used mainly to sell farm produce received from peasant households (both collectivized and noncollectivized) or collective farms (*kolkhozy*), on a commission basis.³³

Since January 1, 1958, when collective farm families and most other people living on farmland in rural areas were freed from compulsory deliveries of specified quantities of farm products to the state, the volume of produce available for commission sale has been limited only by the producers' own needs or their desire to use alternative avenues of disposal. The commission contract (*dogovor komissiyi*) is governed by provisions of the Civil Code,³⁴ insofar as they have not been superseded by special laws or regulations.³⁵ From a common law point of view, it resembles a contract creating a bailment (consignment) relationship between a principal and agent, the latter being known as a factor or commission merchant. The Conditions of Commission Sales require cooperatives to accept all products "of good quality" offered to them by growers.³⁶ A written contract is made describing the products and specifying a time for delivery, an approximate term for realization, sale price, and the manner of settling accounts.³⁷ If the sale is to take place within the local administrative district, the grower gets his money within three days following the sale. For produce accepted in inter-district trade, the cooperative advances 50 per cent³⁸ of the stipulated sale price within two days after the receipt of either the products themselves or shipping documents, and settles the balance within three days after the realization of the products.³⁹ The cooperatives are inclined to calculate the expected price as the mean figure between the lower retail

³¹ PAVLOV, *op. cit. supra* note 17, at 41.

³² Especially Decree of Sept. 29, 1935 (U.S.S.R.), discussed in BLANK, OSNOVY TEORIYI I ISTORIYI POTREBITEL'SKOY KOOPERATSIYI (FUNDAMENTALS OF THE THEORY AND HISTORY OF CONSUMER COOPERATIVES) 151-52 (1963).

³³ Commission sales were inaugurated by Decree of Oct. 12, 1953, (U.S.S.R.) art. 43, ISTOCH. SOV. GRAZH. PRAV. 647 (1961).

³⁴ Arts. 275 a-y.

³⁵ Such as the Conditions of Commission Sales approved by the Ministry of Trade of the USSR, May 22, 1954, ISTOCH. SOV. GRAZH. PRAV. 648.

³⁶ Art. 2.

³⁷ Art. 4; CIVIL CODE art. 275b. A form contract has been used by the *Tsentrosoyuz* since 1955. 2 SOVETSKOYE GRAZHDANSKOYE PRAVO (SOVIET CIVIL LAW) 221 (1961).

³⁸ Compare GOLDMAN, *op. cit. supra* note 21, at 43 (75%).

³⁹ Conditions of Commission Sales art. 11.

price fixed by the government and the higher price prevailing on the vestigial free market—the so-called collective farm market, which I shall discuss next. Barring administrative modification, government prices are stable. Consequently, the prices inserted in commission contracts vary solely because of fluctuating “market conditions”; a strange extension of the interplay of market forces in a socialist economy.⁴⁰ If by reason of a downswing in market or danger of spoilage the cooperative agent is unable to obtain the stipulated amount, the products may be sold at a reduced price, without the cooperative becoming liable for the difference, provided, however, that necessity is proved in the manner prescribed by law.⁴¹ The grower is obligated to pay the cooperative a commission pursuant to a schedule established by the *Tsentrosoyuz*,⁴² and to assume all expense of moving the produce to the place of realization.⁴³ Although the goods after their delivery to the cooperative remain the grower’s property, the cooperative is liable for their loss or damage to them, unless it proves that the loss or damage resulted from circumstances which it could not prevent by the exercise of due diligence.⁴⁴ The requirement that the agent exonerate himself contrasts with the American rule, which shifts the burden of proving fault to the principal after the agent has shown that the goods indeed perished in the alleged manner. But the difference is not due to a peculiarly Soviet appraisal of the inherent merits of the parties. In fact, the Soviet text very closely parallels the German Commercial Code.⁴⁵ And, of course, today it would be impossible to apply a class point of view to a transaction between two cooperatives (i.e., a consumer cooperative and a collective farm) or a cooperative and a small individual producer.

Formally, most rural householders hold one share each in the cooperative system, and each one is entitled to rebates, the total amount of which must not exceed 20 per cent of total profits. However, as I pointed out earlier, the consumer cooperatives enjoy only a very incomplete autonomy. The *Tsentrosoyuz*, the highest organ of the cooperative system, works under the supervision of the State Committee of Trade; the trade plans of cooperatives are ultimately determined by the planning authorities of the state, their managers appointed in the same manner as directors of state trading organizations and enterprises, and their employees included in all statistics with state-employed persons.⁴⁶ The cooperatives must place the require-

⁴⁰ Goldman, *Commission Trade and the Kolkhoz Market*, 10 SOVIET STUDIES 136, 137-38 (1958). A more recent Soviet work states that the prices are set at 10 to 15% below the market. 2 SOVETSKOYE GRAZHDANSKOYE PRAVO (SOVIET CIVIL LAW) 224 (1961).

⁴¹ Conditions of Commission Sales art. 6; CIVIL CODE art. 275-1.

⁴² *Tsentrosoyuz* Regulations of Oct. 29, 1956, ISTOCH. SOV. GRAZH. PRAV. 650.

⁴³ Conditions of Commission Sales art. 9; CIVIL CODE arts. 275-g, 275-r.

⁴⁴ CIVIL CODE art. 275-i.

⁴⁵ Arts. 383-406.

⁴⁶ NOVE, THE SOVIET ECONOMY 41 (1961).

ments of the entire state and trade program above the immediate advantages of their membership. Whereas consumer cooperatives in Western countries strive to provide lower prices for their members, in the Soviet Union the prices charged at their rural outlets are some seven per cent above the comparable prices charged in cities. Since year-end rebates are an exception, the rural residents derive from their practically compulsory membership (there being no other stores around) little besides an increased tax burden.⁴⁷

Cooperative trade has lost the stature it had in the early post-revolutionary period. At that time it constituted the almost exclusive machinery for the distribution of consumer goods. From the very beginning, though, the movement was mistrusted by the Communist Party. It was regarded as an embodiment of rival economic ideas and as a rallying point of elements hostile to the Soviet regime.⁴⁸ Only a lack of practicable alternatives compelled retention of the cooperative system in trade. Today, of course, trade through state establishments is an obvious alternative; still cooperatives have not disappeared, certainly not in name. Having been put under tight state control, they do not represent any kind of threat. They can be likened to a confidence scheme which, notwithstanding its transparency, has some exploitable potentialities.⁴⁹ For whatever it might be worth, the draft of the 1961 Party Program was amended to include the following sentence: "Consumers' cooperatives will be developed and used to improve trade in the countryside and to organize the sale of agricultural products."⁵⁰

According to doctrine, the fact that cooperative ownership of property and cooperative economic efforts are considered socialist institutions,⁵¹ will not save them at the arrival of full communism. At that point in history, they and state-owned property and state economic efforts are to merge into communist property and give rise to communist economic relations.⁵²

C. *Legitimate Private Trade*

As a general proposition, trade by private persons has been a crime in

⁴⁷ GOLDMAN, *op. cit. supra* note 21, at 37. There were about 42,000,000 members in 1962. PAVLOV, *op. cit. supra* note 17, at 40.

⁴⁸ See the verbatim record of the debate at the 10th Party Congress, March 15, 1921, 1 ZILE, READINGS ON THE SOVIET LEGAL PROCESS Va: 1 (mimeo. 1962).

⁴⁹ "A greater role will be played by *co-operatives* . . . as a form of drawing the masses into communist construction, as media of communist education and schools of public self-government." 1961 Program of the Communist Party of the Soviet Union pt. 2, § III (2), translated in SOVIET COMMUNISM: PROGRAMS AND RULES 23 (Triska ed. 1962).

⁵⁰ *Id.* pt. 2, § 11(a).

⁵¹ U.S.S.R. CONST. arts. 5, 7.

⁵² For an elaborate discussion of this thesis, see SDOBNOV, DVE FORMY SOTSIALISTICHESKOY SOBSTVENNOSTI I PUTI IKH SBLIZHENIYA (TWO FORMS OF SOCIALIST PROPERTY AND THEIR CONVERGENCE) (1961).

the Soviet Union since 1932.⁵³ But the wrath of the law is directed against the private merchant—the middleman, whose activity is regarded as socially useless and therefore parasitic. By contrast, the small-scale private producer—the lone “nonexploiting” craftsman or the peasant working a small holding, either within or without the collective farm system⁵⁴—may sell his wares, insofar as his operation is sanctioned by licensing or agricultural laws. As a possible safeguard against covert trade, some operations are licensed only on the condition that the customer provide the raw materials.⁵⁵ Not unlike the cooperative network, private trade was heavily relied on by the Soviets during the period of the New Economic Policy (NEP), 1921-1928, in an effort to restore the country's economy through the participation of private enterprise. Indeed, it was into trade that the rehabilitated entrepreneurs and their resources tended to gravitate. Notwithstanding the efforts of the Soviet government to channel private capital into industry and nonindustrial long-term investments, such as large apartment houses, the majority of investors found the high rate of capital turnover and the quick profits of trade more attractive.⁵⁶ This natural but, from the Soviet point of view, non-cooperative, or even defiantly hostile, attitude of the business groups only seemed to confirm the dim view that the communists had taken of free enterprise.

Today the bulk of legitimate private trade is conducted by the rural population. The same 1932 decree which enjoined “the opening of stores and stalls by private traders” and urged the “use of every means for the eradication of second-hand dealers and speculators, who are striving to make profits at the expense of workers and peasants,” declared that “trade by collective farms, collective farmers and individual toiling peasants is to be conducted at prevailing market prices.”⁵⁷ The clear implication was that direct retailing of farm output by individual peasant households was permissible. With the food shortage in cities acting as a catalyst, these early marketing arrangements developed into the collective farm market system. Collective farm markets are maintained by the local authorities of trade in almost all densely populated places. As of December 1961, there were over 9,000 such

⁵³ See Decree of Nov. 10, 1932 (R.S.F.S.R.), [1932] Sob. ukaz. i raspor. R.S.F.S.R. text 385, amending art. 107 of the R.S.F.S.R. CRIMINAL CODE (1926). See text pp. 272-76 *infra*. There have been some strange exceptions to this law. *E.g.*, at least at one time bootblacks could buy and resell at a profit accessories to footwear. 1 GSOVSKI, SOVIET CIVIL LAW 351 (1948).

⁵⁴ The outer limits of permissive private enterprise are defined in U.S.S.R. CONST. arts. 7, 9, 10.

⁵⁵ For an interesting discussion of the licensing laws, see HAZARD, LAW AND SOCIAL CHANGE IN THE U.S.S.R. 9-12 (1953).

⁵⁶ MOROZOV, RESHAYUSHCHIY ETAP BOR'BY S NEPMANSKOY BURZHUAZIEY, 1926-1929 gg (THE DECISIVE STAGE IN THE STRUGGLE AGAINST NEPMEN BOURGEOISIE) 10-11 (1960).

⁵⁷ Decree of May 20, 1932 (U.S.S.R.) arts. 9, 10, ISTOCH. SOV. GRAZH. PRAV. 421.

markets throughout the Soviet Union.⁵⁸ A few years ago, Moscow, for example, had at least 30 such markets.⁵⁹ A director appointed by the local trade authorities administers the market, enforces compliance with the regulations of the market place, including pricing and sanitary standards, and imposes administrative fines for their violation. Farm products may be sold by their producers at prices prevailing on the market. This, in practice, means prices set by them in the light of supply and demand. The sellers are only required to display price lists and, in addition, put price tags on their merchandise.⁶⁰ Of course, the interplay of truly free market forces is prevented by the existence of state outlets, sometimes on the same market place,⁶¹ selling the same goods at administered prices which have little or no relevance to supply and demand. Generally, however, the "freely set" prices are above those charged in the state stores and stands. Two reasons have been assigned for this reversal of the common Western experience of farmers' market prices being lower. First, the state prices are too low for many scarce products. Second, the products supplied by individual growers are able to command a higher price because their quality is usually better.⁶²

Apart from the farm folk who constitute the majority of sellers, the law makes the collective farm markets accessible also to urban inhabitants who do some farming on the side and to craftsmen licensed to market their output. They too are allowed to sell at "free" prices.⁶³

Considering the primitiveness of the collective farm markets, the volume of trade⁶⁴ on them is quite large. In 1962, 4.4 per cent of the entire retail trade⁶⁵ and a considerably larger percentage of the trade in foodstuffs passed through the collective farm markets.⁶⁶ While the collective farm markets' relative share of the total retail trade has been steadily falling, its volume, in absolute terms, however, has declined less markedly.⁶⁷ The

⁵⁸ GOLDMAN, *op. cit. supra* note 21, at 47.

⁵⁹ Goldman, *Retailing in the Soviet Union*, *Journal of Marketing*, April 1960, pp. 9, 12.

⁶⁰ Decree of Feb. 4, 1936 (U.S.S.R.), 2 ZAK. AKTY NAR. KHOZ. SSSR 530 (1961); Model Rules of Trade on Collective Farm Markets of March 4, 1939 (U.S.S.R.), ISTOCH. SOV. GRAZH. PRAV. 422.

⁶¹ Model Rules art. 3(a).

⁶² Goldman, *supra* note 59, at 12. Frequently state stores cannot compete simply because they do not have enough produce to sell. See *Ekonomicheskaya gazeta*, July 6, 1963, p. 40.

⁶³ Model Rules arts. 3(c) & (d), 14.

⁶⁴ I assume that Soviet statistics do not include state and cooperative trade conducted on "collective farm market places" as "collective farm market trade."

⁶⁵ PAVLOV, *op. cit. supra* note 17, at 65.

⁶⁶ In 1961, 7.5% of all retail trade in foodstuffs went through the collective farm markets. NARODNOYE KHOZYAYSTVO SSSR v 1961 GODU: STATISTICHESKIY YEZHEGODNIK (THE NATIONAL ECONOMY OF THE USSR IN 1961: STATISTICAL YEARBOOK) 632 (1962).

⁶⁷ *Ibid.*

dwindling of the importance of the collective farm markets is attributable to several factors, among which the overall improvement and expansion of the network of state trade are perhaps the most significant. To the same effect are higher prices paid to agricultural producers by the state and the lifting of the one-time ban on the use of commission contracts by consumer cooperatives.⁶⁸ As a matter of fact, a decision to limit personal trading by collective farmers led to the Decree of October 12, 1953.⁶⁹ The act was to stem the diversion of farm labor force for tending small market stalls, often in faraway towns. Calculations showed that about 500,000 collective farmers were engaged in selling on the collective farm markets.⁷⁰ Expert opinion holds that, although the decree caused a further shrinkage in the "free" market, it had not been intended as a covert assault on the institution as such. It merely sought economies through a more rational division of labor and a somewhat more effective control over the doings on the collective farm markets.⁷¹ For instance, a 1956 decree of the Council of Ministers of the USSR urges the councils of ministers of the union republics to encourage "the bringing of . . . [meat and milk products and eggs] to urban collective farm markets."⁷² Similarly, the 1961 Party Program does not prognosticate the elimination of collective farm markets. Quite on the contrary, it asserts, in a sentence added to the draft version, that "collective farm markets will preserve their significance."⁷³ As long as the constitutionally recognized collective farm-garden plot economy is retained (and there is every indication that it will be around for some time to come), a machinery will be needed for channelling the output of many small producers to consumers. It would seem that individual collective farmers and noncollectivized growers will resort to the new scheme of division of labor only if their losses occasioned by lower returns from commission sales are outweighed by gains they can realize, during the time saved, from alternative income-producing pursuits. For an individual collective farmer, participation in the collective work of the farm (as contrasted to work on his garden plot) is the normal alternative. Ordinarily he will make up his mind in the light of the promise that the farm's incentive system holds out for him. If in his estimation the system is unsatisfactory, he will hesitate to give up those immediate advantages which can be secured by direct marketing.

Shortly before the 1932 law making private trade a crime, another law urged the use of "every means for the eradication of second-hand dealers

⁶⁸ The Model Rules art. 5 specifically outlawed commission sales by state and cooperative trading establishments.

⁶⁹ See note 33 *supra*.

⁷⁰ SCHWARTZ, *RUSSIA'S SOVIET ECONOMY* 435-36 (2d ed. 1954).

⁷¹ Goldman, *supra* note 40, at 144.

⁷² Decree of Oct. 25, 1956 (U.S.S.R.) art. 6, 2 ZAK. AKTY NAR. KHOZ. SSSR 535.

⁷³ 1961 Program of the Communist Party of the Soviet Union pt. 2 § II(a).

and speculators, who are striving to make profits at the expense of workers and peasants.”^{73a}

It is perfectly clear that this slogan-like provision was not intended to prevent Soviet citizens from reselling articles of consumption for which they no longer had any use. The phrase had in mind the business of private middlemen and not direct sales by consumers. To facilitate much needed redistribution of personally owned things, second-hand sales have been to some extent institutionalized. Article 3 of the Model Rules of Trade on Collective Farm Markets of 1939⁷⁴ permits “the working people to sell their household articles on [collective farm] markets, at places specially designated for this purpose.” However, the number and the monetary value of transactions of this kind are probably negligible. Resale of surplus property, when need arises, is far more conveniently accomplished through any of the state-owned commission stores put into operation in the mid-1930's.⁷⁵ Fundamentally, the legal framework of this form of trade resembles that of the subsequently introduced commission trade in agricultural products by consumer cooperatives.⁷⁶ The pricing provisions, however, deserve a special mention. Whereas the cooperatives are free to sell the agricultural products consigned to them at prices above the state retail prices and often approaching the “free market” prices, the prices of second-hand manufactured goods must be kept below the state retail prices charged by local stores for comparable articles when new.⁷⁷ Thus higher prices are tolerated when they encourage production, but not when they merely bring a windfall to a nonproducer. Evidently, the Soviets are disposed to forego the advantages obtainable through redistribution of some consumer goods, if in so doing they can keep down the number of opportunities for making “unearned income.” This policy is also evidenced by the rule which permits registered craftsmen to sell their manufactures on collective farm markets at “free” prices.⁷⁸

It seems that a considerable volume of consumer goods is redistributed through private second-hand sales outside the institutionalized channels. These transactions, in general, are governed solely by the pertinent provisions of the Civil Code and the new Principles of Civil Law. The law expressly states that “a sale by citizens of their property is carried out on the basis of prices established by agreement of the parties.”⁷⁹ A commentary

^{73a} Decree of May 20, 1932 (U.S.S.R.) arts. 9, 10, ISTOCH SOV. GRAZH. PRAV. 421.

⁷⁴ See note 60 *supra*.

⁷⁵ Decree of July 29, 1935 (U.S.S.R.), 2 ZAK. AKTY NAR. KHOZ. SSSR 533.

⁷⁶ Apparently the most recent Rules of Commission Trade through state commission stores are those of June 4, 1959 (R.S.F.S.R.), ISTOCH. SOV. GRAZH. PRAV. 645.

⁷⁷ Decree of July 29, 1935 art. 4; Model Rules art. 15; Rules of Commission Trade art. 6.

⁷⁸ Model Rules art. 14(b).

adds that "Soviet law severely punishes those who engage in speculation."⁸⁰ One may doubt, however, whether truly free agreement as to price operates even with regard to those transactions which lack the elements of speculation. While surely countless sales of scarce items have brought the private sellers high prices relative to the administered prices, most of these bargains have been performed voluntarily. In spite of article 36 of the Principles of Civil Law and article 117 of the Civil Code,⁸¹ it cannot be said with certainty that Soviet courts would permit a seller to recover from a defaulting buyer an inflated price. The Soviet court might reason that the state retail price of comparable items represents the "true value" of the product and might view any attempt to recover an amount over and above the state price as a quest of surplus value. Such behavior, the court might say, is characteristic of life under capitalism but violates the rules of conduct in a socialist society. By analogy, taking (by individuals) of compensation for temporary use of furnishings or utensils, charging interest on money loans, and rendering personal services for pay are treated as departures from these socialist rules.⁸²

Reports in the Soviet press indicate that profiteering through sales of personal property is widespread and, as long as the parties do not publicly discuss their dealings, virtually undetectable. Comprehensive state control over such transactions is unfeasible, but as the regulation of private sales of motor vehicles demonstrates, the state will intervene where high demand drives up the prices that individuals are willing to pay and the articles can be identified and traced.

In 1959, the Ministry of Trade of the RSFSR assured the readers of *Izvestiya* that "an automobile, like any other item, is the personal property of the owner, who is free to dispose of it at his discretion. He can sell, exchange or give away his automobile to whomever he wishes." To be sure, there were commission stores dealing in used cars, but nothing precluded an owner from selling his vehicle directly.⁸³ Within two years, however,

⁷⁹ PRINCIPLES OF CIVIL LAW art. 40.

⁸⁰ NAUCHNO-PRAKTICHESKIY KOMMENTARIY K OSNOVAM GRAZHDANSKOGO ZAKONODATEL'STVA SOYUZA SSR I SOYUZNYKH RESPUBLIK (SCHOLARLY AND PRACTICAL COMMENTARY ON THE PRINCIPLES OF CIVIL LAW OF THE USSR AND THE UNION REPUBLICS) [hereinafter cited as KOMMENTARIY] 194 (1962). See text pp. 272, 274 *infra* for definition of speculation.

⁸¹ Art. 36 of the Principles of Civil Law: "... By damages is meant the expenditures made by the obligee, loss or damage to his property, and also income not received by the obligee which he would have received if the obligation had been fulfilled by the obligor. . . ."

Art. 117 of the Civil Code: "... Damage shall be deemed not only the positive loss to property but also loss of such profit as would occur under normal conditions of trade."

⁸² ALEKSEYEV, GRAZHDANSKOYE PRAVO V PERIOD RAZVERNUTOVO STROITEL'STVA KOMMUNIZMA (CIVIL LAW IN THE PERIOD OF ALL-OUT CONSTRUCTION OF COMMUNISM) 215 (1962).

⁸³ *Izvestiya*, Nov. 27, 1959, p. 6.

the system was reappraised and revised. Since 1961, resale of automobiles by individuals must be conducted exclusively through state or cooperative stores, by means of commission contracts. The State Automobile Inspectorate will not register automobiles sold in any other way.⁸⁴ Immediately, the Soviet citizens reacted by displaying a commendable aptitude for evasion of the newly imposed restraints. By far the simplest device is to give an automobile away, as a gift, simultaneously receiving cash on the side. If deferred payments are intended, a written instrument is prepared showing the receipt of a money loan by the donee and containing a promise by the latter to repay it in stated installments.⁸⁵ Because a contract of donation (*dogovor dareniya*) for an amount in excess of one hundred rubles must be notarized,⁸⁶ there is an opportunity for official scrutiny of the transactions. In practice, however, this does not seem to amount to very much. The *mala fides* of the parties does not appear on the face of the instrument. The notaries, who are public officials, are urged to withhold certification until all surrounding circumstances have been investigated.⁸⁷ But perhaps in many cases they have neither any understanding of the problem nor the qualifications for making an effective inquiry. Some owners, instead of purporting to give away their automobiles, empower their secret buyers to use them over long periods of time, sometimes for as long as 10 years,⁸⁸ which should pretty well wear out an average "Moskvich." The transfer is accomplished by a notarially certified civil law *procuratio*⁸⁹ (*doverennost'*). Evasion of law by this device has been facilitated by carelessness of the notaries. According to article 268 of the Civil Code, the duration of a *procuratio* must not exceed three years. Consequently, an instrument providing for a longer term is void and certainly should not be certified.⁹⁰ This particular error occurs probably because article 268 appears in a little used part of the Code.

In case the parties resort to trickery in the extralegal phase of their transaction, and a dispute flares out into the open,⁹¹ they both stand to lose

⁸⁴ ALEKSEYEV, *op. cit. supra* note 82, at 220. See also Decree of April 25, 1961 (Lith. S.S.R.) arts. 2, 5, 6, Sots. zak. No. 7, p. 85 (1961).

⁸⁵ Stepanova, *Udostovereniye sdelok s avtomashinami, primadlezhashchimi k grazhdanam* (Certification of Transactions Involving Automobiles Owned by Citizens), Sov. yus. No. 14, pp. 24-25 (1962). See also Kaznin, *Organy notariata na strazhe sotsialisticheskoyi zakonnosti* (The Organs of the Notariat Guarding Socialist Legality), Sots. zak. No. 5, pp. 18, 19-20 (1963).

⁸⁶ CIVIL CODE art. 138. It is possible to conclude a gratuitous contract in Soviet law.

⁸⁷ See note 85 *supra*.

⁸⁸ *Ibid.*

⁸⁹ Express power to act conferred on an agent; when in writing, similar to our power of attorney.

⁹⁰ Laxity is not universal among Soviet notaries; some are so cautious that it is almost impossible to get them to certify a legitimate transaction. See note 85 *supra*.

⁹¹ As where a party refuses to pay over the purchase money, once outside the notary's office.

a great deal. A private agreement made for the purpose of circumventing the laws against private sales of automobiles would probably be regarded by the courts as a transaction "concluded deliberately against the interests of the socialist state and society"⁹² or "directed to the obvious detriment of the state."⁹³ If so, all the property affected thereby, that is, both the automobile and the purchase money, would inure to the state.⁹⁴ But "honesty in personal dealings, as distinct from cheating the law, is conspicuous in Russia."⁹⁵

In the summer of 1963 the regulations governing the sales of automobiles were extended to heavy motorcycles (over 500 cc) with sidecars.⁹⁶ The classification probably was made because the income-producing capacity of the heavier machines caused demand for them far to exceed the available supply. The state stepped in to preclude profiteering through private sales.

Purchase-sale of consumer goods ordinarily takes the form of simultaneous performances, but fully or partly executory contracts also occur, both between individuals and between individuals and state and cooperative enterprises. Until May 1, 1962, the buyer of an individually described thing acquired ownership rights at the time of making the contract.⁹⁷ Neither non-payment of the purchase price nor leaving the thing in the possession of the seller had any effect on the buyer's title. If the seller retained it after the time set for delivery had passed, the buyer could sue to recover it. The buyer seemed to have two kinds of civil actions available to him; he could sue either to vindicate his property rights⁹⁸ or to demand actual performance (specific performance) of the contract of purchase-sale.⁹⁹ The argument was made, however, that in Soviet law the same legal relationship could not be regulated in different ways. Accordingly, where the violation of property rights stemmed from nonperformance of a contractual obligation, the vindicative action was unavailable.¹⁰⁰ It is impossible to say whether there was more to this than a love of symmetry in legal doctrine. At any rate, the question has now been rendered moot by the new Principles, which

⁹² PRINCIPLES OF CIVIL LAW art. 14.

⁹³ CIVIL CODE art. 30.

⁹⁴ PRINCIPLES OF CIVIL LAW art. 14; CIVIL CODE art. 147.

⁹⁵ Brain, *On the Road in Russia*, Harper's Magazine, May 1961, pp. 147, 150. "The regime tries to focus shame on nonperformance and on failures . . . to observe formal bureaucratic rules . . . [T]he Russian is little shamed by these kinds of performance failures and is more likely to feel shame for moral failures." BAUER, INKELES & KLUCK-HOHN, *HOW THE SOVIET SYSTEM WORKS* 165 (1960).

⁹⁶ Sov. yus. No. 16, p. 30 (1963).

⁹⁷ CIVIL CODE art. 66.

⁹⁸ CIVIL CODE art. 59.

⁹⁹ CIVIL CODE arts. 107, 189.

¹⁰⁰ YURCHENKO, *OKHRANA IMUSHCHESTVENNYKH PRAV SOVETSKIKH GRAZHDAN (PROTECTION OF THE PROPERTY RIGHTS OF SOVIET CITIZENS)* 16-18 (1962).

provide for passage of title as of the moment of delivery, unless otherwise specified by law or contract.¹⁰¹ The rule regarding individually described things was thus brought in line with that which had governed the ownership rights in generically described things.¹⁰² The change was hailed as a beneficial one in that it removed a point of contention (individually described thing vs. thing described by generic characteristics) and afforded greater protection to the consumer with respect to accidental loss or damage.¹⁰³ The Principles left intact the rule placing the risk of accidental loss or damage of property on its owner, in the absence of an agreement to the contrary. But in the event of default (either by nondelivery or nonacceptance), the risk is on the defaulting party.¹⁰⁴

As we saw before, the owner has the right to recover his property from another person's illegal possession in a property action.¹⁰⁵ Here Soviet law makes an exception in favor of the bona fide purchaser for value. As against a bona fide purchaser, the owner or another person entitled to immediate possession of the property has a superior right only if the property has been lost by the claimant, stolen from him, or removed from his possession by means other than his volition. By contrast, state property and property of collective farms and other cooperative and public organizations, unlawfully alienated by whatever method, can be recovered by the organization concerned from any possessor.¹⁰⁶

A quick survey of the available decisional material failed to disclose any consumer litigation involving the problems just discussed. As between private individuals *inter sese* and individuals and socialist organizations, these problems may well be academic.

III. TRANSMISSION OF CONSUMER DEMAND TO PRODUCERS

Stalin's decision to combine central planning with money and monetary incentives has left a lasting mark on the Soviet economy. In addition to making possible decentralized initiative in managing the country's economy through the principle of economic accountability, money gives considerable freedom to the consumer. He can either save it or spend it. If he decides to spend, he has a choice among several objects. However, consumer sovereignty, in the sense of the pattern of production being determined by consumer choices, does not exist in the Soviet economy. For example, long waiting lists for the purchase of automobiles one year do not assure that more automobiles will be produced the next year. The decision of how

¹⁰¹ PRINCIPLES OF CIVIL LAW art. 30.

¹⁰² CIVIL CODE art. 66.

¹⁰³ KOMMENTARIY 149.

¹⁰⁴ CIVIL CODE art. 186.

¹⁰⁵ PRINCIPLES OF CIVIL LAW art. 28; CIVIL CODE art. 59.

¹⁰⁶ PRINCIPLES OF CIVIL LAW arts. 28, 29; CIVIL CODE arts. 59, 60, 183.

many, if any, automobiles should enter the consumer sector is influenced far less by potential consumer demand than by considerations of an entirely different order, some tainted by ideology, but most of them dictated by economics. It is conceivable, for instance, that automobile sales to individuals are held down because of a fear that their ownership will adversely affect the attitudes and ways of the people. One can detect a strong concern about the persistence of "private proprietary tendencies" in the Soviet Union and about the fact that many citizens, especially the younger generation, seek to live comfortable, joy-centered lives. But the continued low output of automobiles is explainable also in terms of priorities in resource allocation between producer and consumer goods or the reluctance to create new urban problems before a host of others have been solved.¹⁰⁷

On the other hand, when a line of goods is produced, there is no guarantee that it will be favorably received by consumers. While Soviet trade in consumer goods still has features of a seller's market, many prime necessities of the population have been fairly well satisfied, so that the consumer does not invariably rush to buy whatever is put on the counter. It is in this limited area that the Soviet consumer exercises a modicum of sovereignty. As Professor Wiles has aptly put it, "the consumer [can] react but not influence."¹⁰⁸ But his mere reaction can, of course, force a manufacturer to either improve its product or adapt its equipment to something different. In the contrary event, unsaleable goods will begin to clutter up warehouses.

In this section we are concerned with the devices for transmitting consumer preferences ascertained at the retail level. If a retail trading organization, through the experience of its outlets or by independent survey, observes that men have ceased buying wide, flapping trousers, that housewives pass over salted herring and demand marinated, and that young couples search for light compact furniture and reject bulky unfashionable items, two problems arise. Does the organization have any incentive for changing the composition of its stock of merchandise? Assuming such incentive, how can it secure the flow of new, desirable products?

A. The Function of Money

There are several reasons why the management of a retail trading organization wants its stores to "move the goods." Because the organization is governed by the principle of economic accountability, it must produce income to cover costs, many of which are fixed, in the sense that they do not vary with the volume of sales. Operating revenue is derived from percentage rebates (*skidki*) set by the state for each category of goods. The

¹⁰⁷ Zile, *Programs and Problems of City Planning in the Soviet Union*, 1963 WASH. U.L.Q. 19, 43-44.

¹⁰⁸ WILES, *THE POLITICAL ECONOMY OF COMMUNISM* 35 (1962).

mechanical side is handled by the local branch of the State Bank (*Gosbank*) which, having accepted the organization's receipts for deposit, transfers an appropriate portion to a separate operating account.¹⁰⁹ The percentage rebate thus is not the same as profit. True profit appears only when the organization has not exhausted its operating account to finance the expense of distribution, including payments into an asset amortization account. Therefore, a trading organization must attain a certain volume of sales just to stay out of the red. But there is more to it. The financial plan of an organization usually calls for a definite amount by way of true profits. A major portion of these profits is to be eventually drawn upon to finance capital expenditures over and above those chargeable against the amortization account and to expand working capital. However, another portion of the profits goes into the so-called enterprise fund (*fond predpriyatiya*). The money paid into the enterprise fund is used principally to improve the working and living conditions of the employees (including housing and passes to resorts) and to pay occasional cash bonuses to outstanding workers. If an organization shows a profit in excess of the planned sum, the law permits the use of a larger portion of this surplus to replenish the enterprise fund.¹¹⁰ However, the benefits which the employees, as individuals, derive from the enterprise fund are ordinarily very modest. Consequently, they provide a weak incentive for keeping the profit margin high.

It would seem that a much stronger material incentive to increase sales arises from another success indicator—the volume of sales expressed in thousands of rubles. As a general rule, each employee of a trading organization works on a base pay which varies with the type and location of the organization, and the qualifications and duties of the employee. All employees who have a reasonably direct connection with the actual distributive process get pay increments when their organization (or store, department, section) exceeds the volume of sales planned for the period. The increments rise progressively with the magnitude of the plan fulfillment. Top managers get bigger benefits than minor managers or common salespeople.¹¹¹ There is little doubt that, just as in the case of industrial executives,¹¹² the bonuses constitute a substantial part of retail managers' income. Their weight may be substantial even in the case of rank-and-file personnel. For example, in a Leningrad department store "the employees receive 120 per cent of their salary if the store plan is fulfilled by 105.1—110.0 per cent, and 130 per cent of their salary if the plan is overfulfilled by 110.1 to 115.0 per cent. This

¹⁰⁹ GOLDMAN, *SOVIET MARKETING: DISTRIBUTION IN A CONTROLLED ECONOMY* 108-09, 120 (1963). Retail price equals wholesale price plus turnover tax plus rebate (which varies not only from product to product but also from region).

¹¹⁰ KONDRASHEV, *TSENA I KHOZYAYSTVENNYY RASCHYOT (PRICE AND ECONOMIC ACCOUNTABILITY)* 90-92 (1961).

¹¹¹ *EKONOMIKA SOVETSKOY TORGOVLI (ECONOMICS OF SOVIET TRADE)* 375-80 (1962).

¹¹² GRANICK, *THE RED EXECUTIVE* 130-32 (1960).

increase continues until salaries reach 170 per cent of the base amount.”¹¹³ The gross sales criterion naturally leads to pushing of goods which are best for the index. *Izvestiya* carried a story about a waitress who was observed to express her disappointment with two young coffee-drinking patrons. First she coaxed them into ordering 300 grams of wine as a supplement; but once the wall of resistance had been broken, she came through with a full bottle. “[I]t may happen,” the reporter concluded, “that the waitress who got the two fellows drunk will have her name displayed on the honor roll.”¹¹⁴

Since a Soviet retail organization and its management and staff have an interest in raising or at least maintaining a fairly high volume of sales, and since we saw that merchandise could not normally be forced on disinclined customers, it follows that the organization has a further interest in carrying goods that sell. From the point of view of the organization and its personnel, consumer reaction is determinant of their own success. A clothing store would not receive with equanimity a suggestion from its superiors or suppliers that it fulfill its plan for the month of May through sales of men’s overcoats—wool, navy blue, size 40.

B. *The Planning Process*

Economic planning in all its ramifications—industrial and agricultural output, the level of new investment, allocations for the armed forces and the space effort, and the volume of sales to households—is a complicated multistage undertaking. A plan for retail trade cannot be prepared without regard to plans for the development of agriculture, light industry, and transportation. The output of consumer goods and the plan for their distribution must be coordinated with the purchasing power in the hands of the people during the term covered by the plan. Intersector relations are coordinated by specialized agencies, among which the State Planning Committee (*Gosplan*) of the USSR¹¹⁵ is the ranking one.

Procurement and distribution of several important classes of consumer goods rest with the Council of Ministers of the USSR and the *Gosplan* of the USSR. The present list of “centrally planned” commodities consists of meat and meat products, milk and milk products, flour, groats, macaroni products, sugar, confections, vegetable oil, margarine, fish, herring, canned fish, cotton, wool, linen and silk fabrics, clothing (including knitwear), leather, rubber and felt footwear, furniture and automobiles.¹¹⁶ For purposes

¹¹³ GOLDMAN, *op. cit.* *supra* note 109, at 144.

¹¹⁴ *Izvestiya*, April 3, 1962, p. 3.

¹¹⁵ As a result of the latest reorganization, the *Gosplan* was made into a union-republic agency subordinate to the Supreme Council of National Economy. Edict of March 13, 1963 (U.S.S.R.), [1963] *Ved. verkh. sov. S.S.S.R.* text 133.

¹¹⁶ PAVLOV, *SOVETSKAYA TORGOVLYA V SOVREMENNYKH USLOVIYAKH (SOVIET TRADE UNDER CONTEMPORARY CONDITIONS)* 51 (1962).

of distribution of these commodities, all republics are divided into two groups, in essence, the "haves" and the "have nots." Each republic is told what and how much it will have to ship to other republics and what and how much it will receive from the others. It is the responsibility of the government of each republic to implement these all-union plans of procurement and allocation. By contrast, before 1957 the Council of Ministers of the USSR did not stop merely at distributing the key commodities among the republics, but went on to prescribe, at the proposal of the *Gosplan* of the USSR and the former union-republic Ministry of Trade, their detailed allocation throughout the trading systems of each republic. In keeping with the spirit of decentralization, the republic authorities are, in turn, supposed to make only the most important decisions regarding the distribution of these and other goods, leaving the rest to their administrative subdivisions. Thus it was reported in 1963 that the Ministry of Trade of the RSFSR reserved the right of approval of the allocation plans for only 12 foodstuffs and 42 different industrial products.¹¹⁷ In some republics, however, the ministries are reluctant to relinquish their power of approval and attempt to impose their schemes on the local agencies. One reason for this may be the republic governments' fear of unfounded requests from the local units; unfounded in the sense that consumer income in the locality does not justify the quantity of consumer goods requested.¹¹⁸ By retaining the power to review the retail trade plans practically down to the level of the ultimate buyers, a republic government is in a position to determine whether a request represents a bona fide projection of demand or a bid for "reserve" stocks by officials who have succumbed to "localist tendencies."

The planning of retail trade is not an entirely arbitrary process. It is a two-way street on which the top decision-makers' broad goal formulations are met and influenced by the requests received from below. The latter reflect the estimates of consumer demand made by the trading organizations and enterprises. Within the total mass of consumer goods, broad product groups are calculated on the basis of "physiological norms" for foodstuffs and "rational norms" for manufactured goods.¹¹⁹ The product mix to be allocated to the retail outlets depends to some degree on the accuracy of the various estimates.

C. *The Law of Contract*

The separation of the law of contract from the planning process, even

¹¹⁷ BUDARAGIN, *EKONOMICHESKIYE SVYAZI TORGOVLI S PROMYSHLENNOST'YU* (ECONOMIC TIES BETWEEN TRADE AND INDUSTRY) 129 (1963).

¹¹⁸ Sapel'nikov, *Roľ mestnykh organizatsiy v planirovaniyi tovarooborota* (*The Role of Local Organizations in Planning Circulation of Commodities*), *Sov. torg.* No. 6, pp. 16, 17 (1960).

¹¹⁹ Hanson, *The Assortment Problem in Soviet Retail Trade*, 14 *SOVIET STUDIES* 347, 351 (1963).

if only for the convenience of discussion, may be cogently objected to, because the contract device here discussed is actually but a facet of planning. Perhaps more has been written in Soviet legal literature about contract than any other phase of economic law, but to my knowledge, its use in the consumer sector of the Soviet economy has never been satisfactorily analyzed and elucidated. The writers are apt to paraphrase the pertinent laws, which are legion,¹²⁰ without frankly explaining their administration in practice. The reader is supplied with stock phrases but little insight. Plans are described as rough-hewn documents, since the planners are not asked to plan everything down to grade, style, size, shape, and color. These details, as well as exact delivery schedules, are hammered out in negotiations between producers and distributors and eventually put into documents outwardly resembling written agreements or contracts. "A contract makes the plan assignment concrete and reinforces the administrative planning discipline by means of civil law sanctions."¹²¹

During the early months of the year preceding the year for which the plan is being prepared, the retail trading organizations are required to submit requests or orders (*zakazy*) for consumer goods they will need. In those instances in which they have been permitted to deal directly with designated industrial enterprises, their orders must reach the producers by May 15. If they are required to deal with wholesalers, their orders must reach the latter by April 15. The wholesale trading organizations combine the requests and, with possible additions of their own, forward the totals to the appropriate producers, also by May 15. At this point differences are bound to arise regarding the ability of a producer to turn out the requested goods. Factory managers are inclined to schedule production so as to achieve the best possible showing under their success indices (usually gross output expressed in either physical quantity or monetary value). They frequently refuse to produce what trading organizations desire. After all, a factory manager is responsible only for making the industry look successful; the problems of trade are not his problems.¹²² Ultimately an agreement is reached. The supplier undertakes to deliver goods of given quality, in specified assortment, at stated times; the buyer agrees to receive and pay for them in a manner agreed upon. Other provisions may refer to transportation arrangements, handling of packing materials, etc.

¹²⁰ E.g., Decree of May 22, 1959 (U.S.S.R.), *ISTOCH. SOV. GRAZH. PRAV.* 465; Decree of Aug. 8, 1960 (U.S.S.R.), *id.* at 435; Decree of Jan. 26, 1961 (R.S.F.S.R.), *KHOZYAYSTVENNYYE DOGOVORY: SBORNIK NORMATIVNYKH AKTOV (ECONOMIC CONTRACTS: A COLLECTION OF NORMATIVE ACTS)* 151 (1962).

¹²¹ Genkin, *Aktual'nyye voprosy pravovogo regulirovaniya sovetskoy gosudarstvennoy trgovli (Current Problems of Legal Regulation of Soviet Trade)*, *Sov. gos. i pravo* No. 8, p. 41 (1961).

¹²² PAVLOV, *op. cit. supra* note 116, at 74-75. "The fact that sovarkhozy are not responsible for retail trade but are responsible for the output of the bulk of the goods supplied to it is a source of friction . . ." Hanson, *supra* note 119, at 352.

Direct ties between local retail distributors and local industry are quite useful, because they are close. The retailers' wishes can be more vividly presented to the industrial enterprises and more accurately incorporated into contractual arrangements.¹²³ Moreover, intimate personal relationships between managers of industry and trade and local planning officials facilitate settlement of differences. The close contacts between the heads of the various economic units developed by reason of their membership in the same lower level (*e.g.*, city or district) party organization can be of considerable working importance.

The apparently satisfactory experience with direct ties with local industry has been eyed as a possible solution for the difficulties that arise when distant manufacturers are involved. Some larger stores deal directly and successfully with industrial suppliers; economists and lawyers urge the extension of the method. This by-passing of wholesale trading organizations can yield positive results only up to a point. As Goldman admonishes, there are situations where the wholesaling function is indispensable. If a squeeze-out is attempted, "the wholesaling activity inevitably bulges up somewhere else, causing a serious disruption of services and increasing costs."¹²⁴ Certainly a store of the size of Moscow's GUM can deal effectively with manufacturers; it has storage facilities and can purchase by whole lots. Consider now a provincial retailing outfit approaching a major factory. Will the factory break lots to assemble an order? Will the retailer be in a position to bargain advantageously with the manufacturer and influence the product mix?

Notwithstanding the agitation in favor of direct contracts between retailers and producers, most contracts for delivery of consumer goods are concluded between wholesale organizations and producers and thereafter between the wholesale organizations and retail trading organizations. Sometimes, when both purchasing and sales warehouses are involved, there is a chain of three contractual relationships.¹²⁵

Quite apart from the accuracy with which consumer demand is investigated at the retail level and transmitted to wholesalers, the selection of goods that find their way to retailers' shelves and counters depends also on the determination with which the consumers' case is presented to producers. One of the major criticisms against wholesalers is that, despite their virtual monopoly power in negotiating the output of consumer goods with light industry, they do their job poorly.¹²⁶ Nove remarks that the interven-

¹²³ BUDARAGIN, *op. cit. supra* note 117, at 131-33.

¹²⁴ Goldman, *Marketing—a Lesson for Marx*, *Harv. Bus. Rev.*, Jan.-Feb. 1960, pp. 79, 81.

¹²⁵ KHALFINA, PRAVOVOYE REGULIROVANIYE POSTAVKI PRODUKTSIYI V NARODNOM KHOZ-YAYSTVE (LEGAL REGULATION OF DELIVERY OF PRODUCTS IN THE NATIONAL ECONOMY) 138 (1963).

¹²⁶ Kolenko, *Rasshirit' pryamyye svyazi s promyshlennost'yu (Direct Ties With Industry Should Be Expanded)*, *Sov. torg.* No. 7, pp. 18, 20 (1961).

tion by a wholesale organization "depersonalizes the product."¹²⁷ Wholesale organizations which go out of their way to accommodate self-centered producers find themselves overburdened with unpopular merchandise. In some cases such goods are then practically forced on retailers by methods that smack of tie-in sales or by administrative pressure, the state agencies controlling the wholesalers being superior to the state agencies controlling the retailers. Purchase orders are accepted and contracts are made, but according to the principle "take what is given to you."¹²⁸ Sometimes no duress is evident and yet a retailer would sign a contract giving the supplier practically a free hand. For example, a contract might say merely that the wholesale warehouse will supply "fish, herring and canned goods" in a certain monetary amount, without requiring any definite assortment.¹²⁹ Frequently commodities move in apparent disregard of contractual ties or in their absence. A distress call came from Kazaen': "Halt shipments of pressed tea. We have reserves for five years."¹³⁰ A newspaper correspondent who found piles of tables, chairs, sofas, and wardrobes stacked in front of a furniture store in Riga reported his conversation with the store's director:

" 'Why did you order so much?'

" 'We did not; they simply brought it,' sighed the director. 'For example, we ordered 50 chairs from the furniture factory "Association"; they brought 100. The manufacturer's employees told us bluntly: "We carry only full truckloads. If you don't take this shipment, you won't get anything." ' ' " ¹³¹

Soviet laws emphatically state that unordered shipments of goods must be rejected. Similarly, the trade organizations must refuse to accept goods the quality and assortment of which deviate from the specifications. Perhaps of late the organizations of trade are learning to regard their legal obligations more seriously. Smirnov, the head of the Chief Administration of Trade, reported recently, by way of an example, that at the beginning of the planning year 1962 many trade organizations balked, refusing to accept any more ready-made clothing from 16 enterprises in the RSFSR and 14 in the Ukrainian SSR.¹³² Furthermore, mindful of the impossibility of making accurate demand forecasts a year or more in advance, the law provides

¹²⁷ NOVE, *THE SOVIET ECONOMY* 175 (1961), quoting a Soviet critic, Kulyov, in *Kommunist* No. 9, p. 27 (1959).

¹²⁸ Ivanov, *Ustranit' nedostatki dogovornoy praktiki (Incorrect Contract Practices Should Be Eliminated)*, *Sov. torg.* No. 2, pp. 7, 8 (1960); *Cina*, Dec. 2, 1961, p. 2.

¹²⁹ Fialkov, *Khozyaystvennym dogovoram—neoslabnoye vnimaniye (Economic Contracts [Deserve] Unremitting Attention)*, *Sov. torg.* No. 2, p. 3 (1960).

¹³⁰ *Izvestiya*, July 25, 1962, p. 3.

¹³¹ *Cina*, July 31, 1963, p. 2.

¹³² *Pravda*, June 12, 1962, p. 2.

for renegotiation of contracts in the face of changed circumstances. If the revision affects plan assignments, it must be approved by the planning authorities. Manufacturers as a rule will oppose any suggestion that plans be revised in mid-term. Their production has been scheduled for the entire year and is in full swing when the petition for modification reaches the authorities. Numerous suppliers are delivering raw materials and parts to them, pursuant to other plans and contracts. Any rescheduling of output would raise havoc with the plant's incentive system, especially when gross output is its principal indicator of success. If the manufacturers prevail, unneeded goods will be produced until the end of the planning year. It was reported in the Soviet press that there were 300,000 unsold sewing machines in storage in the warehouses of the RSFSR trade organizations in the fall of 1962, with the manufacturing plants expected to accumulate an equal number of finished machines by the end of the year.¹³³ Soviet reaction to problems of this sort seems to be one of mild bewilderment; the phenomenon of over-production is new to their economy. As product differentiation progresses and the products involved are not necessities for which demand is relatively inelastic, the Soviet consumer begins ever more often to search and wait for a favorite product, letting Brand X lie on the shelves. The planners who have been reared in a seller's market will have to learn a more sophisticated approach to consumer resistance. Smirnov reported in June of 1962 that while sales volume increased in the USSR in 1958-1961 by 24 per cent, the inventories in retail trade went up by 70 per cent. The value of merchandise accumulated above the norms reached almost two billion rubles in 1961. In some republics the figure was set at more than a quarter of the total value of goods in the trade network.¹³⁴ A few months later *Pravda* complained that

“in many organizations the demands for a number of products are not satisfied, while at the same time inventories have grown. Clothing and shoes accumulate in especially large amounts. This happens because industry often produces goods without consideration of demand and because their quality does not always meet the requirements of the customers.”¹³⁵

Even careful research of past consumer behavior and prudent forecasts concerning the same can only be tentative. One must be prepared to face unanticipated shifts in consumer attitudes and habits. Only wide assortment and considerable slack in each group of goods can reduce consumer disappointments and enable retail trade to perform its primary function satisfactorily. There would inevitably remain stocks unsold by the end of the

¹³³ *Izvestiya*, Oct. 3, 1962, p. 3.

¹³⁴ *Pravda*, June 12, 1962, p. 2.

¹³⁵ *Id.*, Aug. 22, 1962, p. 1.

period. This is a normal condition in a market economy but is regarded by the Soviets as waste, ideologically unpalatable.¹³⁶

Contracts that skirt the difficult problem of assortment are largely meaningless, by reason of their unenforceability in this important respect. By basing deliveries on a superficially drafted contract the parties merely enable the *Gosbank* to authorize payments of purchaser's acceptances¹³⁷ and take a bow to the principle that all movements of commodities, in the execution of the national economic plan, must rest on contracts.

If a contract has been made with a purpose of ensuring not only timely deliveries and quality but also a carefully calculated assortment of goods, the law gives it teeth. There is a formidable array of legal sanctions for breach of assumed obligations. An organization defaulting in any one of a number of ways must pay the other party several kinds of stiff penalties (*neustoyka*, *penya*, *shtraf*) according to prescribed schedules, as well as compensatory damages to the extent that actual losses have not been covered by the receipts of penalties. Moreover, the payment of penalties does not release the obligor from rendering actual performance. And, since on top of all that, the organizations are duty bound to enforce and collect their claims,¹³⁸ the irresponsible obligors stand to lose large amounts of money and incur the wrath of superior authorities. Conversely, conscientious enforcers may find a short cut to riches. A high official of the Ministry of Trade of the RSFSR cites the good work of a Sverdlovsk department store which in 1959 brought more than 600 suits on grounds of poor quality alone, recovering in excess of one million rubles.¹³⁹ Although encouraged by the state, contract litigation on such a grand scale is not universally practiced. It is a time-consuming process demanding, under the present statute of the *Gosarbitrazh*,¹⁴⁰ the participation of responsible managers, in addition to the organization's legal counsel.¹⁴¹ Litigiousness by managers is also in conflict with the need for maintaining friendly, informal contacts with their counterparts who are similarly situated and who would retaliate rather than cooperate were the tables turned. Furthermore, when breaches of contract are disclosed, it is not only the juristic person, the organization, which suffers. Managers and other officials are personally liable for non-performance of the obligation. The laws in force provide for criminal,

¹³⁶ Cf. BUDARAGIN, *op. cit. supra* note 117, at 54.

¹³⁷ The requirement is found in Decree of Aug. 21, 1954 (U.S.S.R.) art. 25, 1 ZAK. AKTY NAR. KHOZ. SSSR 154.

¹³⁸ RAIKHER, PRAVOVYE VOPROSY DOGOVORNOY DISCIPLINY V SSSR (LEGAL PROBLEMS OF CONTRACT DISCIPLINE IN THE USSR) 79-80, 88 (1958).

¹³⁹ Ivanov, *supra* note 128, at 8.

¹⁴⁰ A system of economic courts having jurisdiction over disputes between socialist organizations.

¹⁴¹ See Friedman & Zile, *Soviet Legal Profession: Recent Developments in Law and Practice*, 1964 Wis. L. Rev. 32, 70-71.

property (civil), and disciplinary liability.¹⁴² This may be all the more reason for not sticking one's neck too far out by imposing, and at the same time assuming, commitments which are difficult to fulfill.

IV. DEVICES FOR SHAPING CONSUMER DEMAND

A. Price Policies; Use Restrictions; Priority Sales; Advertising

The Soviets manage retail prices to achieve and maintain a rough balance between the stocks of consumer goods and the purchasing power in the hands of the people. They also manipulate the prices to influence the demand for individual groups of items. Characteristically, prices would be kept high on items whose use is discouraged (alcoholic beverages, tobacco, etc.) or nonessential (jewelry, various delicacies, etc.). Conversely, prices of necessities have been kept relatively low; some goods in this class are actually sold below cost.

Similarly, when some goods are in ample supply, far exceeding the current demand for them, their retail prices will be reduced either to deplete inventories or to avert excessive accumulation. Given the opposite trend, prices will be raised, even on prime necessities; witness the recent price increases on meat and dairy products. Except for the few instances of below-cost sales, Soviet retail prices, after allowing for the cost of production, producer's planned profit, and wholesale and retail rebates, leave a sizable variable element known as turnover tax. In 1960 its average rate to the total retail sales was approximately 40 per cent.¹⁴³ The function of the turnover tax is thus twofold: it constitutes one of the chief sources of revenue for the state, and simultaneously acts as a shock absorber in the up and down movements of retail prices. Until 1957-58 price administration was almost entirely vested in the union government. A 1958 decree empowered republic and local authorities to set retail prices in a limited way. By 1962 about 45 per cent of the entire volume of goods was sold at decentralized prices. However, the new policy is a mixed blessing. The fact that in different communities similar goods are sold at unequal prices "perplexes buyers and lays groundwork for abuses in the trade network."¹⁴⁴ I have made no attempt to look into these abuses. Probably the workers of retail trade situated in a low-price area buy the goods on their own account and ship them to a high-price area for private resale.

Since the postwar abolition of the rationing system, the Soviet Union has not resorted to use restrictions until recently. The perennial hardships

¹⁴² E.g., Edict of April 24, 1958 (U.S.S.R.), [1958] *Ved. verkh. sov. S.S.S.R.* text 202. "It seems a fair generalization that all Soviet managers are, *ipso facto*, criminals according to Soviet law." GRANICK, *op. cit. supra* note 112, at 43.

¹⁴³ GOLDMAN, *op. cit. supra* note 109, at 86.

¹⁴⁴ PAVLOV, *op. cit. supra* note 116, at 52-53.

of Soviet agriculture culminated in a serious food shortage in 1962-63. The massive wheat imports, extreme sensitiveness to foreign opinion,¹⁴⁵ hoarding,¹⁴⁶ emotional appeals "to show respect for bread" and "save every grain,"¹⁴⁷ and programs for massive investments in agriculture all testify to the magnitude of the continuing problem. Bread is the foundation of Soviet diet. The demand for bread is inelastic; higher prices alone would not appreciably affect the consumption. In order to reduce the demand, the Soviets are waging a battle against wasteful use of bread. People are denounced for leaving half-eaten slices of bread on restaurant tables.¹⁴⁸ Stores are asked to limit the amount of bread sold to a single customer at one time.^{148a} But the strongest action is being taken against those who feed bread or other cereal products purchased at state or cooperative stores to cattle or poultry. Since May 1963, minor violators are subject to fines of 10 to 50 rubles, imposed by the local administrative authorities. A new article, article 154-1, was added to the Criminal Code:

"The purchase in state and cooperative stores of bread, flour, groats and other cereal products for the purpose of feeding them to cattle and poultry, or such feeding of bread, flour, groats and other cereal products so purchased, if the actor has already been administratively fined, or is doing it systematically or in large quantities—are punishable by either corrective labor for up to a year or deprivation of liberty for a term from one to three years with or without confiscation of the livestock."¹⁴⁹

Other republics have enacted similar laws.¹⁵⁰ For purposes of enforcement, local soviets, the press, and vigilance groups organize forays into both sheds where private animals are kept and people's apartments. The investigators examine troughs and count loaves on kitchen tables.¹⁵¹ The wrong which these laws punish is a subtle one. Obviously, there is no destruction of food stuffs involved, in the same sense as throwing away perfectly good slices and crusts of bread would be. Instead of being wasted, cheaper products are converted into more valuable forms. Meat and lard command higher prices than the cost of feed (including bread) that goes into their production. Evidently the offense is found in the fact that private individuals who happen to own livestock and poultry, rather than the state, are making

¹⁴⁵ *E.g.*, *Izvestiya*, Oct. 27, 1963, p. 5.

¹⁴⁶ *Kazakhstanskaya pravda*, Oct. 13, 1963, p. 3.

¹⁴⁷ *Cina*, Sept. 20, 1963, p. 1.

¹⁴⁸ *Cina*, Nov. 14, 1963, p. 4.

^{148a} *Trud*, Sept. 29, 1962, p. 1.

¹⁴⁹ Edict of May 6, 1963 (R.S.F.S.R.), *Sov. yus.* No. 11, p. 7 (1963).

¹⁵⁰ *E.g.*, Law of July 25, 1963 (Latv. S.S.R.), *Cina*, July 28, 1963, p. 1.

¹⁵¹ *Cina*, Sept. 19, 1963, p. 4; *id.*, Sept. 21, 1963, p. 4; *id.*, Nov. 30, 1963, p. 4.

economic decisions and pocketing the differential between the artificially fixed prices.

The demand for certain scarce items is not influenced by making them more expensive or imposing restrictions on their use but rather by exercising control over who gets them. In some cases stores which carry lines of this kind maintain waiting lists for prospective buyers. The merchandise is then sold in the order in which the customers' names appear on the list. For some articles coupons (*talony*) are issued by state and public organizations to selected persons, either entitling them to purchases outside the waiting lists or making the articles available exclusively to them. This device is simultaneously part of the system of rewards for meritorious service, with the coupons going to socialist labor heroes and other outstanding workers and the car becoming a symbol of cooperation with the system.¹⁵²

In 1961 the Lithuanian SSR inaugurated a much praised system of selling automobiles only to persons recommended by factory and plant committees or collective farm administrations. The procedure was made applicable to sales of both new and used cars.¹⁵³ The power to screen the sales through state and cooperative stores, together with the tight restrictions on transfers of automobiles between private individuals,¹⁵⁴ enables the public organizations to determine, to a large extent, who in the Soviet society will own and drive automobiles.¹⁵⁵ There is concern over the fact that private automobiles are widely used to transport paying passengers and thus turned into sources of unearned income, contrary to the concept of personal property.^{155a}

As long as a sellers' market prevailed in the Soviet Union, the disposal of goods was assured without much sales talk. The emergence of patches of a buyers' market has now awakened interest in techniques of consumer persuasion. Advertising Soviet style still lacks the swagger of Madison Avenue, but it has earned recognition as a legitimate economic endeavor and is growing. Moscow may well be the world's most signless metropolis, advertisingly speaking, yet in 1961 alone, 7,500,000 rubles were spent on advertising signs in the capital of communism.¹⁵⁶ Most of the signs are either public service announcements ("Beware of Fire") or propaganda slogans ("Glory to the Communist Party"). However, there are also signs that

¹⁵² NOVAK [pseud.], *THE FUTURE IS OURS*, *COMRADE* 38, 188 (1960).

¹⁵³ Decree of April 25, 1961 (Lith. S.S.R.) arts. 1, 3, *Sots. zak.* No. 7, p. 85 (1961).

¹⁵⁴ See text pp. 227-29 *supra*.

¹⁵⁵ I am not quite sure whether this system of automobile sales is now used throughout the Soviet Union. See a broad statement indicating universality in *ALEKSEYEV, GRAZHDANSKOYE PRAVO V PERIOD RAZVERNUTOGO STROITEL'STVA KOMMUNIZMA (CIVIL LAW IN THE PERIOD OF ALL-OUT CONSTRUCTION OF COMMUNISM)* 220 (1962).

^{155a} See note 10 *supra*; Edict of Aug. 3, 1957 (Arm. S.S.R.), *Sov. yus.* No. 1, p. 75 (1958); Case of Dronevich, [1960] *Byul. verkh. suda S.S.S.R.* No. 5, p. 8 (Plenum Supr. Ct. S.S.S.R.).

¹⁵⁶ *Pravda*, July 14, 1962, p. 6.

advertise goods and services, as well as a few newspaper and magazine advertisements and radio and television commercials having the same purpose. Again, much of the advertising that refers to goods and services is purely informational: announcements of shows, opening of new stores, or arrival of large shipments of goods. Individual retail stores sometimes advertise their superiority over comparable stores, by stressing wide selection of merchandise and "the best in service." Occasionally attempts are made to incite people to shopping sprees, much the same as stores in our country would stage sales to mark holidays and anniversaries. For example, shortly before the International Women's Day a newspaper would carry a half page of advertisements under a banner headline: "Comrade Men! Read and Keep in Mind! The 8th of March Is Approaching." Below, in one of the items the Central Department Store of Riga reminded the male population: "Do not forget to buy presents for your mothers, wives, sisters, daughters and [girl-]friends." Another would list the addresses of stores carrying jewelry, watches, table accessories, and specially prepared gift sets. A third would offer perfumes, colognes, and beauty creams, by brand name.¹⁵⁷ Promotion of specific products is becoming more common. Advertising is used to create and remold habits of consumption, for instance, by presenting the merits of new products ("Tomato juice is healthy").

In the final analysis, the task of socialist advertising is to serve the interests of economic planning. Certain parts of the plan are such that their fulfillment would actually be impossible without advertising. The consumption of a number of goods would decrease without the people being reminded of them through advertising. Turnover in some of the retail stores would drop because many consumers would spend their purchasing power elsewhere.¹⁵⁸

B. Mail Order Sales

Mail order sales were first introduced in the Soviet Union on an experimental basis in 1924, but they did not catch on. Mikoyan is credited with having revived the experiment in 1949.¹⁵⁹ *Posyltorg*, within the Ministry of Trade of the RSFSR, is the mail order house for the entire country, except that in late 1959 the consumer cooperative system began operating its own setup especially for cooperative members in the virgin lands territories.¹⁶⁰ The mail order service endeavors to bring dribbles of the new affluence to inadequately supplied localities, in particular the remote corners

¹⁵⁷ Cina, March 6, 1963, p. 4.

¹⁵⁸ GOLDMAN, *op. cit. supra* note 109, at 195-96; Milwaukee J., Dec. 5, 1963, green sheet p. 1, col. 6; Goldman, *supra* note 124, at 84; Varga, *An Economic Explanation*, 4 ATLAS 26 (1962). *Izvestiya*, May 23, 1964, p. 3.

¹⁵⁹ PAVLOV, *op. cit. supra* note 116, at 132.

¹⁶⁰ GOLDMAN, SOVIET MARKETING: DISTRIBUTION IN A CONTROLLED ECONOMY 36 (1963).

of the land. The overwhelming majority of orders come from Krasnoyarsk and Khabarovsk Territories and Arkhangel'sk, Irkutsk, Chitinsk, and Vologda regions.¹⁶¹ The existence of the service and the availability of goods are made known through newspaper advertisements, billboards, and radio commercials. Detailed information about the merchandise, prices, and the conditions of sale and shipping is published in illustrated catalogs listing several thousand items. Although the minimum size of an order has been set to exclude petty purchases, the service is nonetheless a convenience for the Soviet citizen. The state, on its part, derives principally two kinds of benefits: savings through a smaller number of retail trade outlets, and an opportunity for disposing of surplus stocks or, as the Soviets would put it, of "those manufactured goods which are in adequate supply."¹⁶² By changing the contents of the mail order catalog the *Posyltorg* is able to tap latent demand in areas heretofore not reached by the retail trade network, and can deal successfully until the point of saturation is reached. For example, at one time surplus watches were a major component of the mail order sales volume. Today almost everyone seems to own a watch, so that scarcely anybody buys them even by mail.¹⁶³ The volume of sales has been growing. In 1961 more than 3,000,000 orders were filled in the amount of more than 70,000,000 rubles, or approximately twice as much as in 1955.¹⁶⁴ However, this is still only a tiny share—less than one-thousandth of the entire retail trade volume, so that it cannot really be said that the mail order service as of now can generate sufficient effective demand to enable suppliers to get rid of otherwise unwanted goods.

The *Posyltorg* is required to fill an order within 10 days from the day of its receipt. Sending the merchandise after the 10-day limit is a contract violation which makes the *Posyltorg* liable to the customer for any damages caused by late performance. Undoubtedly, in the overwhelming majority of cases it is impossible to prove any damages. However, if the delay has caused the customer to lose any interest in the merchandise due to changed circumstances, including acquisition of a substitute item, the customer can refuse to accept performance and demand damages instead. The damages, if any, will include an out-of-pocket loss incurred in placing the order. In addition, the customer may also claim a refund of the money sent in advance. The same would be true if the *Posyltorg* refused entirely to perform.¹⁶⁵

Soviet legal writers take the position that a mail order catalog which contains all the necessary information on the basis of which a prospective

¹⁶¹ PAVLOV, *op. cit. supra* note 116, at 133.

¹⁶² PRAV. REG. GOS. TORG. SSSR 268.

¹⁶³ GOLDMAN, *op. cit. supra* note 160, at 194.

¹⁶⁴ PAVLOV, *op. cit. supra* note 116, at 132-33.

¹⁶⁵ PRAV. REG. GOS. TORG. SSSR 269-70.

buyer can act, is an offer to make a contract of sale. Consequently, the buyer's order (accompanied by a remittance of money) constitutes an acceptance.¹⁶⁶ Under the Civil Code section governing the formation of contracts where the parties are negotiating at a distance, a contract is concluded at the time of the receipt of the acceptance by the offeror.¹⁶⁷ This is a bit awkward. In theory, at least, there could be problems regarding the duration of an offer and thus the existence of an enforceable agreement. If the *Posyltorg* revises its catalog, will orders placed in reliance on the previous edition be considered valid acceptances? What if the item listed in the catalog is not available at all? I suspect, however, that this is strictly classroom law, that in practice such problems seldom arise, and that if they do they are not under Soviet conditions pressed to a litigation stage. In the absence of any evidence to the contrary, hypothesizing would be uncalled for.

Disputes concerning the quality of merchandise are handled in accordance with principles generally applicable to problems of quality. By way of a natural exception, the buyer, because of his absence, is not required immediately upon delivery to examine the merchandise for obvious defects. Delivery to pass the title is effected at the time the merchandise is turned over to postal or transportation authorities.¹⁶⁸

C. *Installment Credit Sales*

Early in 1959 the trade organizations in several cities began to allow consumer credit on an experimental basis. Apparently the people responded appreciatively, and no untoward consequences of the "progressive" method were noted.¹⁶⁹ Heartened by the quick success, the Council of Ministers of the USSR on August 12, 1959, authorized¹⁷⁰ the union republics to give their unreserved blessing to installment credit sales of durable consumer goods. Although buying on time had been once in a while denounced as a bourgeois evil, the step was not without a precedent in the Soviet setting. In 1923-24 the RSFSR, Belorussian SSR, Ukrainian SSR and possibly other republics had adopted decrees¹⁷¹ regulating retail sales on credit. As a matter of fact, they were still on the books at the time of the 1959 enactment. However, the early decrees had grown out of a semimarket environment and had

¹⁶⁶ *Id.* at 269.

¹⁶⁷ CIVIL CODE art. 134.

¹⁶⁸ PRINCIPLES OF CIVIL LAW art. 30; PRAV. REG. GOS. TORG. SSSR 270; see text pp. 267-72 *infra*.

¹⁶⁹ Gribanov & Kabalkin, *Pravovoye regulirovaniye kupli-prodazhi s rassrochkoy platyozha* (*Legal Regulation of Installment Sales*), Sov. gos. i pravo No. 8, pp. 103, 104 (1960).

¹⁷⁰ Decree of Aug. 12, 1959 (U.S.S.R.), ISTOCH. SOV. GRAZH. PRAV. 414.

¹⁷¹ Decrees of Oct. 10, 1923 (R.S.F.S.R.), Nov. 26, 1923 (Bel. S.S.R.), Oct. 3, 1924 (Ukr. S.S.R.), cited in Gribanov & Kabalkin, *supra* note 169, at 104-05.

been adopted mainly to facilitate sales of tools and farm implement to peasants rather than of nonproductive goods to consumers in general.¹⁷²

Installment credit has been paraded as "one of those instances in which the public interest of . . . [the] socialist state coincides with the personal interests of Soviet citizens."¹⁷³ The avowed purpose of the 1959 decree was to "create for the workers and employees the most favorable conditions for the acquisition of durable goods."¹⁷⁴ But a closer look at the rest of the provisions and Soviet own admissions indicate that the installment credit is first and foremost an instrument for marketing otherwise unsaleable inventories.¹⁷⁵ Any benefits that in the process redound to the consumer, though real, are purely incidental. The initial union decree listed only a few selected items which could be sold on installment basis, instead of giving blanket authority to sell anything durable.¹⁷⁶ While the enumeration included bicycles in general, it singled out one make of sewing machines, one make of outboard motors, two makes of motor scooters, the more expensive cameras, etc. The list was to be kept flexible. The Council of Ministers of the USSR delegated to the union republic councils of ministers the power "to modify the list and supplement it with other durable goods of which sufficient quantities are available."¹⁷⁷ As a result, the lists differ considerably from one republic to another.¹⁷⁸ In the RSFSR the Council of Ministers has further delegated the amending authority to the republic's Ministry of Trade,¹⁷⁹ as an agency best qualified to react immediately to changes in inventory accumulations. On the whole the nomenclature of goods sold on credit is constantly increasing, although some retail outlets, on their own initiative, refuse to sell some listed goods for which they find enough cash customers.¹⁸⁰ The rapid growth of the total volume of credit sales evidences the success of the device in reaching an otherwise untapped market. In 1960, the year after the adoption of the enabling decree, 396,000,000 rubles' worth of consumer goods was sold on credit.¹⁸¹ By the end

¹⁷² *Id.* at 105.

¹⁷³ Kunik, *Dogovor kupli-prodazhi v kredit (Contract of Credit Sale)*, Sov. yus. No. 12, at 16 (1962).

¹⁷⁴ Decree of Aug. 12, 1959 preamble.

¹⁷⁵ Lokshin, *Za dal'neyshiy pod'yom kooperativnoy trgovli (For Further Improvements in Cooperative Trade)*, Sovetskaya potrebitel'skaya kooperatsiya (Soviet Consumers' Cooperatives) No. 3, p. 38 (1960). Cf. Gribanov & Kabalkin, *supra* note 169 (the view criticized as excessively "sales-oriented").

¹⁷⁶ While laws and writers all stress that only durable goods can be subject to installment sales, it is to be noted that clothing and footwear are included in that definition.

¹⁷⁷ Decree of Aug. 12, 1959 art. 1.

¹⁷⁸ YAZEV, *PRODAZHA TOVAROV NASELENIYU V KREDIT (SELLING GOODS ON CONSUMER CREDIT)* 7-9 (1960).

¹⁷⁹ Regulations of Sept. 4, 1959 (R.S.F.S.R.), ISTOCH. SOV. GRAZH. PRAV. 414.

¹⁸⁰ Gribanov & Kabalkin, *supra* note 169, at 106.

of 1961 the figure had trebled.¹⁸² Statistics for the RSFSR show that installment credit is used mostly by people of lower incomes. It is also significant that goods for which there is a strong buyers' market (*e.g.*, watches) are purchased overwhelmingly (84.1 per cent) by people with monthly incomes below 100 rubles and hardly at all (2.8 per cent) by those in the higher bracket—over 151 rubles. By contrast, the sales of relatively scarcer items (*e.g.*, motorcycles) show a much less pronounced disparity between the two income groups (48.9 and 15.7 per cent, respectively).¹⁸³

Quite apart from the limited selection of goods, the installment credit sales are wrapped up in a multitude of other restrictions. Some of them have been adopted perhaps for the sake of administrative simplicity. Others remind one of the most thorough efforts of a nineteenth-century monopolistic company store¹⁸⁴ to squeeze every possible advantage and safeguard out of the relationship with an incomparably weaker customer. At times the consumer interests have seemed to be in a danger of being smothered by all the other considerations. Initially credit sales were permitted "in cities" only.¹⁸⁵ The 1960 decree "On Measures To Achieve Further Improvements in Trade"¹⁸⁶ authorized the consumer cooperative system to extend credit sales to rural areas as well.¹⁸⁷ The sales are, however, inadequately organized outside the cities, and this method of trade is still nonexistent in the so-called settlements (workers', summer-house, resort), densely populated places of urban character which still have not achieved city rank. Soviet experts say that it would be perfectly possible to bring the share of credit sales up to 10 per cent of the total retail turnover by extending the law to settlements and by better organizing the sales in rural areas.¹⁸⁸ The RSFSR regulations make it clear that even in cities credit sales are to be conducted exclusively through stores specifically designated for that purpose. Moreover, not every customer who goes to a credit store can avail himself of the privilege. At first, installment sales were only for "workers and employees (among them service personnel of officer and noncommissioned officer rank in the regular armed forces) permanently employed in the city where the store is located."¹⁸⁹ Temporarily employed persons were

¹⁸¹ Kunik, *supra* note 173, at 16.

¹⁸² PAVLOV, SOVETSKAYA TORGOVLYA V SOVREMENNYKH USLOVIYAKH (SOVIET TRADE UNDER CONTEMPORARY CONDITIONS) 131 (1962).

¹⁸³ *Id.* at 132.

¹⁸⁴ I am indebted to my colleague, Professor Robert H. Skilton, for this felicitous comparison.

¹⁸⁵ Decree of Aug. 12, 1959 art. 1; Regulations of Sept. 4, 1959 art. 1.

¹⁸⁶ Decree of Aug. 8, 1960 (U.S.S.R.), ISTOCH. SOV. GRAZH. PRAV. 435.

¹⁸⁷ Art. 17.

¹⁸⁸ Pravda, Nov. 18, 1962, p. 4.

¹⁸⁹ Regulations of Sept. 4, 1959 art. 2.

excluded "because they might find it difficult to meet the payments."¹⁹⁰ Kazakh, Belorussian, Lithuanian, and Tadzhik republics still make both permanent employment and permanent residence in the same city preconditions to credit. This excludes a large number of potential buyers, as a good part of the urban labor force resides in suburban settlements. Even if credit sales were extended to these settlements, the commuters would still be unable to take advantage of the credit system because of their inability to satisfy both conditions at either place.¹⁹¹ The omission of self-employed craftsmen, writers, pensioners, rank-and-file servicemen, and others was not perhaps extremely significant in terms of stored-up demand, but it certainly was an example of inequitable classification from a consumer standpoint. Much more striking was the denial of access to the new system to the rural residents who constitute roughly one-half of the Soviet population. One may wonder whether there had been a deliberate decision to shortchange the already under-supplied country dwellers or whether the shutout had been prompted by a reluctance to encounter unknown difficulties in collecting time payments from defaulting peasants. The circumstances under which new groups have been granted the credit privilege in the last few years suggest that the original restrictions were at least partly for the benefit of administration. In an article written shortly before the 1960 decree "On Measures To Achieve Further Improvements in Trade," two writers argued that "along with the gradual transition to monetary payments for labor on collective farms, and in the light of the growth of the output of consumer goods, a need arises to organize credit sales in rural areas."¹⁹² When the policy change came it was explicitly made applicable to rural workers, employees, and collective farmers, who are members of consumer cooperatives and are not behind in their membership share payments.¹⁹³ Some republics now permit installment credit sales to pensioners. Commentators approve of this practice, stressing the reliability of the pensioners' source of income.¹⁹⁴ They also suggest inclusion of seasonal workers, if the repayment period is appropriately shortened.¹⁹⁵ Stores actually have no power to extend the credit method in their discretion to persons not covered by law, but some stores in Kiev, "taking into account concrete conditions and circumstances, sell goods on credit to students." Finally, in a few republics the law directly prohibits credit sales to minors. In some other places the question is unsettled. The critics of this particular limitation argue that the

¹⁹⁰ Gribanov & Kabalkin, *supra* note 169, at 106.

¹⁹¹ Ospanov, *Dogovor roznichnoy kupli-prodazhi s rassrochkoy platyozhi (Contract of Installment Sale at Retail)*, Sots. zak. No. 9, pp. 23, 23-24 (1962).

¹⁹² Gribanov & Kabalkin, *supra* note 169, at 106.

¹⁹³ Kunik, *supra* note 173, at 16.

¹⁹⁴ YAZEV, *op. cit. supra* note 178, at 17; Gribanov & Kabalkin, *supra* note 169, at 106.

¹⁹⁵ Kunik, *supra* note 173, at 17.

important question is whether the minor has a separate wage or salary. If so, he should not be denied the privilege.¹⁹⁶

These provisions really add up to an attempt to establish rough credit ratings. They are rough because the risk is not appraised on basis of the status and past performance of an individual, but rather in terms of the position and performance of a large social group of which the individual is a member. However, the state does not stop at this. Several other safeguards individualize the case and come close to eliminating any residual risk left by the law's broad classification. For purposes of preliminary appraisal of the seller's risk in a particular case, the Soviets make use of a statement (*spravka*) issued by the prospective buyer's place of employment, certifying the worker's or employee's average pay. At the beginning, the law of the RSFSR required at least three-months' employment with the attesting organization immediately prior to the issuance of the statement.¹⁹⁷ This period was extended to six months in the spring of 1962, apparently with a view to tightening credit.¹⁹⁸ The statement, which is valid for 15 days, is treated as a document of major importance: it must be signed by the manager, deputy manager, or senior accountant.¹⁹⁹ By contrast, some lax employers issue signed and sealed statements, leaving the recipient to fill in the blanks. This liberty has been abused. A buyer through a consumer cooperative obtains a similar statement from his place of work and submits it, together with his cooperative membership booklet and an application for credit sale, to the chairman or deputy chairman of the cooperative association.²⁰⁰ In those republics which permit credit sales to pensioners, the latter obtain statements of their pension income from the social security agencies.²⁰¹ The earnings figures contained in the statements help in determining the maximum amount of credit to be allowed. The Ministry of Trade of the RSFSR originally ruled that a person's credit purchases in any one year could not exceed his four-months' wages or salary.²⁰² In case of a collective farmer the ceiling is calculated by looking at his annual earnings, both in money and *in natura*. The limit on credit is set at one-third of this figure.²⁰³ It is ordinarily less than his actual earnings for a four-months' period, because he derives additional income (oftentimes substantial) from his garden plot economy. The treatment of pensioners seems

¹⁹⁶ Ospanov, *supra* note 191, at 23. See also CIVIL CODE art. 9.

¹⁹⁷ Regulations of Sept. 4, 1959 art. 6.

¹⁹⁸ Decree of March 26, 1962 (R.S.F.S.R.), Sots. zak. No. 9, p. 79 (1962).

¹⁹⁹ Kabalkin, *Dogovor roznichnoy kupli-prodazhi s rassrochkoy platyozhi (Contract of Installment Sale at Retail)*, Sots. zak. No. 12, p. 65 (1960).

²⁰⁰ Kunik, *supra* note 173, at 16.

²⁰¹ YAZEV, *op. cit. supra* note 178, at 17.

²⁰² *Id.* at 15.

²⁰³ Kunik, *supra* note 173, at 16.

to be unsettled. A suggestion has been made to limit their installment credit to a month's pension.²⁰⁴ In the RSFSR employers must not issue another statement until after the applicant's previous indebtedness on a credit purchase has been fully extinguished.²⁰⁵ In the Armenian SSR a person may buy on credit only one item at a time, irrespective of its price. In those republics which do not have regulations of this type, the employers are expected to cease issuing new statements when a worker's or employee's obligations to stores become unreasonably high relative to his earnings.²⁰⁶ In their total effect these restrictions save individual buyers from assuming excessive burdens. Overcommitment of private resources might, under Soviet conditions, lead to illicit money-making activities or induce shopping around for more remunerative work. The latter practice would only aggravate the already serious problem of high labor turnover.

After the buyer has made a downpayment of at least 20 per cent of the retail price and paid a "service charge" of 1 to 2 per cent calculated also on the total price rather than the unpaid balance, he signs an instrument authorizing his employer (or collective farm or social insurance agency) to withhold the balance from his pay in equal amounts, twice a month, over a period from 6 to 12 months. The amounts so withheld are transferred to the appropriate trading organization (seller) by the eighth day of each month.²⁰⁷ There is, however, some pressure in favor of modifying the compulsory withholding feature. In at least two republics (Ukrainian and Latvian SSR) the buyer may elect a direct payment system: cash at the store or money order.²⁰⁸ On collective farms an agreement is usually made as to how much will be withheld by the farm administration and what amounts will be paid directly by the purchaser. This is natural, because a collective farmer derives a part of his money income from sales of produce either distributed to him by the farm or grown on his own plot. Some say that pensioners should make all their payments directly. The advocates of the direct payment method contend that its wider use could cause the volume of installment credit sales to expand.²⁰⁹

Unless otherwise provided by law or contract, the title passes at the time the thing is delivered, which in the ordinary case is simultaneous with the downpayment. The transaction is not a conditional sale. The seller retains no security interest in the thing; his rights are purely contractual. Neither the union nor republic laws limit the buyer's power over the thing.

²⁰⁴ *Ibid.*

²⁰⁵ See note 198 *supra*.

²⁰⁶ YAZEV, *op. cit. supra* note 178, at 16.

²⁰⁷ Decree of Aug. 12, 1959 art. 2; Regulations of Sept. 4, 1959 arts. 3, 4, 8. In the RSFSR the repayment terms are set by law for each commodity. Kunik, *supra* note 173, at 17.

²⁰⁸ YAZEV, *op. cit. supra* note 178, at 26.

²⁰⁹ *E.g.*, Pravda, Nov. 18, 1962, p. 4.

He can sell it or give it away, at his pleasure. Of course, the transfer of ownership or the loss or destruction of the thing does not terminate the seller's right to collect the debt in full. It is possible though to write a new contract whereby a subsequent buyer assumes the first buyer's obligation toward the store and releases the former. Preliminary to a new contract of this kind, the second buyer must procure an earnings' statement from his employer and, in accordance with article 126 of the Civil Code, obtain the creditor's approval of the transaction.²¹⁰ Under the 1923 decree of the RSFSR, the seller retained a security interest until the indebtedness was paid off; the buyer could not sell the property, or give it away, or encumber it, or use it in a manner inconsistent with its purpose or tending to damage it. After a default on three installment payments, the seller was entitled to rescind the contract, demand the return of the thing and recover an appropriate compensation for its deterioration and use.²¹¹ Today the closely controlled payment system, in combination with the Soviet citizens' general duty to work and an effective machinery for collecting civil judgments, actually makes a repossession feature superfluous.

The earnings' statement issued by an employer is informational only; it is in no sense a suretyship agreement. It is after the purchase that the buyer's enterprise or organization is obliged to withhold the necessary amounts, that is, where the direct payment method is not used. Whenever, for any reason, the employer ceases withholding, it is required to communicate this fact to the creditor. In addition, by signing the withholding authorization, the buyer himself has undertaken to report the same.²¹² If the termination of withholding is due to the buyer's removal to another place of employment, the trading organization's position is somewhat impaired. In the scheme of the 1959 regulations of the RSFSR, the trading organization requested that the withholding authorization be forwarded to the buyer's new employer which thereafter was to act as a collection agent.²¹³ This procedure has now been amended to require the first employer to withhold from the departing worker's or employee's pay the entire unpaid balance, unless it exceeds the ceilings established by law.²¹⁴ The effect is essentially that of an acceleration clause. Here, too, one finds considerable experimentation in the several republics. Thus in the Armenian SSR a buyer who changes his job must pay the remaining installments directly. By contrast, the neighboring Azerbaydzhanis have elected an approach that affords a high degree of protection to the creditor. In case the original pattern is upset, they shift

²¹⁰ Ospanov, *supra* note 191, at 24.

²¹¹ Gribanov & Kabalkin, *supra* note 169, at 105.

²¹² Regulations of Sept. 4, 1959, art. 8; Annex to the Regulations, ISTOCH. SOV. GRAZH. PRAV. 416.

²¹³ Art. 8.

²¹⁴ See note 198 *supra*.

the risk to the buyer's initial employer. When the buyer moves away, the employer pays off the debt to the trading organization and becomes subrogated to its rights and subsequently can avail itself of the usual legal means for collecting the debt from the former employee.²¹⁵ The Kirghiz law goes as far as to require a debtor to liquidate his obligation before leaving for a different place of residence.²¹⁶ Complaints are heard that employers frequently neglect their duties and aggravate the debt-collecting process. As might have been expected, the solution is seen in stiffer punishments for the delinquent managers.²¹⁷ When a member of a consumer cooperative either leaves the cooperative system completely or transfers to another association, his indebtedness is collected by taking the amount owed out of his paid-in shares and dividends earned but not distributed.²¹⁸

The question of a buyer's liability for late payment or nonpayment may arise in those cases in which the buyer has been making direct payments all the while or where such payments are imposed after the termination of a withholding arrangement. In the Ukrainian and Latvian republics the buyer has to pay the creditor organization a contract penalty calculated at .2 per cent of the amount in default for each day of delay.²¹⁹ The penalties are added to payments currently due. The statute of limitations apparently begins to run from the maturity date of each installment.²²⁰

According to Soviet sources, defaults on installment sales contracts are rare. They reached only .85 per cent for the entire country in 1960. The greater number of defaults is said to be associated with changes in employment. Quite a few others are attributed to employers' neglect in reporting their former employees' whereabouts, or issuing earnings' statements under circumstances permitting the applicants to overcommit themselves. Now and then a buyer's heirs fail to pay up.²²¹ In several union republics recovery of unpaid balances on time contracts is by an ordinary civil action in the people's court of the district or city in which the defendant resides. On the other hand, in some republics, including now the RSFSR and the Ukrainian SSR, the debt may be enforced in an *ex parte* proceeding before a notary by obtaining an endorsement of execution (*ispolnitel'naya nadpis'*). Execution on the debtor's property may be levied on the basis of this document. The Statute on State Notariat of the RSFSR provides: "A state notarial office shall issue an endorsement of execution: (a) whenever the documents

²¹⁵ YAZEV, *op. cit. supra* note 178, at 27-28.

²¹⁶ Kabalkin, *supra* note 199, at 66.

²¹⁷ Gribanov & Kabalkin, *supra* note 169, at 109; Kunik, *supra* note 173, at 17-18.

²¹⁸ Kunik, *supra* note 173, at 17.

²¹⁹ YAZEV, *op. cit. supra* note 178, at 33.

²²⁰ Gribanov & Kabalkin, *Pravovoye regulirovaniye kupli-prodazhi s rassrochkoy platyozha* (Legal Regulation of Installment Sales), Sov. gos. i pravo No. 8, p. 108 (1960).

²²¹ *Id.* at 109; Kunik, *supra* note 173, at 17.

presented, as a whole, establish the debtor's indebtedness to the person seeking to collect it, beyond any doubt."²²² The claimant-seller must present (1) the original contract, (2) a certificate from the debtor's employer to the effect that he has left, and (3) an extract from the debtor's account showing the amount of the indebtedness, attested by the seller.²²³ A bona fide dispute over the existence of the debt or its amount, is within the jurisdiction of the courts.²²⁴ Retailers have been complaining about the necessity of collecting debts by court action. This, they say, considerably "complicates" their work. They have been vocal in advocating the *ex parte* proceedings. Apparently, in response to their clamor, the RSFSR in 1960 switched over to the notarial method. However, regulations issued by the *Tsentrosoyuz* in 1962 ordered judicial in lieu of notarial enforcement.²²⁵ One explanation for this inconsistency in attitudes might be found in the fact that cooperatives operate mainly in rural areas where the competence of the notaries is perhaps less adequate and informal proceedings in their offices lend themselves to miscarriages of justice. Of course, a debtor faces an enforcement action, whether judicial or notarial, only when the breach has been due to his fault. If, for instance, the collecting agent (employer) has failed to transmit the amounts withheld from the debtor's pay, the debtor is not liable. Under those circumstances the creditor would have to seek recovery from the employer.

D. Rental of Consumer Durables²²⁶

Rental service (*prokat*), though not properly part of retail trade, has much to do with developing and satisfying consumer demand. It is not treated merely as a transitory expedient but, as I mentioned in the introduction, is regarded as a wave of the future. The rental system increases the utilization rate of consumer durables, thus making each item "socially more useful." Alekseyev stresses the educational potentiality of the system; it will help gradually to obliterate concepts such as "exclusively mine" and "exclusively yours."²²⁷ In this connection, perhaps the most striking vision of things to come has been offered by octogenerian academician Strumilin:

"The people themselves will throw away personal cars and dachas and individual [garden] plots like so much excess baggage when modern

²²² Statute of Dec. 31, 1947 (R.S.F.S.R.) art. 33, ZAKONODATEL'STVO O NOTARIATE (LEGISLATION ON THE NOTARIAT) 151 (1960).

²²³ Decree of Nov. 12, 1962 (R.S.F.S.R.), summarized in Sov. yus. No. 2, p. 30 (1963).

²²⁴ Gribanov & Kabalkin, *supra* note 220, at 109.

²²⁵ Kunik, *Dogovor kupli-prodazhi v kredit (Contract of Credit Sale)*, Sov. yus. No. 12, pp. 16-17 (1962).

²²⁶ See text pp. 257-62 *infra* on "Automobile Rental."

²²⁷ ALEKSEYEV, GRAZHANSKOYE PRAVO V PERIOD RAZVERNUTOGO STROITEL'STVA KOMMUNIZMA (CIVIL LAW IN THE PERIOD OF ALL-OUT CONSTRUCTION OF COMMUNISM) 231 (1962).

boarding houses with all the conveniences spring up in the best and most picturesque locations, offering separate rooms, yachts, motor scooters for pleasure rides, helicopters for excursions, etc., and when excellent cars of all models and colors (just pick one to suit your taste!) are lined up in the public garages, just waiting for passengers. . . . "There will be plenty of everything in the public dining room or the apartment-house kitchen: Eat it or leave it alone as you please. Excessive clothes only clutter up the closet."²²⁸

As the Good Book says: "Your old men shall dream dreams."

Ordinary leasing agreements involving consumer durables were occasionally made in the earlier days, but it appears that not until 1957 was the public rental system recognized as a distinct institution requiring its own rules in derogation of the Civil Code.²²⁹ Since then, the popularity of the service has grown. As of January 1, 1961, there were 2,081 "rent-all" centers in the country, not including sporting equipment counters at stadiums and parks of culture.²³⁰ But considering the size of the country and the uneven distribution of the centers, the service is not yet generally accessible to the people.

The Principles of Civil Law refer to rental service in article 55, which states that "conditions and procedures" of such service shall be prescribed by laws of the union republics. The special rules, when enacted, are to displace the general provisions of the chapter on property hire (articles 53 to 55).²³¹ Article 55 further provides that "the councils of ministers of the union republics shall approve model contracts to govern various specific kinds of rental" and that "any departure from the terms of the model contracts, which limit the borrowers' rights, is void." Because of either inaction at the republic level or further delegation of the rule-making power, no uniformity of regulation has been achieved in any of the 15 republics. Since the centers are operated by many different masters (trade organizations, public service branches of local soviets, industrial enterprises, housing administrations, etc.),²³² the rental contracts are typically governed by diverse departmental regulations and local ordinances. The multiplicity of principles and rules perplexes both administrators and consumers. The critics of the present system say that the existing differences for the most part cannot be justified in terms of local peculiarities and should be done away with in the new civil codes.²³³

²²⁸ *Izvestiya*, Aug. 30, 1961, p. 3, transl. in 13 C.D.S.P. No. 35, pp. 24, 25 (1961).

²²⁹ Basic Rules of Rental of April 9, 1957 (U.S.S.R.), *ISTOCH. SOV. GRAZH. PRAV.* 532.

²³⁰ Petrishcheva, *Pravovyye voprosy bytovogo prokata (Legal Problems of Rental Service)*, *Pravovedeniye* No. 2, pp. 40, 40-41 (1963).

²³¹ KOMMENTARIY 232-33.

²³² Kabalkin, *Dogovory prokata predmetov bytovogo obikhoda (Contracts Involving Rental of Articles of Everyday Use)*, *Sots. zak.* No. 9, p. 90 (1962).

²³³ Petrishcheva, *supra* note 230, at 41.

The regulations of rentals are similar to those of installment credit sales in that they seem to be designed to give maximum protection to lenders. In fact, a fear that socialist property would be squandered by lenient rental centers has been one reason for demanding uniform and compulsory regulation at a higher level.²³⁴ At present the authorities which promulgate rental regulations also issue lists enumerating articles available for rent.²³⁵ Here centralization would be undesirable. A local body fully conversant with the conditions of local trade is no doubt better qualified to manipulate the rental lists with a view to influencing consumer demand for durable goods in the stores. The USSR regulations of 1957 extended the service to all adult citizens residing either permanently or temporarily "in the city (suburb) where the rental center is located."²³⁶ Again, the exclusion of rural areas and urban-type settlements is puzzling. I have found no clear reference to a subsequent extension of the service, as has been the case of installment credit sales. To establish himself as a resident, a customer must present his domestic passport. A temporary resident may be required to leave a monetary deposit in the amount of the retail price of the borrowed item.²³⁷ In some cities articles are rented, by way of exception, to nonresidents, if they make a deposit equal to 150 per cent of the retail price!²³⁸ The City of Leningrad Rules of August 22, 1960, are worried about borrowers who are not gainfully employed (except students in institutions of higher learning, armed forces personnel and pensioners). However, instead of being required to make prohibitive money deposits, they must find someone to sign a contract of guarantee (*poruchitel'stvo*) backing their performance. The guarantor must be a Soviet citizen, a permanent resident of Leningrad and gainfully employed.²³⁹ A regressive rental fee is collected according to a government-established schedule. When no deposit is required, the fee must be paid in advance. Frequently, maximum use periods are set.²⁴⁰ The agreed upon period can be extended upon notice to the rental outlet and payment of an additional fee, if necessary. If, however, an article is withheld without the lender's consent, the borrower may be charged double rental for the excess time. On the other hand, if the borrower returns the article ahead of the appointed day, the unused portion of the fee is not refunded.²⁴¹

²³⁴ Kartasheva, *Nekotoryye pravovyye voprosy bytovogo prokata (Some Legal Problems of Rental Service)*, Sov. yus. No. 4, p. 11 (1962).

²³⁵ Kabalkin, *supra* note 232, at 90.

²³⁶ Basic Rules art. 1.

²³⁷ *Id.* art. 2.

²³⁸ Petrishcheva, *supra* note 230, at 46.

²³⁹ *Ibid.*

²⁴⁰ *E.g.*, in Leningrad, household articles, sporting equipment, and musical instruments are rented for a maximum period of three months. *Id.* at 43.

²⁴¹ Basic Rules arts. 3, 4; Kabalkin, *supra* note 232, at 91.

When the rented property is damaged, some of the local regulations have little sympathy for the borrower. The rules of Moscow prohibit him from making his own repairs. Understandably, rental centers wish to control the quality of work and guard against attempts to conceal serious defects by superficial "fixing." Thus, in Moscow, when a customer returns a thing whose damage is repairable, he must pay the cost of the needed repairs according to a list of prevailing prices. By contrast, under the rules of City of Izhevsk, in the Udmurt ASSR, a customer who returns an article in a damaged condition must find a way to repair it at his own expense and, in addition, pay a double fee for each day the item is being repaired. Considering the shocking state of repair services in the Soviet Union, where it may take weeks, months, and even years to eliminate a minor flaw, such a rule, if enforced, is downright cruel. Indeed, the hapless customer might be wiser to claim total loss. In such a case, in Izhevsk the rental outlet would extract from him three times the depreciated value of the item, still quite an unsatisfactory alternative. He would be only a little better off in Aktyubinsk (twice the depreciated value) or Sverdlovsk (list price plus an extra month's rental). Characteristically, the local rules are much more unfavorable to the public than were the original USSR regulations of 1957. This evidences possibly not only local narrow mindedness, but also misuse of rental outlets to "buy" things. The USSR regulations of 1957 provided for payment of the depreciated value only.²⁴² But since June 13, 1958, the Ministries of Trade and Finance of the RSFSR have required their rental outlets to sue for either return of a rented article or one-and-half times its value.²⁴³ If rental services are indeed used to shape consumer demand for goods in retail trade, the inflated value feature makes a great deal of sense. It is the scarce goods that are made available on rental basis. Being in short supply, they are apt to command high prices in a free bargaining situation. At ordinary retail prices the most desirable items would be rapidly withdrawn from rental outlets, the borrowers subsequently claiming their loss or total destruction. Of course, some articles might be highly desirable even at a 50 per cent premium. Perhaps it is necessary to impose a 200 per cent premium in Izhevsk to keep the goods within rental channels. A desire to "buy" things from a rental outlet may be intensified by another factor, too. Poor quality of consumer goods being a constant problem, a Soviet consumer might feel much safer in acquiring an item which he himself has tested for a while and found in working order. If, however, the law empowers a retail outlet to sue for actual performance (return of the article itself), the borrower is not free to render substitute performance (payment of money) without the lender's consent. Under this rule, a conscientious rental service should accept sub-

²⁴² Basic Rules art. 8; Kabalkin, *supra* note 232, at 91; Petrishcheva, *supra* note 230, at 47, 49-50.

²⁴³ Kabalkin, *supra* note 232, at 92.

stitute performance only in cases in which delivery of the thing itself has become objectively impossible.

If not voluntarily settled, claims for damage to, or return of, rental property are brought in people's courts. The number of such suits is "quite considerable."²⁴⁴ In the overwhelming majority of cases, the rental outlets are successful. A writer reports that none of the defendant borrowers has appealed an adverse decision.²⁴⁵ On the other hand, rental outlets have not taken full advantage of article 36 of the Principles of Civil Law and article 117 of the Civil Code; their monetary recoveries, as a rule, have been limited to repair expenses only.²⁴⁶ Criminal liability for deliberate failure to return a borrowed article arises only in those cases in which the customer, "by way of fraud or abuse of confidence," converts the property to his own use, without paying for it.²⁴⁷

E. Automobile Rental

"Rent-a-car" service (*prokat bez shofyora*) appeared in the Soviet Union along with the other innovations of the late 1950's. On March 23, 1959, the RSFSR Minister of Autotransport and Highways approved the first comprehensive rules to regulate the use of rented cars.²⁴⁸ On October 6 of the same year, Khrushchev, fresh back from his American trip, came out strongly in favor of automobile rental service in his Vladivostok speech on consumer problems:

"[I]t is not at all our aim to compete with the Americans in the production of large numbers of automobiles . . .

"We will turn out a lot of cars, but not now. We want to establish a system for the use of automobiles that will differ from the one in capitalist countries, where people reason on the principle: 'The car may be lousy but it's my own.' We will make more rational use of automobiles than the Americans do. We will develop public taxi [rental] pools on an ever broader scale; people will get cars from them for necessary trips. Why should a man worry about where to park his car; why should he have to bother with it."²⁴⁹

²⁴⁴ *Ibid.*

²⁴⁵ Kartasheva, *supra* note 234, at 11.

²⁴⁶ Petrishcheva, *supra* note 230, at 49.

²⁴⁷ CRIMINAL CODE art. 93; Kabalkin, *supra* note 232, at 92-93; Case of Yefimov, Presid. Supr. Ct. R.S.F.S.R. 1960, [1961] Byul. verkh. suda S.S.S.R. No. 4, p. 44. But see the earlier case of Shahavelev, Presid. Lenigr. City Ct., ab. 1959, Sots. zak. No. 3, p. 86 (1960).

²⁴⁸ The rules are cited in Levenson, *Dogovor prokata legkovykh avtomobiley* (*Contract of Automobile Rental*), Sots. zak. No. 6, p. 64 (1961). Regulations of automobile rental are not the same in all republics. Moreover, several regions and cities have adopted their own rules. Krasavchikov, *Dogovor prokata legkovykh avtomashin* (*Contract of Automobile Rental*), Sov. gos. i pravo No. 11, p. 74 (1962).

²⁴⁹ Pravda, Oct. 8, 1959, p. 1, transl. in 11 C.D.S.P. No. 4, p. 3 (1959).

The draft of the 1961 Party Program promised that "output of automobiles for the population (*dlya naseleniya*) will increase significantly." In the final version, this innocuous phrase was changed very pointedly to read that "output of automobiles to serve the population (*dlya obsluzhivaniya naseleniya*) will increase."²⁵⁰

A Soviet *avtobaz* (rental station) is not overly anxious to put any comer into the driver's seat. Just as the pleasure of owning an automobile is bestowed only upon carefully selected persons, the thrills of driving, too, are parcelled out with circumspection. Naturally, the prospective borrower must have a valid driver's license. He must also reside and work in the town in which the rental station is located. In addition, he must secure from his place of employment a certificate indicating his privilege to use rented automobiles. Such certificates issue for limited periods (*e.g.*, one year in the RSFSR, Tadzhik SSR, and Georgian SSR; six months in Azerbaidzhan SSR) and thereby give employers an opportunity to review the applicant's deserts. Some local rules, such as those of the City of Odessa, permit rentals only to *peredoviki* (first-rate workers). It seems, however, that the ultimate decision to rent or not to rent is made by the *avtobaz* bureaucrats, who have the power to dishonor a perfectly good employer's certificate. A rental station keeps a card file containing detailed information about its customers. As long as a person has failed to meet his obligations arising out of a previous rental arrangement, another automobile is not rented to him. Some of the stricter rules provide that for a serious violation of the terms of a rental agreement (*e.g.*, involvement in an accident, damage to the automobile, use of the automobile to derive unearned income, systematic violation of the rules of the road) a person forfeits his privilege of renting an automobile *forever*. Apparently, this affects only the person's relations with that particular local rental station. If he moves to live and work elsewhere, his past transgressions stay behind, unless there exists some method by which other rental stations are apprised of the fact of disenfranchisement. Whereas Soviet commentators criticize the harshest aspects of the regulations, they support rigorous screening of prospective customers who are to be entrusted with an expensive piece of state property which, at the same time, is a dangerous instrumentality. As the final step before getting an automobile, the applicant must pass a special driver's test administered by the personnel of the *avtobaz*. This test, however, is not repeated in cases of subsequent rentals from the same station.²⁵¹ In all this, opportunities for red tape, favoritism, and corruption are unlimited.

Automobiles are rented for periods ranging from three hours to one

²⁵⁰ Alekseyev feels that the amendment confirms his theory of gradual shrinkage of personal property ownership. ALEKSEYEV, *op. cit. supra* note 227, at 196.

²⁵¹ Petrishcheva, *supra* note 230, at 42-43, 48-49; Levenson, *supra* note 248, at 64; Krasavchikov, *supra* note 248, at 75.

month. In some republics longer periods are permitted with ministerial approval in exceptional cases. Rental charge is computed on the basis of both time and mileage. The borrower, in addition, pays for fuel and lubricants. By signing the rental agreement, he declares that he has examined the vehicle at the time of accepting it, and either has found nothing wrong with it or has informed the rental station of all discovered defects. It is abundantly clear that an ordinary person is ill-equipped to carry out a successful inspection. Obviously, he cannot see any hidden defects. An unreasonable contract term of this kind is likely to breed abuse. Some *avtobaz* personnel rent defective automobiles and cover up their own carelessness and mismanagement by shifting the blame to users. Since the borrower has expressly agreed to return the automobile in good working order, he must pay for all parts and labor needed to restore it to that condition.²⁵²

In the experience of rental stations, each rental automobile is damaged on the average 15 to 20 times per year. Consequently, many former users owe large sums of money to the rental stations. Showing concern for protection of the interests of the state, some rental station managers have suggested large security deposits; others, casualty insurance. Deposit requirements would surely cut into an already severely restricted number of users. Insurance would be far more acceptable, with the cost of the premiums shifted to the clientele. As a general proposition, a borrower is liable for damage to, or destruction of, the automobile only if the loss is attributable to his fault. In case of late return, he is, however, liable also for harm inflicted by circumstances beyond his control.²⁵³ Some rental stations have adopted form contracts which extend borrowers' liability beyond these limits. When a third person has caused damage to the automobile while it was in the borrower's possession, the rental station can nevertheless claim compensation directly from the borrower, who then has a claim over against the wrongdoer. All disputes involving claims against borrowers are tried in the people's court of the city or district of the *avtobaz*. Despite efforts of some rental stations to calculate their claims in retail prices, the courts have held that since state organizations acquire automobiles at a special low price and carry them on books at this low cost figure, their recovery should be similarly limited (acquisition price less depreciation). Apparently, to fight the stripping of automobiles of scarce parts and accessory equipment, some local rules impose multiple liability for their removal. For example, in Baku, a borrower pays double the value of the missing item; in the Latvian SSR, he is assessed its fivefold value. Also, according to the

²⁵² Petrishcheva, *supra* note 230, at 43, 45; Levenson, *supra* note 248, at 64-65; Krasavchikov, *supra* note 248, at 65. For the most cogent critique of the present practice, see Sokolova, *Ob otvetstvennosti grazhdan, vsiavshikh legkovoy avtomobil' naprokat* (*On Liability of Citizens Using a Rented Automobile*), Vest. Mosk. Univ. No. 3, p. 50 (1962).

²⁵³ CIVIL CODE art. 121.

Latvian rules, the borrower who returns a damaged automobile is assessed both the cost of repairs and the income lost by reason of idleness, in accordance with the regular schedule of rental fees.²⁵⁴

Serious problems have arisen with respect to allocation of liability for damage caused to third persons. Article 90 of the Principles of Civil Law, corresponding to article 404 of the Civil Code, provides:

“Organizations and citizens whose activity involves increased danger for those in the vicinity (transport organizations, industrial enterprises, construction projects, owners [*vladeľtsy*] ²⁵⁵ of automobiles) are obligated to compensate for damage caused by the source of increased danger, unless they prove that the damage arose as a result of an insuperable force or the intention of the victim himself.”

The person (juristic or natural) whose activity is proximately connected with a source of increased danger is “in charge (possession) of the source of increased danger (*vladeľets istochnika povyshennoy opasnosti*).” Identification of this person is important: whoever is in charge is liable for any harm done to others. Ordinarily, where an organization owns the source of increased danger, it is considered as being in charge thereof. Thus, a cab driver employed by a taxi park is not liable for injuries caused to others in the absence of his own fault.²⁵⁶ For some reason, the rent-a-car situation has not been regarded as analogous. It has been argued by some that a rental station which turns an automobile over to a user pursuant to a rigorously drafted rental agreement is no less in charge than an organization whose vehicle is operated by one of its employees. Consequently, a victim should be permitted to proceed against the *avtobaz*. The “majority view” is diametrically opposite. Russian, Ukrainian, Armenian and other regulations, as well as the judicial practice of the RSFSR, take the view that the liability is the borrower’s alone. On top of that, a provision of the Ukrainian regulations makes the borrower criminally liable, if the injury has been inflicted by reason of his fault. The Latvian SSR has taken a slightly modified position. Its regulations look to article 403 of the Civil Code (of the RSFSR) as a basis of recovery, thus making the borrower’s liability hinge on fault. It is not clear whether the Latvian courts permit victims to hold the rental stations liable without fault under article 404. The “majority view” has been praised by righteous commentators as placing the loss where it belongs—on the real culprit, the driver; they feel strongly that no state money ought to be paid to the victim. This constant obsession with “safeguarding

²⁵⁴ Petrishcheva, *supra* note 230, at 48-50; Kartasheva, *supra* note 234, at 12; Levenson, *supra* note 248, at 64-65.

²⁵⁵ [Author’s note] “*Vladeľets*” is a bad term. In common usage it has the same meaning as “*sobstvennik*”—“owner.” In a more technical sense it means “possessor.” In article 90 the distinction is important.

²⁵⁶ KOMMENTARIY 328.

the socialist property” and tendency to look for a single guilty individual make virtually impossible any rational analysis of distribution of risks. Some writers suggest making the borrower and the rental station jointly and severally liable, an approach “justifiable, first of all, from the point of view of the victim.”²⁵⁷ Indeed, in many cases accident victims obtain money judgments which, for some reason, turn out to be uncollectible. Something can be said also in favor of easing the burden of the borrower who, in the present scheme of things, can be well-nigh ruined moneywise.²⁵⁸

The Soviet Union knows of no automobile accident liability insurance. Occasional proposals for its introduction have been severely criticized. The Principles of Civil Law do not acknowledge this form of insurance,²⁵⁹ and article 3 denies to the union republics the right to take initiative in the area of insurance. Objections against liability insurance are based mainly on assumed deterrent effect of delictual liability. We know enough by now to regard such assumption with much caution. I have not seen any Soviet writer try to analyze the idea that accidents are avoidable by the conscious efforts of a driver, in the light of article 90 of the Principles of Civil Law which recognizes as defenses only narrowly defined “insuperable force” and “the intention of the victim himself.” Even “gross negligence” of the victim, mentioned in article 404 of the Civil Code, has been dropped from the new Principles. The opposition to liability insurance is thus really a matter of faith. For example:

“The institution of liability insurance, so widespread in capitalist society, is principally and categorically unacceptable to socialist society and law.

“It is unacceptable especially now when the Party Program calls for more vigorous educational work, for realization, within the lifetime of this generation, of habits and ways of communistic living . . .”²⁶⁰

It is a good guess that before long this bit of ideological nonsense, too, will be relegated to the memory hole. Czechoslovakia, Poland, and GDR are undisturbed by the alleged antisocial effect of liability insurance.²⁶¹

²⁵⁷ Krasavchikov, *supra* note 248, at 76-77; Levenson, *supra* note 248, at 65; Dobrovolskiy, *Novoye v sudebnom praktike po delam o vozmeshcheniyi vreda (Recent Judicial Practice Concerning Compensation for Injury)*, Sots. zak. No. 8, p. 54, 59 (1960).

²⁵⁸ Artyom'yev & Polovinchik, *Novyye vidy strakhovaniya podskazyvayet zhizn' (Life Suggests New Forms of Insurance)*, Sov. yus. No. 11, p. 3 (1961). Artyom'yev at the time was a Deputy Minister of Autotransport and Highways of the RSFSR.

²⁵⁹ Arts. 78-82.

²⁶⁰ Rakhmilovich, *O strakhovaniyi grazhdanskoy otvetstvennosti (On Liability Insurance)*, Sov. yus. No. 4, p. 21 (1962).

²⁶¹ Katanyan, *Dogovor prokata legkovykh avtomobiley (Contract of Automobile Rental)*, V. I. Yur. Nauk: Uch. zap. No. 17, pp. 118, 152-53 (1963).

V. PROTECTION OF BUYERS' INTERESTS

The discussion of this section assumes that production patterns have been determined, and that some goods are being channelled into the trade network and others are already awaiting final distribution. For a moment we are not viewing the individual as a dynamic "consumer" whose reactions can affect even the august national economic plan. Instead, we now focus our attention on the individual in his role as a humble "shopper" or "buyer" of things offered to him by a vast and impersonal trading system. A buyer is interested in doing his shopping conveniently and in a decent way, and in getting what reportedly has been produced to satisfy his needs. In other words, he is interested in the quality of facilities and service, and in seeing that the things he buys are really what they purport to be. He has a definite interest in the quality of merchandise. In these areas many of the more effective controls are not legal controls. This is not, however, entirely a Soviet phenomenon. The pervasiveness of extralegal controls in our own country's business affairs, and especially in consumer relations, is no secret. The striking thing about the Soviet system, therefore, is not the employment of these devices but rather some of their peculiarly Soviet forms.

A. Quality of Facilities and Service

The number of consumer trade outlets is still inadequate. The absolute volume of retail trade has increased considerably faster than the number of stores, catering establishments, and various service concerns (laundries, repair shops, gasoline stations). By stretching the existing facilities, the Soviets have managed to hold down costs of distribution, but only at the expense of the amenities of trade. Rural areas continue to be served mainly by simple, if not primitive, "general stores." Because of transportation problems, many people are practically dependent on a single store and must take both the goods and the service as they come. Where a large segment of the population, whether it be in a city or country, is dependent on a single store or a small group of stores, it is not at all certain that the store (or stores) will carry all the needs. While the monetary incentive system discourages stocking of unsaleable merchandise, it does not necessarily lead to stocking all those items that could be sold without any trouble. Store managers are reluctant to carry lines on which the percentage rebate is low. And in order to increase the volume of gross sales, they would rather stock and sell a few television sets and bicycles than simple things like hairpins and thumb tacks. Fresh vegetables might not be carried because of danger of quick spoilage. The belief is that in the absence of garden greens, the customers will purchase more potatoes, or macaroni, or similar worry-free products. If canned fish is obtainable, why stock much demanded herring with all the attendant problems of handling? When making proposals for the next planning year, the previous "consumption pattern" is cited to wangle an allocation of

products good for the store. If supply of consumer goods is inadequate, even that which is sold obviously gives a distorted picture of what demand actually is. By reason of their virtual monopoly position some stores are able to go on slanting the information about demand indefinitely.

In recognition of the fact that economic stimuli alone, under Soviet conditions, do not assure balanced inventories of merchandise and proper trade practices at individual stores, Commissions of Societal Control were established in the late 1950's.²⁶² They were endowed with broad powers to gather facts and make proposals for the improvement of retail trade, public catering and everyday services. For this purpose the commissions may, among other things, conduct surprise inspections on the spot and obtain explanations from managers and sales personnel concerning poor assortment, bad physical layout, questionable sales practices, etc. In cities the commissions are attached to trade unions, in rural areas—to cooperative associations. Their accomplishments probably have been modest, once the initial effect of newness wore off. Usually crusades of this type soon become formalistic and before long turn into bureaucratic fossils. Some sort of *modus vivendi* is reached between the inspectors and the inspected. Not infrequently the inspectors simply join the vast circle of recipients of graft. When a control apparatus has outlived its usefulness, whether because of complacency or corruption, it must be either abolished or placed under a new untainted super-institution. The Commissions of Societal Control continue to exist in the area of trade, but they as well as similar inspectorates in other sectors of the Soviet economy, are now overshadowed by the Party-State Control Committee. The Committee was created in 1963²⁶³ as a control body to control all controllers and everyone else, too. The hope is that now the Committee will wage "the struggle against abuses, waste and pilfering and against inefficiency, bureaucracy and bribetaking."²⁶⁴ Some informal control is exercised by the press. Newspapers often organize raids on various trading enterprises and report in detail their findings of deficiencies. The "hottest" exposés may contain extremely serious accusations and passages amounting to character assassination. The episodic nature of the press raids makes for both good and bad results: while the information gathered is probably quite trustworthy, it is far too sketchy to give the higher authorities a thorough and systematic account.

Shopping in the Soviet Union has always been closer to drudgery than delight. Notwithstanding recent improvements, the buying of things still requires perseverance and a great deal of luck. The buyer must be prepared

²⁶² Statute of July 11, 1958 (U.S.S.R.), ZHILISHCHNO-BYTOVYYE VOPROSY: SBORNIK POSTANOVLENIY I INSTRUKTSIY (PROBLEMS OF HOUSING AND EVERYDAY LIFE: A COLLECTION OF DECREES AND REGULATIONS) 225 (1960).

²⁶³ Izvestiya, Jan. 18, 1963, p. 3.

²⁶⁴ Pravda, April 5, 1963, p. 2.

to spend considerable time in drab surroundings and in contact with unpleasant people. The retailing methods are still inefficient and cumbersome. The so-called cashier (*kassa*) system (still widespread in Western Europe, too) is the accepted way of operating a store. The cashier system is a three-line ritual that facilitates checking and doublechecking on store personnel: "the unattended customer is not allowed to examine any commodity, the salesclerk is not allowed to take cash, and the cashier is not allowed to handle any goods."²⁶⁵ However, behavior of the store personnel can cause more grief than the mechanics of retailing. The most often heard complaint concerns "chilly indifference" and even rudeness of the salespeople.²⁶⁶ Possibly Soviet trade attracts not just average Soviet people (who are ordinarily quite meddlesome and easily plunge into petty quarrels)²⁶⁷ but types who choose the occupation primarily because it offers illicit fringe benefits to the unscrupulous and the dishonest.^{267a} Persons with such proclivities are perhaps even less suited to face an anxious and demanding public. There are untold opportunities for both lowly and ingenious crooks. In retail trade their schemes usually will not be so spectacular nor their rewards so lush as those of the grand operators in factories and wholesale organizations, but they will serve well to supplement a man's pay and improve his diet. Pilfering (*khishcheniye*) is part of the Soviet way of life. An American tries to recoup a portion of the government's take by cheating on his income tax; a Soviet citizen makes it his daily habit to stuff something into his pocket or handbag. "The scarcity element which predominates in Soviet society . . . must be assumed to have aroused intense anxieties about oral deprivation in the Soviet population which would serve greatly to increase the impact of the objectively real shortages which have been chronic in the system."²⁶⁸

Trade regulations provide for write-off of an assumed percentage rather than actual losses of products by spillage, evaporation, etc. In 1961 about 5,000,000 rubles worth of goods was written off in the RSFSR alone. In a delicatessen store the sales staff would be appropriating one-half liter of vodka out of every 1,000 liters and 2.5 kilograms of butter out of every 100 kilograms sold.²⁶⁹ If the products are scarce, consumers as a group suffer.

²⁶⁵ GOLDMAN, *SOVIET MARKETING: DISTRIBUTION IN A CONTROLLED ECONOMY* 132-33 (1963).

²⁶⁶ *Sov. Ross.*, April 7, 1960, p. 2; *Izvestiya*, Feb. 13, 1963, p. 3; *Cina*, Aug. 3, 1963, p. 1.

²⁶⁷ Especially true of the large Russian population. Russians are generally expansive; they express their feelings easily and are given to impulse. Suppressed, pent-up feelings easily break out in the form of petty quarrels in routine face-to-face relationships. See BAUER, INKELES & KLUCKHOHN, *HOW THE SOVIET SYSTEM WORKS* 163-67 (1960).

^{267a} The 1960 Congress of Consumers Cooperatives conceded that "people who want to live at the expense of society without giving anything in return still worm their way into the midst of cooperative personnel." *Pravda*, Aug. 22, 1962, p. 1, 4.

²⁶⁸ BAUER, INKELES, & KLUCKHOHN, *op cit. supra* note 267, at 163.

²⁶⁹ *Izvestiya*, Feb. 21, 1963, p. 4.

This may all seem to be within the law. Not so. When the write-offs are fictitious, a crime has been committed. One Krasintsev, the manager of a warehouse in Kalinin, made 15,733 rubles by writing up imaginary glassware breakage and pulled fifteen years for it.²⁷⁰ Pilfering of socialist property is an extremely serious crime.²⁷¹ If the pilfering is on an "especially large scale," it may be punished by death.²⁷² Executions under this article have been common. Whether the scale of the effort will be gauged "especially large" depends on many factors, including the ruble value of the loot. Three organizers of "a large group of swindlers entrenched in the province delicatessen trust . . . in Dnepropetrovsk" were shot after "a search brought to light millions of rubles in cash and valuables in the possession of the swindlers."²⁷³ In the celebrated *pirozhki* (small hot rolls with meat or vegetable filling) case, key persons in a Sverdlovsk restaurant reduced the fat content in each of the rolls from six to four grams, but continued charging the previous price. Investigation established that, in four years, the innovators had appropriated 125,000 rubles worth of foodstuffs (evidently for resale on the black market). This was sufficient to put two of the leaders in front of a firing squad.²⁷⁴ Given equal amounts of appropriation, repeated acts involving small amounts apparently are dealt with more severely than a single act involving a large amount.²⁷⁵

The penalties are milder when the property loss falls on a buyer rather than the state. So, if instead of reducing the assets of the state by appropriation of merchandise stocks, the dishonest retailer derives his gain from intentionally cheating by measurement, shortweighing, shortchanging, inflating prices, or selling a lower grade product at the price of a higher grade, he can be imprisoned for up to two years only; except that when such acts are committed on a "large scale" or by a person previously convicted of the same offense, the prison term may be increased to seven years, with or without confiscation of property.²⁷⁶ According to two known judicial decisions, the line between "large" and "small" scales lies somewhere between

²⁷⁰ Case of Krasintsev, [1963] Byul. verkh. suda R.S.F.S.R. No. 1, p. 15 (Crim. Div. Supr. Ct. R.S.F.S.R. 1962).

²⁷¹ CRIMINAL CODE art. 92 (the most commonly applicable article).

²⁷² *Id.* art. 93-1. "Pilfering" in English usually denotes petty stealing or filching. The meaning of "*khishcheniye*" is not so limited. Although I realize that "grand pilfering" may be regarded as contradiction in terms, I prefer the word "pilfering" because most taking of state property is on a small scale. The term has been used by others in this context, and it is more colorful than "larceny" or "theft," which I would use to translate "*krazha*."

²⁷³ Trud, May 29, 1962, p. 4.

²⁷⁴ Pravda, Feb. 10, 1963, p. 6.

²⁷⁵ Case of Lyubavina, [1963] Byul. verkh. suda R.S.F.S.R. No. 4, p. 15 (Presid. Supr. Ct. Karel. A.S.S.R., late 1962 or early 1963).

²⁷⁶ CRIMINAL CODE art. 156.

42 and 625 rubles.²⁷⁷ A few years ago, a check of the retail trading outlets of Baku showed that twenty percent of the scales cheated the customer.²⁷⁸ Marking and price tagging of consumer goods is very poor, permitting various abuses.²⁷⁹

A common practice is to conceal certain much desired and scarce goods and trade "under the counter." After the customer has made correct overtures, an agreement is reached to sell and buy the article at an amount in excess of the fixed price. Sometimes the article is displayed, but sale refused on the pretext of lack of certain necessary documents or instructions on price.²⁸⁰ However, as soon as "good will" money appears in the prospective buyer's hand, the log jam breaks. Information concerning arrival of much demanded merchandise is priceless. As a matter of fact, in connivance with warehouse and transportation people, a special delivery of a single article to a retail store may be staged to enable a special customer to "chance upon" it. The legitimate part of the deal is concluded openly, before everyone's eyes. The other part of the bargain is carried out in privacy, at another place and time.²⁸¹ From time to time, of course, effective inspections uncover some of these transactions and, at least temporarily, disrupt the established "business." Since the seller pockets the buyer's money in return for favors connected with his official position, this form of misconduct is treated as bribery. The Criminal Code regards bribery as a most serious crime, in some cases bringing death to the bribetaker.²⁸² As a rule, arrangements of the kind described involve of necessity large numbers of people. All those who know, or might know, of the operations are entitled to a cut. It is axiomatic: "if you rob, do not forget to share [the loot] with your fellow man."²⁸³ As a security precaution, inspectors, too, are enlisted.

"After all, the most a member of the commission can get as a reward for reporting a store manager is some praise, but just a little effort invested in collaborating with the store manager can triple his monthly income. Show me the man who under these circumstances would prefer to be a socialist hero of labor and ruin the source of his best, truly socialist income."²⁸⁴

²⁷⁷ Vol'fman, *Ugolovnaya otvetstvennost' za obman pokupatelya (Criminal Liability for Defrauding Buyers)*, Sov. yus. No. 2, pp. 18, 20 (1963).

²⁷⁸ Pravda, Jan. 19, 1958, p. 2.

²⁷⁹ Cina, July 18, 1963, p. 2.

²⁸⁰ Radyanska Ukraina, Feb. 26, 1958, p. 3; Cina, June 8, 1961, p. 4.

²⁸¹ NOVAK [pseud.], *THE FUTURE IS OURS, COMRADE 195-96* (1960).

²⁸² Arts. 173-74.

²⁸³ Cina, June 8, 1961, p. 4. On the involvement of large conspiratorial groups, see Dremov & Gustov, *Prinimat' mery k likvidatsiyi khishcheniy v torgovle (Measures Should be Taken for the Liquidation of Pilfering in Trade)*, Sots. zak. No. 8, p. 46 (1963).

²⁸⁴ NOVAK, *op. cit. supra* note 281, at 194-95.

When misdeeds of this sort are brought to trial, defendant's benches are normally occupied by whole "gangs."—It takes a collective to build a socialist system; it takes a collective to beat it.

Chapter seven of the Special Part of the Criminal Code treats the so-called "general" official crimes, that is crimes that can be committed in any branch of state administration, including the trade network. Besides bribery, the chapter includes abuse of authority (article 170), acts exceeding authority (article 171), failure to use authority (*khalatnost'*) (article 172), and forgery in connection with official duties (article 175). Article 172, the successor of article 111 in the 1926 Code, could perhaps be applied to trade situations with considerable ease. "Failure to use authority" means failure to perform or poor performance of one's official duties, by reason of negligence or bad faith. It carries a penalty of imprisonment up to three years, or corrective labor up to one year, or dismissal from duties. Failure to secure a store against thieves and pilferers might be qualified as such a crime. Likewise, careless certification of incorrect accounts and other trade documents might come under article 172.²⁸⁵ However, these broad catch-all articles are invoked very sparingly. Almost every Soviet administrator, at some time during his career, has offended against their sweeping provisions. Quite on the contrary, there is a lot of shielding of, at least, the more important officials by their brethren in other positions of authority. The following example is not at all unusual: When Aliyev, a high official in the Baku Trade Department was called before a party committee to answer serious charges of misconduct in office, he "quickly sensed the way the wind was blowing, repented immediately and with unusual fervor." He was let off with a warning. But this was not his first trouble. Some time before, while Aliyev was the Director of the Azerbaydzhan Trade Trust, waste and embezzlement in his department came to more than 2,500,000 rubles. Aliyev was merely reprimanded "for failing to wage a satisfactory struggle against irregularities, for employing questionable personnel and for conniving with swindlers."²⁸⁶

B. Quality of Merchandise

A story out of the Soviet Union tells of a buyer hard put to choose among several shirts. He finally picks out one, but confides to the salesclerk that he is not entirely pleased with its color. Don't let the color bother you, says the clerk, it will come off after the first washing anyway.

²⁸⁵ 2 PIONTKOVSKIY, MEN'SHAGIN & CHKHIKVADZE, *KURS SOVETSKOGO UGOLOVNOGO PRAVA: CHAST' OSOBENNAYA* (A COURSE ON SOVIET CRIMINAL LAW: SPECIAL PART) 105-06 (1959).

²⁸⁶ Pravda, Jan. 19, 1958, p. 2. But see Case of Barulina, 1959, [1960] Byul. verkh. suda S.S.R. No. 3, p. 46 (Presid. Supr. Ct. Latv. S.S.R.) (store manager who knowingly sold goods to speculators convicted of abuse of authority and complicity in speculation).

The poor quality of products is a disgrace to the Soviet economy. Added to a lack of ways and means for eliminating defects, it at times borders on disaster. Obtaining spare parts for producer goods presents a major problem for managers and their staffs. The need is even more neglected in the area of consumption. The cost in terms of time and energy wasted by a factory to hunt down a certain gear or by a teacher to find a tiny screw for the frame of his eyeglasses is incalculable. Furthermore, defects in machines and gadgets that are supposed to work constitute an interminable source of frustration. One can easily imagine the annoyance felt by a Soviet viewer whose set goes on the blink during a telecast on the next Seven-Year Plan. Repair services are few, understaffed, inadequately supplied and ill-organized. Corruption has not spared this nook of Soviet economic life either.

According to the Civil Code, a buyer is obliged to examine the merchandise on the spot for "obvious" defects, such as scratches in the finish of furniture, loose seams in ready-made suits and crooked heels on women's shoes. He must immediately report his findings to the seller, at the risk of losing his right to raise any objections later on. The rule unmistakably has been designed to guard against buyers who willingly acquiesce in a defect at first, then change their minds, as well as those who mar the merchandise while handling it themselves. Immediate discovery of "hidden" defects cannot be and is not required. Defects in the works of a watch or loose connections in a radio receiver are usually noticed only after some period of use. In these cases, the buyer must present his claims to the seller as soon as defects have come to his notice. A buyer who has thus in due time informed the seller has the right to claim either a substitute item of proper quality, or reduction in price, or rescission of the contract and recovery of all damages.²⁸⁷ The Principles of Civil Law add a fourth option—elimination of the defects without expense to the buyer,²⁸⁸ but in other respects retain the general approach of the Code: the buyer's recourse is to the seller (in most cases, the retail trade organization) rather than the producer from whom the seller acquired the thing; the buyer chooses the form of relief.

In practice, leaving aside a few exceptions, a buyer enjoys neither a right to proceed directly against a retail trade organization nor a choice of the type of relief. Disputes over quality are handled under departmental rules issued by the Ministry of Trade of the USSR on June 15, 1956.²⁸⁹ These rules are inconsistent with the Code provisions and it is not clear on what (formal) authority they have been promulgated.

²⁸⁷ CIVIL CODE arts. 195-98.

²⁸⁸ PRINCIPLES OF CIVIL LAW art. 41.

²⁸⁹ Rules for Exchange of Consumer Goods of June 15, 1956 (U.S.S.R.), ISTOCH. SOV. GRAZH. PRAV. 412.

The 1956 rules distinguish between goods the quality of which has been assured for a specified period of time and those which are not so guaranteed. If a buyer discovers any defects, within the guarantee period, he can take the article to a repair shop designated in the contract of sale. A faulty item is accepted by the seller for exchange only when either (a) the designated shop is unable to correct the defect for lack of skill or parts, or (b) when the item refuses to function properly more than twice during the guarantee period, notwithstanding efforts to get the problem corrected. A third alternative—returning the item for refund of money—is open to the buyer only after he has become entitled to get the thing exchanged and it appears that no replacement is available.²⁹⁰ The procedure envisaged by the rules is not entirely unreasonable, but it breaks down in application. Significantly, when trouble first occurs, the retail store (seller) is in no way interested in helping, or obligated to help, its hapless customer. The buyer initially has to deal with a repair shop. A Soviet critic of the present system writes:

“In some cases, the guarantee workshops are directly subordinated to producer plants, in other cases—tied to them by contract. In every case they act in the name and the interests of the plant.

“Since it is not a party to the contract of sale-purchase, a guarantee workshop has no contractual obligations toward the buyer. It is interested neither in improving the construction of the article, nor in conscientious performance of repairs, inasmuch as the length of the guarantee period is unaffected by the number of repairs, and the shop is fully compensated by the producer plant. The mission of the guarantee shops is simply to employ all means to “prolong the life” of the article until the expiration of the guarantee period.”²⁹¹

Electronic goods have been especially plagued by poor quality. But, instead of trying to combat the crisis with the incentive weapons we discussed in the section on “Transmission of Consumer Demand to Producers,” the government showed the white feather. On October 30, 1956, the Ministry of Trade of the USSR released a circular letter “On Procedure for Exchanging Defective Radio-Goods.” The letter declared that the June 15 rules on exchange (for either a *new set* or *money*) were inapplicable in the event that supplies of suitable tubes, condensers, etc. had been exhausted, and that, in any event, exchange after two unsuccessful efforts to repair was permissible only if an authorized guarantee workshop certified that further repairs would be necessary! Thus a buyer’s rights were made to depend on a self-serving statement of a manufacturer’s agent.²⁹² Obviously, the short-

²⁹⁰ Rules, *supra* note 289, art. 2.

²⁹¹ Moyseyev, *O pravovykh garantiyakh dobrokachestvennosti tovarov (On Legal Guarantees of Quality of Goods)*, Sots. zak. No. 10, p. 56 (1962).

²⁹² This system is described and severely criticized in *id.* at 57. See also Cina, Feb. 9, 1963, p. 4 (the case supports Moyseyev’s analysis).

comings of the present method for adjusting buyers' claims are not due to retardation of the law. The Soviet system is capable of rewriting any doctrine in short order, if it so wishes. And, at any rate, it is the recent administrative regulations, not the traditional civil law institutions, that neglect buyers' interests by refusing to face the problem.

A buyer who has discovered defects in an item which is not subject to a guarantee ordinarily has a right to return it to the store for exchange or refund (if no replacement is available), within seven days. Some products are subject to special rules; *e.g.*, footwear.²⁹³

If the guarantor does not perform its part of the undertaking, the buyer may bring a civil action. There is a general six-months' statute of limitations. When a guarantee is longer than for six months, the statute of limitations is extended to coincide with the guarantee period.²⁹⁴ I have found no discussion concerning selection of the proper party defendant. It seems that, under some circumstances, the action lies against the retail trade organizations. But can it ever be brought against a repair shop? Although the manufacturer would seem to be the proper party defendant, have any actions actually been brought against manufacturing enterprises? There might be some jurisdictional difficulties in the latter case. Suits against an enterprise must be commenced in the district where its executive organ is situated or where it has a local organ (branch), provided the suit arises out of a transaction concluded with the local organ.²⁹⁵ Would an Estonian consumer have to travel to Irkutsk to sue a manufacturer there? Is a repair shop working for an Irkutsk factory its "local organ" for purposes of territorial jurisdiction?

Efforts to protect the buyer's interests in the quality of merchandise are already made before the goods reach sales outlets. Article 152 of the Criminal Code (replacing article 128-a of the 1926 Code) provides:

"The release from any industrial enterprise, repeatedly or on a large scale, of products of bad quality or products which are incomplete or do not meet the standards and technical requirements, by its director, chief engineer or head of the department of technical control, as well as by persons who fulfill the duties of the aforesaid persons— is punishable by deprivation of freedom for up to three years or by corrective labor for up to a year, or by dismissal from the official position."^{295a}

For purposes of this article, "products of bad quality" are products which cannot be used for the designated purpose at all. There is no basis for crimi-

²⁹³ Rules, *supra* note 289, arts. 2 (note), 3.

²⁹⁴ PRAV. REG. GOS. TORG. SSSR 159-60.

²⁹⁵ CODE OF CIVIL PROCEDURE arts. 14, 27.

^{295a} Approximately the same criminal sanctions are imposed upon the trade personnel who subsequently sell such products. CRIMINAL CODE art. 157.

nal prosecution if the goods merely have to be reclassified into a lower grade. "Incomplete" products lack spare parts, service tools, technical data (e.g., operating and maintenance instructions), etc.²⁹⁶ As I mentioned before, there are very few Soviet managers behind the bars for violating criminal statutes of this kind. An unsuccessful manager today is not likely to be faced with anything worse than a party reprimand, possibly followed by demotion. The occasional trials and convictions do not necessarily involve instances where waste has been extreme or the people most irresponsible.²⁹⁷ It seems that in some cases the Party and the rest of the "business" community, for whatever reason, are not anxious to stand up for some individuals. These cases thus create an illusion that transgressions of this kind do not go unpunished. The procuracy, which bears overall responsibility for seeing that laws are obeyed, is not happy with nonenforcement, but its officials in the field do not seem to be able to overcome the local sentiments and pressures.²⁹⁸

Contracts between trading organizations and producers for delivery of consumer goods are supposed to contain detailed terms governing their quality. But quality requirements of some goods are deemed so fundamental that their definition has been transferred to the State Committee on Standards, Measures and Measuring Instruments attached to the Council of Ministers of the USSR. These requirements are known as "state standards" (*GOST*) and cannot, under any circumstances, be lowered by agreement.²⁹⁹ In the event that the delivered goods do not meet the quality standards (whether established by law or by agreement), a trade organization is under a legal duty to reject the shipment and refuse to pay for it, and to demand a contract penalty amounting to twenty per cent of the value of the defective goods.³⁰⁰ Since by law breaches of delivery contracts may not be compromised, violators should suffer great monetary losses and their failures should be noted by superior authorities. But enforcement of an organization's rights with respect to proper quality is tempered by the familiar reluctance to treat fellow organizations with the full severity permitted (and even demanded) by law. Besides, as we saw before,³⁰¹ many contracts are

²⁹⁶ Vol'man & Shevchenko, *Otvetsvennost' za khozyaystvennyye prestupleniya (Liability for Economic Crimes)*, Sov. yus., No. 7, pp. 10, 11 (1961).

²⁹⁷ Case of Romanov, Sov. yus. No. 18, p. 21 (1960) (Crim. Div. Supr. Ct. R.S.F.S.R.) (release of 4,685 pairs of shoes valued at 400,000 (old) rubles, "over a long period of time"). In some instances administrative penalties are imposed as an inbetween measure. Pravda, Jan. 29, 1962, p. 2.

²⁹⁸ See generally Gol'st, *Usilit' bor'bu s vypuskom nedobrokachestvennoy i nestandartnoy produktsiyi (The Struggle Against Poor Quality and Non-standard Output Should Be Intensified)*, Sots. zak. No. 8, p. 32 (1963).

²⁹⁹ SHELESTOV, PRAVOVYYE FORMY BOR'BY ZA KACHESTVO TOVAROV (LEGAL MEANS IN THE STRUGGLE FOR QUALITY OF GOODS) 12-22 (1960).

³⁰⁰ Decree of May 22, 1959 (U.S.S.R.) art. 58, ISTOCH. SOV. GRAZH. PRAV. 465.

³⁰¹ See text pp. 237, 239 *supra*.

drafted purely as a formality and do not create any enforceable obligations. The handling of guarantees on consumer goods also impairs the value of contract as a device for ensuring quality. A producer should be answerable to a trade organization for poor quality of guaranteed merchandise. However, under the present system, the trade organization does not have a chance (even if it wanted) to claim penalties from its supplier for defects that have appeared only in the course of use. Such claims cannot be presented because the trade organization is unaware of how the items are actually functioning: after the sale, the merchandise leaves the purview of the store, and the quality of the goods is watched over by repair shops which do not report to the retail stores.³⁰²

"Production mark" is a trademark with a peculiarly Soviet twist. The primary purpose of a trademark is to indicate origin. In a market economy a trademark is normally regarded as a valuable asset; it is displayed prominently on the holder's goods and jealously guarded against infringement. In the West it contributes to deliberate "individualization" of products. By contrast, the Soviet producer characteristically prefers anonymity, since his output is nothing much to brag about. As a result, in the Soviet Union the affixing of a production mark is compulsory and serves the interests of the state rather than the individual enterprise.

"Production mark makes it easy to determine the actual producer of a product in case it is necessary to call him to account for the delivery of goods of bad quality. By reason of this, it is one of the most effective means in the struggle for the quality of products."³⁰³

VI. EXTENT AND FUNCTION OF ILLICIT PRIVATE TRADE

We saw before that, as a general proposition, private trade has been a crime in the Soviet Union since the early 1930's. This offense against the Soviet state is known as "speculation." However, the wrath of the law is not directed only against individuals who deal "with a view to making a profit from conjectural fluctuations in the price" or individuals who enter "into a business venture involving unusual risks for a chance of an unusually large gain or profit."³⁰⁴ The Soviet legal system outlaws the earning of ordinary profit by private persons. "Speculation" in Soviet context, therefore, is nothing but "purchase and resale of goods or other articles for gain."³⁰⁵ The common Soviet "speculator" makes his living by charging a fee for services rendered: for finding scarce goods and bringing them to a clientele willing to pay a price that reflects the true state of supply and demand. If

³⁰² Moyseyev, *supra* note 291, at 57-58.

³⁰³ PRAV. REG. GOS. TORG. SSSR 118. See also WILES, *THE POLITICAL ECONOMY OF COMMUNISM* 176-77 (1962).

³⁰⁴ WEBSTER, *THIRD NEW INTERNATIONAL DICTIONARY* 2189 (1961).

³⁰⁵ CRIMINAL CODE art. 154.

his activity involves any unusual risks, they are not due to economic conditions, but rather to the fact that the state has decided to suppress and punish private trade for reasons of its own.

“Even though the number of persons criminally prosecuted for speculation has significantly decreased over the recent years,” writes a doctor of juridical science, “speculation was and still is a dangerous crime.”³⁰⁶ The number of prosecutions is not publicized. This is in keeping with the Soviet policy of not releasing crime statistics. But even if their frequency were readily ascertainable, the actual extent of speculation would still be a matter of guesswork because of the problem of non-enforcement of law. Most speculators operate on a small scale. While their contribution to the welfare of the Soviet society is modest, their business is not particularly repugnant to the average Soviet citizen. Most Soviet citizens at one time or another have made use of speculators’ services, and perhaps even dabbled in speculation themselves. We have read of the plight of a mother in search for a pacifier for her newborn baby, from Krasnodar to Krasnoyarsk.³⁰⁷ We have been told of the despair of the men of Moscow, who were exhorted to remember their women with flowers on the 8th of March,³⁰⁸ but were unable to find any in Moscow’s flower shops. How much public indignation could then be whipped up against a man who suddenly appeared with a pocketful of pacifiers (even if he charged 100 or 200 per cent over the state price), or against a group of Georgians who flew twelve and a half tons of mimosa to Moscow to supplement a state supply of two and a half tons?³⁰⁹ The illicit private trade meets demands left unsatisfied by the socialist distribution system. The only sensible way to fight the crime of speculation is to eliminate the environmental conditions in which it thrives. Suppose that speculation were eradicated before the governmental distribution had been put in order. As a result, some goods would be unobtainable at any price. How effective would be the principle of material incentive in the eyes of those workers and salaried employees who were now compelled to accumulate cash which they had intended to spend?

Some speculators have organized genuine enterprises that carry out far-flung operations. A staff of buyers scans all corners of the country in search for scarce goods. Transportation crews ship them to points of demand. Local sales personnel do the marketing. Some such enterprises, and even individual speculators, have substantial capital. It enables them to own automobiles. This is no doubt one reason why car sales are now so strin-

³⁰⁶ Mitrichev, *Bor’ba so spekulyatsiyey (Struggle with Speculation)*, Sots. zak. No. 8, p. 28 (1961).

³⁰⁷ Trud, Oct. 7, 1962, p. 4.

³⁰⁸ See text p. 243 *supra*.

³⁰⁹ *Operatsiya “Mimoza” (Operation “Mimosa”)* Krokodil No. 9, p. 13 (1962).

gently regulated. Often air freight is used to rush supplies.³¹⁰ When an individual or a group of individuals engages in private trade on a fairly large scale, chances are that other criminal acts besides speculation are involved. Not infrequently, Soviet investigative authorities unearth private economic empires showing considerable vertical integration. The pilfering of state materials may constitute the first phase. A scarce product may then be manufactured either in a hidden unlicensed private shop or by using the facilities of a state plant. Distribution follows in the usual manner. Bribe money is used freely to close eyes, ears, and mouths. Nikolay Kotlyar, the "Soviet lipstick king," was a millionaire at the time he was shot. The description that the Soviet press gave of the villain's life was a story of an extraordinary success. It was probably calculated to arouse intense feelings of envy in the readers who then would become more prone to turn in speculators who manage to achieve today a standard of living not even dreamed up by the Party Program.

"Kotlyar's Riga accomplices lived luxuriously. They had their own seaside *dachas* [summer houses] and automobiles and spent tens of thousands of rubles in cafés. The "lipstick king" himself eschewed night clubs, preferring to buy valuables—gold, diamonds, silver and lottery tickets—which he carefully hid away in vaults in his house.

"In the evenings, after tightly closing the shutters, the Kotlyar family would gather around a table and start checking their lottery tickets against the lists of winning numbers. This was their favorite pastime. Kotlyar dreamed of accumulating more valuables."³¹¹

Admittedly some speculation is artificially generated and is not attributable to failures of the economic system. For instance, workers in trade organizations turn into speculators' accomplices by informing them what goods will be available and how to get them. Such practice obviously is "in restraint of trade" in that it creates a scarcity situation in state stores and forces consumers to buy on the black market. Thus, in evaluating the speculator's role in the Soviet economy, one should recognize that some of his activities are truly pernicious.

Article 154 of the Criminal Code distinguishes between three "degrees" of speculation. Ordinary speculation, that is, "purchase and resale of goods or other articles for gain," is punishable by deprivation of freedom for a period up to two years, with or without confiscation of property, or by corrective labor for a period up to a year, or by a fine up to three hundred rubles. Speculation can be committed only with direct intent; a person must be conscious of the fact that he is buying an article for resale at a profit. The profit motive is already crucial at the time of purchase. If it is lacking,

³¹⁰ Mitrichev, *supra* note 306, at 28; N.Y. Times, Sept. 18, 1960, p. 4, col. 1

³¹¹ Izvestiya, Dec. 2, 1961, transl. in 3 ATLAS 135-36 (1962).

there is no speculation. Whether a profit was indeed made is irrelevant. In cases in which resale has not been proved, the court may, nevertheless, find from the entire evidence that the purchase was intended for resale for profit and designate the act as an attempt to commit the crime of speculation.³¹² However, under article 15 the same criminal liability attaches for an attempt as for the completed crime, so that the distinction is relevant only for purposes of meting out punishment. In determining the punishment, the court can take into account the stage to which the criminal attempt had been carried and the reasons for its abandonment. When a man resells his motor scooter at a handsome profit, he puts himself at odds with the Soviet system, but he is not necessarily a criminal. If the craving for profit has overcome him only after the purchase of the machine, his state of mind is despicable, but not criminal. Even under the Leninist banner it is not a crime to drive a hard bargain. I pointed out earlier, though, that a profit-oriented executory contract might be unenforceable in courts as violative of socialist morality (a rule reminiscent of the civilian principle of *contra bonos mores*).

Speculation conducted either as a business or on a large scale is punishable by deprivation of freedom for a period from two to seven years, with confiscation of property. Speculation "as a business" will be found in those cases in which the speculator *systematically* buys and resells goods for profit, so that the income derived becomes either the basic or supplemental source of his subsistence. Whether the acts of speculation are "on a large scale" cannot be mechanically determined. The Soviet courts supposedly take into account the quantity of goods involved and their value and the amount of the profit derived. Where 495 needles (officially priced at 6 (old) kopecks and sold speculatively at 15 (old) kopecks apiece) were seized from the defendant, the offense was classified as petty speculation. On the other hand, a deal involving a single 4,000 ruble "Volga" car, resold at 5,500 rubles, was speculation on a large scale. Ordinary speculation was found where the defendant had in his possession various parts of wrist watches, including 4,930 watch hands (the largest number of a single part), in the total amount of 176 rubles, and the authorities marked 607 rubles of the defendant's money as having been acquired by criminal activity.³¹³

Petty speculation is not specifically defined in the Code. The term undoubtedly covers transactions of extremely minor importance. As a matter of fact, petty speculation is considered a crime only if the person concerned has been previously guilty of speculation. It is punishable by deprivation of

³¹² Yur'yev & Konstantinov, *Otvetstvennost' za spekulyatsiyu i zanyatiye zapreshchennym promyslom* (Liability for Speculation and Engaging in Prohibited Crafts), Sots. zak. No. 7, pp. 50, 51 (1961).

³¹³ Romanenko, *Otvetstvennost' za spekulyatsiyu pri otyagchayushchikh obstoyatel'stvakh* (Liability for Speculation Under Aggravating Circumstances), Sov. yus. No. 9, p. 8 (1963).

freedom for a period up to a year, or by corrective labor for a like period, or by a fine up to two hundred rubles with confiscation of property involved in the speculative transaction.

Activities of speculators are known to a great many (perhaps most) people. Thus the war against this form of criminal conduct could be waged successfully with the cooperation of the masses. But the law enforcers complain that people are reluctant to talk about these matters, a sad comment on the new Soviet man. In a case involving speculative sales of foreign made watches by the personnel of retail stores, evidence could be secured only by means of getting Moscow University law students to pose as bona fide customers. The prosecution got its witnesses, and the students a field exercise in entrapment. The media of mass communications have been enlisted in the campaign against speculation. Newspapers and broadcasters are urged to reveal the names of speculators to the people. However, such reports, lest they be regarded as announcements in furtherance of illicit trade, must, if possible, be accompanied by caricatured likenesses of the speculators and details of their sordid lives.³¹⁴ Recently, the RSFSR Statute on Comrades' Courts was amended to expand the jurisdiction of these informal, quasi-judicial bodies. They will now have the right to decide first-offense cases of petty speculation.³¹⁵

³¹⁴ Mitrichev, *supra* note 306, at 29-31.

³¹⁵ *Izvestiya*, Oct. 25, 1963, p. 3.