

heavy bipartisan financial support, especially during elections. As a result, trade unions turned out to be the most ardent opponents of the reform of the police sphere in the USA, seeing in such attempts by politicians and public activists certain threats to the stability of the system of social and legal protection of law enforcement officers.

**Keywords:** *police, USA, unions, contract, investigation, control, collective bargaining, reform, protection, criticism.*

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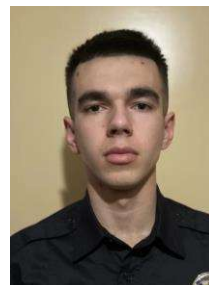
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#### SEPARATE ISSUES REGARDING THE DIVISION OF MOVABLE AND IMMOVABLE PROPERTY OF THE WIFE IN DIVORCE

**Олена Нагорна, Карина Лагун, Микола Сятиня. ОКРЕМІ ПИТАННЯ ЩОДО ПОДІЛУ РУХОМОГО ТА НЕРУХОМОГО МАЙНА ПОДРУЖЖЯ ПРИ РОЗЛУЧЕННІ.** У статті описано одну з найпоширеніших проблем сімейно-шлюбних відносин – визначення спільного майна подружжя та його розділ, що виникає при розірванні шлюбу.

В даній роботі визначено, що найпоширенішою проблемою сучасності, на жаль, є поділ майна подружжя, яке у свою чергу виникає при розірванні шлюбу. Проблем поділу майна можна уникнути завдяки своєчасному укладенню шлюбного договору, у якому поділ майна здійснюватиметься з умовами, прописаними у шлюбному договорі, тобто. ця процедура буде здійснюватися на підставі добровільної угоди. Проте, укладання шлюбного договору перестав бути поширеною практикою серед подружніх пар, які ставляться до цієї процедури як образу почуттів, цим здійснюючи грубу помилку і ускладнюючи собі процедуру поділу майна у разі припинення шлюбних відносин, так як суперечки щодо розподілу майна практично завжди супроводжують розірвання шлюбу.

Охарактеризовано, що розділ спільного майна подружжя (колишнього подружжя) означає, як правило, припинення їхньої спільної власності, у тому числі спільною, яка в деяких випадках може стати частковою неможливістю поділу майна в натурі). Розділ спільного майна тягне за собою виділення конкретного майна або його частини кожному з подружжя (колишнього подружжя), а іноді і стягнення різниці в вартості виділеного майна з одного з них на користь іншого, якщо розділ не був здійснений відповідно до долі чи не є рівноцінним. Досліджено правові норми, що регламентують порядок створення та поділу спільного майна подружжя у шлюбно-сімейному законодавстві України. Здійснено аналіз деяких прикладів з судової практики визначення часток подружжя в їх спільній власності.

Визначено, що найпоширенішою проблемою сучасності, на жаль, є поділ майна подружжя,

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яке у свою чергу виникає при розірванні шлюбу. Проблем поділу майна можна уникнути завдяки своєчасному укладенню шлюбного договору, у якому поділ майна здійснюватиметься з умовами, прописаними у шлюбному договорі, тобто, ця процедура буде здійснюватися на підставі добровільної угоди. Проте, укладання шлюбного договору перестав бути поширеною практикою серед подружніх пар, які ставляться до цієї процедури як образу почуттів, цим здійснюючи грубу помилку і ускладнюючи собі процедуру поділу майна у разі припинення шлюбних відносин, так як суперечки щодо розподілу майна практично завжди супроводжують розірвання шлюбу.

**Ключові слова:** шлюб, подружжя, сімейне право, розлучення, рухоме та нерухоме майно, поділ майна.

**Relevance of the study.** Today's level of development of Ukrainian society, change social and economic policy of Ukraine, integration in the international community are all factors influencing change current civil and even family legislation of our country. It should be noted that the issues of property rights and division of property between spouses are enshrined in the Constitution of Ukraine [1], the Civil Code of Ukraine [2] and the Family Code of Ukraine [3].

According to current legislation, a spouse may have both common and personal property. The current Family Code establishes that up to the property of each of the spouses may include things, as well as rights that belong to each of the spouses until marriage. As the same determining factors in relation to the property located in the time and grounds for the separate property of the spouses should be attributed the emergence of ownership rights to certain property in one of married couple. At the same time, to the property that belonged to one of the spouses you can also include property that was acquired even during marriage, but for one of the spouses' own funds that belonged to him before the moment of marriage.

It should be noted that they are available in judicial and notarial practice problems of legal regulation of the disposal of the joint joint the property of the spouses causes more and more every day topicality.

**Recent publications review.** The issue of actual marital relations was investigated on at the scientific level for more than ten years, in particular, problematic aspects of the division of common property in unregistered marriage was investigated in their works by O. Dzer, I. Zhilinkov, M. Antokolska, and S. Fursa. However, as practice shows, the family legislation of Ukraine contains gaps in the regulation of property relations, and therefore the detailed implementation analysis of the norms of family legislation, taking into account court practice, needs more detail study.

**The article's objective** is analysis and characterization of certain aspects of the division of movable and immovable property of spouses in accordance with current civil and family legislation.

**Discussion.** The most common modern problem, unfortunately, is the division of marital property, which in turn arises when a marriage breaks up. Property division problems can be avoided thanks to the timely conclusion of a marriage contract, in which the division of property will be carried out with the conditions prescribed in the marriage contract, i.e. this procedure will be carried out on the basis of a voluntary agreement. However, the conclusion of a marriage contract has ceased to be a common practice among married couples, who treat this procedure as an insult to feelings, thus making a gross mistake and complicating the procedure for the division of property in the event of termination of marital relations, since disputes regarding the division of property almost always accompany the dissolution of marriage [4, p. 54].

Division of joint property of spouses (former spouses) means, as a rule, the termination of their joint property, including joint property, which in some cases may become part of the impossibility of dividing property in kind). The division of joint property entails the allocation of a specific property or part of it to each of the spouses (former spouses), and sometimes the recovery of the difference in the value of the allocated property from one of them in favor of the other, if the division was not carried out in accordance with fate or is not of equal value.

If the marriage contract was not concluded, then the property acquired by the spouses during the marriage will be their joint property and will be subject to division. It is necessary to make adjustments to the definition of "common property" and define what is included in it and what is not. The list of property of each spouse is regulated by Art. 63 FC. This property includes the property belonging to each of the spouses before marriage; received as a gift or by inheritance (also from a husband during marriage); which was bought with the own funds of one of the spouses; personal items. Current legislation recognizes the declaration of the division of joint property of spouses among themselves [5, p. 387].

This means that practically all types of movable and immovable property, on which the

spouses have joint ownership, can be divided between them. Separately, it is worth noting that articles 356 of the Civil Code of Ukraine, as well as articles 60-74 of the Family Code of Ukraine and others establish not only the rights to joint property, but also the rights to have loans (debts). When dividing the joint property of spouses, the shares are recognized as equal. The Civil Code of Ukraine establishes a list of common property of spouses - this is real estate; movable things; securities; bank deposits; income received from movable and immovable property; jewelry and other luxury items; income received from labor, commercial, as a result of intellectual activity.

List of non-divisible property:

– gifted or inherited by one of the spouses. The time when the property becomes personal property (before or during the marriage) does not matter. How is an apartment purchased as a gift divided during a divorce in Ukraine? Is the gift apartment not divided in case of divorce? But even in this case there are exceptions.

– all movable and immovable property acquired before marriage.

– privatized property in the form of a residential premises (apartment, house, etc.) or a land plot, if such privatization was free of charge. However, there is an exception to the rule, and it concerns property that was privatized between 11.01.2011 and 17.05.2012. Also an exception is "privatization", which was carried out as a purchase of residential premises from the state. Such property, if it is acquired during marriage, is joint property of the spouses.

– payments under personal insurance policies for any amount.

– personal awards and prizes. But if the court finds that these premiums were obtained with the assistance of the second spouse, then monetary payments of this nature are also divided between the spouses.

– all things of personal use, including jewelry, furs, etc., are not subject to division, even if their purchase was made in marriage.

– compensation for loss or damage to personal property of one of the spouses, as well as moral damage [6, p. 54].

It does not matter which of the spouses the property is registered to. If the property is acquired during marriage, it will be recognized as joint property of the spouses. But you should take into account the nuances of such an acquisition, which are described in this article.

The division of joint property involves two methods: this is the conclusion of an agreement, optionally notarized, and obtaining ownership certificates from a notary; and in court. The statute of limitations arising from the division of joint property is three years after the dissolution of marriage in court (from the date of entry into force of the decision).

If the spouses fail to agree on the division of property, the court, at their request, decides which of the spouses will own certain property. If, in the process of property division, one of the spouses receives property that exceeds the value of the property of the other, the court awards the husband monetary compensation, the amount of which corresponds to this difference, within a certain period established by the court. To be shared between spouses as property, and their jointly acquired debts in marriage are divided into equal parts [7, p. 210].

Undoubtedly, in the process of dividing the joint property of the spouses, the presence of children in the spouses plays a decisive role, the court, based on the interests of minor children, has the right to depart from the principle of equality in the share of the property, and award the majority of the property to the person recognized as the guardian of the child.

The division of property between spouses takes place by signing a contract at a notary, as well as by court order. How to divide property after divorce? This issue is resolved at the notary if there are no disputes between the former spouses. The division of property after divorce is formalized by an agreement on the division of property of spouses. For notaries, this is a standard contract that they usually draw up in their daily practice. If the couple has a lot of different property, and there are also peculiarities: the existence of a marriage contract, special conditions for the use and disposal of property after its division, as well as other nuances, then the help of our lawyers and lawyers will be useful. Our attorneys and lawyers will be able to advise and help draft a contract, participate in negotiations with the ex-husband and his lawyer, as well as other legal assistance [8, p.35].

Division of property in court the most complex, long-lasting, therefore, it is necessary to analyze the norms of family law quite topically.

As a rule, property is divided between spouses in the following ways:

- 1) "in kind";
- 2) in the so-called "ideal particles";
- 3) by paying monetary compensation.

Division of property "in kind" provides for the distribution of property in such a way that specific property becomes the personal property of each of the spouses. For example, the couple acquired during the marriage: a house, a plot of land and a car. As a result of the division of property, the wife gets ownership of the house, and the husband gets a land plot and a car. In such cases, it is possible to collect additional sums of money from the man who acquires more expensive property. Such division takes place on the basis of determining the value of individual property objects and their equivalent division. The value of the property is determined by a forensic expert. The expert can also offer options for such distribution. Often, the common house of the spouses is shared "in kind" when it is technically possible. Monetary compensation is paid in two cases: after the illegal (arbitrary) sale of common property by one of the spouses or when one of the spouses agrees to receive monetary compensation, and the dispute between the spouses arose only regarding the amount of such compensation [9, p.377].

Therefore, the use of this method of dividing property in court is not always possible, and when it is possible, it requires a highly qualified lawyer and a convincing evidence base. To make a decision on the division of property between spouses, the court must find out all the circumstances of the case and factors that may affect its outcome. Example:

- list of property to be divided. When distributing land plots, not only the Family Code, but also the Land Code of Ukraine will be applied as a legal basis.
- when, by which of the spouses, and under what conditions the property was purchased.
- availability of credit or other debt obligations.
- determination of the real value of the property for further determination of the payment amount for the transfer of rights to its ownership or sale.
- wishes of spouses in terms of property division.

This list can be expanded depending on the situation and individual circumstances of the case. Often, when dividing property, spouses try to use their relatives to prove that the property was purchased with money they borrowed from their relatives. With the help of such loan agreements, the spouses try to prove that the property acquired during the marriage, which was bought with borrowed money, is therefore their personal property. Such agreements appear so often in cases concerning the distribution of marital property that courts in Ukraine are already used to them. And the courts in their decisions on such contracts often write the following conclusions: the fact that one of the spouses has funds borrowed from her father or mother cannot be unconditional confirmation that the disputed property was purchased with these funds without providing relevant evidence [10, p.143].

These points should be taken into account when preparing the case for trial. The wife with whom the children remained after the divorce has an increased share in the ownership of the joint property, and the property that was purchased for the use of the children is not subject to division and is automatically transferred to the party with whom the children remained during the divorce (the child's belongings, books, furniture for the child and etc.).

If the property belongs only to the spouses, then the child in this case does not own anything. Accordingly, during the distribution of property, the share of the father, with whom the child remains, does not increase. However, during the division of the property of the spouses, the court may take into account the interests of the child who lives in a particular apartment or house. During the division of the property of the spouses, the court may leave the apartment or house to the spouse with whom the child lives, and to the other – allocate other property that corresponds to the value [11, p. 65]. If the child participated in the privatization, or otherwise became a co-owner of an apartment or house that is subject to division between spouses, then it is obvious that the child is already a co-owner of the apartment (house). Therefore, the child's share when dividing the property of the spouses will also be taken into account by the court.

When there are reasons to take into account the interests of the child when dividing the property of the parents, then in such cases another rule applies: "the interests of the child prevail over the interests of the parents". Also, one of the parents can register his real estate for the child in order to pay alimony. This option is possible if both parents agree [11, p. 76]. Sometimes, in the process of considering the case, the parents reached an agreement to transfer the real estate to the child and not to divide it between them. However, we advise parents to approach such an agreement with caution, since when the child reaches 18 years of age, she will have full right to dispose of this property without parental consent.

The fact of the majority or minor of children at the time of division of property or at the time of its acquisition (creation) can be of great importance for the court. Only in Ukraine it is possible to divide immovable property located on the territory of Ukraine. Such real estate cannot

be divided abroad. Contracts and court decisions drawn up abroad regarding real estate in Ukraine are not accepted in Ukraine [12, p. 55]. Marriage contracts are often found in cases of property division with a foreigner. Such contracts may be valid in Ukraine, even if concluded in another country. The difference in mentality and legislation often causes many questions and difficulties in court if the marriage contract is concluded in the territory of another country. Movable property (cars, yachts, paintings, antiques, etc.) can be divided in Ukraine, as a rule, regardless of where this property is located. In some countries, there are specifics for the registration of such property, therefore, before making a decision on where and how best to arrange the division of property, it is necessary to additionally consult with the lawyers of the country where the transfer of ownership of this property will be registered.

In the legal process, the task of the court is not only to divide the property between the spouses, but also to establish the property that is not subject to joint ownership and its division, in case the spouses include this property in the claim statement. The property acquired during the separation, before the actual dissolution of the marriage, can also be excluded by the court from the claim, referring to the personal property of one of the spouses. Debt obligations are distributed together with the spouse, who must later repay his or her part of the debt, determined by the court [13, p. 76]. There are also cases when it is impossible to divide or allocate the share of one of the spouses without violating the integrity of the property (car, painting, etc.), then the court can make a decision, taking into account the interest of each party and determining the need for its use, leaving the right to whoever needs it more, and assigns compensation to the second, which is expressed in the form of providing property of equal value, or payment in money, with the condition that the husband has given his consent to receive monetary payments. If the amount is insignificant, the court may decide on the obligation to pay compensation without requiring consent. The court sets a deadline for payment of monetary compensation to one of the spouses, violation of which entails fines.

The division of common property of spouses is often faced with such a practice as falsification of documents, pursuing two goals: the first is to eliminate the division of common property through evidence that the property did not exist, or was purchased by third parties, most often relatives are indicated, or this property is not jointly acquired; the second is to reduce the real share of the husband in the joint property, proving that the spouses have joint debts, underestimating the value of the property, etc. [14, p. 65].

It is possible to eliminate falsification of evidence during the distribution of joint property upon divorce by securing a lawsuit and imposing a seizure on disputed property. Before seizing the property, it is necessary to collect all possible documents that confirm the fact that the spouses acquired the property before the separation of the brother (documents, photos, etc.). Also, if necessary, a forensic commodity examination should be conducted in the course of the trial, it is needed in order to establish the real value of the disputed property; judicial – technical documents, handwriting examination, it is necessary to establish the statute of limitations of compliance of receipts, or to make any changes to them [15, p. 174]. In order to establish the fact of falsification of evidence, in the event that a party provides fictitious documents confirming the payment, it is necessary to send requests to the tax authority in order to clarify the fact of the existence of this organization, its location, and its field of activity.

**Conclusions.** Thus, the problem of dividing the property of the spouses is quite relevant. It is the contractual regulation of property relations between spouses that will avoid many complications in the event of a divorce. However, in order to implement the conditions on the contractual regime of marital property in practice, it is necessary to ensure an increase in the legal literacy of the population, so there is still a lot of work to be done in this direction. The division of marital property is a complex process due to the large number of legal nuances and individual circumstances of each family.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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#### ABSTRACT

The article describes one of the most common problems of family and marital relations – the determination of the common property of the spouses and its division, which occurs in the event of a divorce. It is characterized that the division of joint property of spouses (former spouses) means, as a rule, the termination of their joint property, including joint property, which in some cases may become part of the impossibility of dividing property in kind). The division of joint property entails the allocation of a specific property or part of it to each of the spouses (former spouses), and sometimes the recovery of the difference in the value of the allocated property from one of them in favor of the other, if the division was not carried out in accordance with fate or is not of equal value. The legal norms regulating the procedure for creation and division of joint property of spouses in the marriage and family legislation of Ukraine have been studied. An analysis of some examples from the judicial practice of determining the shares of spouses in their common joint property was carried out. It was determined that the most common problem of modern times, unfortunately, is the division of property of the spouses, which in turn arises in the event of a divorce. Property division problems can be avoided thanks to the timely conclusion of a marriage contract, in which the division of property will be carried out with the conditions prescribed in the marriage contract, that is, this procedure will be carried out on the basis of a voluntary agreement. However, the conclusion of a marriage contract has ceased to be a common practice among married couples, who treat this procedure as an insult to feelings, thus making a gross mistake and complicating the procedure for the division of property in the event of termination of marital relations, since disputes regarding the division of property almost always accompany the dissolution of marriage.

**Keywords:** marriage, spouse, family law, divorce, movable and immovable property, division of property.

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#### PROBLEMATIC ISSUES AND PROPOSALS FOR IMPROVING THE INSTITUTION OF JUDGMENTS REVISION TO NEWLY DISCOVERED OR EXCEPTIONAL CIRCUMSTANCES

**Олег Журавель. ПРОБЛЕМНІ ПИТАННЯ ТА ПРОПОЗИЦІЇ ЩОДО  
ВДОСКОНАЛЕННЯ ІНСТИТУТУ ПЕРЕГЛЯДУ СУДОВИХ РІШЕНЬ ЗА  
НОВОВИЯВЛЕНИМИ АБО ВИНЯТКОВИМИ ОБСТАВИНАМИ.** Процес удосконалення  
законодавства складний і тривалий. Формулювання нових правових норм, а також внесення змін і  
доповнень до чинних нормативно-правових актів, як правило, базується на глибоких теоретичних  
дослідженнях питань і зроблених на їх основі аргументованих висновках. Результатом такого  
багатоетапного процесу, до якого поряд із законодавцями залучаються науковці та фахівці  
відповідних галузей права, є прийняття нормативно-правових актів, які відповідають не тільки  
вимогам нормотворчої техніки, але, перш за все, потребі демократичної та правової держави.  
Наведені міркування набувають важливого значення при перенесенні їх на процес удосконалення  
цивільного процесуального законодавства, яке регулює конкретну сферу суспільних відносин, що  
потребує максимально продуманого прийняття законодавчих рішень за результатами досліджень  
вчених-процесуалістів, які беруть участь у нормотворчій діяльності процесу.

Незважаючи на високий рівень розвитку цивільно-процесуальної науки, багато проблемних  
питань не отримали свого однозначного вирішення. Серед останніх привертає увагу питання  
теоретичного осмислення стадії провадження у справах за нововиявленими обставинами, зокрема  
проблема визначення ключового терміну стадії цивільного процесу «Проведення у цивільних  
справах у зв'язку з нововиявленими обставинами» відповідно до законодавства України – поняття  
нововиявлених обставин.

Справа в тому, що незважаючи на значну роль цього терміна в характеристиці стадії  
провадження у цивільних справах за нововиявленими обставинами, у цивільному процесуальному  
законодавстві його визначення відсутнє. Крім того, у науковій, навчальній та навчальній літературі

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