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THE INSTITUTE OF MARRIAGE CONTRACT: A COMPARATIVE LEGAL STUDY OF THE LEGISLATION OF UZBEKISTAN, ISLAMIC, AND EUROPEAN COUNTRIES



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MONOGRAPH

Achilova Liliya Ithomovna

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In the monograph “Legal Regulation of the Marital Contract: Analysis and Issues of Improvement”, the author examines the history of the emergence of the contract for the provision of paid services and its definition in civil law, the scope of application of contracts for the provision of paid services, and the specific features of such agreements.

The conclusion formulates findings and presents several proposals aimed at improving the national legislation regulating the contractual regime of property between spouses.

The monograph has been prepared in line with the goals and objectives defined in the Strategy for the Development of New Uzbekistan for 2022–2026, taking into account relevant legislative materials and specialized academic literature.

The research emphasizes the importance of developing a modern legal framework that reflects both national traditions and international experience in family law. Particular attention is given to the comparative analysis of marital contracts in Uzbekistan, Islamic countries, and European jurisdictions, revealing differences in legal philosophy, contractual freedom, and protection of spousal rights. The study underscores that the effective regulation of marital contracts not only contributes to legal certainty and economic stability within the family but also serves as an indicator of the progressive evolution of civil society and the rule of law in Uzbekistan.

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INTRODUCTION

The development of the institution of the marital contract represents an important aspect of the modernization of family and civil law in the context of global legal evolution. In recent decades, Uzbekistan has undertaken a steady course toward establishing a democratic, rule-of-law state and a just civil society, where the family is recognized as the fundamental unit of social life. Article 76 of the Constitution of the Republic of Uzbekistan enshrines the principle that the family is under the protection of both society and the State — a provision that reflects the increasing importance of legal mechanisms ensuring equality, stability, and transparency in marital relations.

Within this broader framework, the marital contract (also known as a prenuptial or postnuptial agreement) serves as a legal instrument that allows spouses to define their property rights and obligations, contributing to the balance between individual autonomy and family solidarity. Its regulation in Uzbekistan has evolved alongside civil law reforms, reflecting a gradual convergence between traditional legal concepts and modern principles of contractual freedom and gender equality.

This monograph, entitled “The Institute of Marriage Contract: A Comparative Legal Study of the Legislation of Uzbekistan, Islamic, and European Countries”, undertakes a comprehensive examination of the marital contract as an institution of family law, analyzing its essence, legal nature, and practical implementation. The study explores the evolution of this legal instrument in Uzbekistan, compares it with the approaches adopted in selected Islamic jurisdictions — where marital agreements often interact with religious norms — and in European countries, where the marital contract has long been integrated into civil law systems as a means of regulating matrimonial property regimes.

By analyzing statutory provisions, judicial practice, and doctrinal approaches, this research aims to identify the main similarities and divergences between national and foreign legal systems. Special attention is devoted to the adaptation of international legal experience to the Uzbek context, particularly in the light of ongoing reforms under the Strategy for the Development of New Uzbekistan for 2022–2026.

The results of this comparative study make it possible to formulate conclusions and practical recommendations aimed at improving the legal framework governing marital contracts in Uzbekistan, enhancing the predictability of property relations between spouses, and ensuring the effective protection of the rights and legitimate interests of both parties within the family.

CHAPTER 1. THE CONCEPT OF THE MARITAL CONTRACT AND THE HISTORY OF THE DEVELOPMENT OF THIS INSTITUTION IN THE REPUBLIC OF UZBEKISTAN AND IN FOREIGN COUNTRIES.

1.1. Definition and Content of the Marital Contract: National and International Legal Regulation

One of the primary objectives of the socio-economic, political and spiritual reforms being carried out in the country is the satisfaction of the interests of the individual and the family. Therefore, these matters consistently remain at the centre of the State's policy.

The essence and social purpose of the family are, in principle, the same for all peoples of the world; however, each society possesses its own specific features. Undoubtedly, such particularities must be taken into consideration when determining the forms and means, as well as when selecting the methods of legal regulation of marital and family relations.

Issues concerning marital and family relations are among the most widespread in legal practice. Family relations include psychological, moral and property aspects. Property relations occupy an important place within the family. They arise between spouses, between parents and children, and between other family members. It is this sphere of family life that is the most subject to legal regulation.

The family, as is well known, is a society in miniature. All positive and negative processes taking place within society are reflected, to a certain extent, in the family. The transition of our State from public ownership relations to relations based on private property has brought about changes in property relations between spouses. Families whose material well-being exceeds the average level have developed a need to strengthen guarantees for the protection of their property. The legislator responded to these changes, as evidenced by the adoption of the Family

Code of the Republic of Uzbekistan in 1998. One of the fundamental innovations of the Family Code lies in the fact that the marital contract was “admitted” into family relations¹.

In the majority of states, the property relations of spouses are regulated through such legal regimes as the statutory regime and the contractual regime. The established practice of concluding marital contracts in European countries and in the CIS states provides for a dispositive framework for defining the essential rights and obligations of persons entering into marriage or of spouses, in comparison to their statutory regime. Statutory regulation of matrimonial property relations constitutes a legal mechanism in which primary significance is held by legislative norms, acts of state authorities, and rules developed through judicial practice, which establish general standards of conduct for spouses in the property sphere.

In contemporary foreign legal systems, three principal subsystems of statutory matrimonial property regimes have developed, namely: the separation of property, the community of property, and the deferred community of property.

The legal systems of those countries in which the institution of the marital contract is enshrined at the legislative level are characterised by a number of similar legal features.

Thus, marital contracts are subject to the general conditions of validity of contracts as established in civil law. This is confirmed by the fact that family law does not contain an independent legal construct of the marital contract that differs from the civil-law contractual framework. At the same time, the validity of marital contracts may be associated with special conditions due to the specific composition of the parties involved.

¹ Family Code of the Republic of Uzbekistan. National Legislation Database, 07.02.2024, No. 03/24/905/0106.

Moreover, the general principles of civil-law regulation of contractual relations are likewise applicable to marital contracts.

In foreign legal scholarship, there is no unified system of marital contracts; however, various classifications of such contracts have been developed, as a result of which the marital contract is regarded as a generic concept encompassing other types of agreements. The generic term for a contract concluded by spouses or persons entering into marriage is the term “spousal” or, as it is also referred to, “family” contract.

A diametrically opposite situation has arisen in domestic legal scholarship, where the marital contract is viewed as one of the independent types of agreements regulating family legal relations.

In Uzbekistan, a distinctive system of marital (spousal) contracts is forming, differing from that which operates in the legal systems of common law and continental law countries.

The definition of the marital contract was introduced into national family law by the Family Code of the Republic of Uzbekistan, specifically by Article 29 of Chapter 6 entitled “The Contractual Regime of the Property of Spouses.”² Initially, the conclusion of such agreements between prospective spouses or spouses already in marriage was alien to the national Uzbek mentality. In analysing this issue, we have identified such contributing factors as: the low level of material well-being of the population; the absence of traditions concerning the conclusion of marital contracts; the complexity of the procedure for concluding such agreements; and legal nihilism.

Therefore, the theoretical conclusions formulated in the study and the analysis of the practice of applying the legislation are of particular interest both to those engaged in scholarly research in this sphere and to students

² Family Code of the Republic of Uzbekistan. National Legislation Database, 07.02.2024, No. 03/24/905/0106.

studying the relevant institution in the course “Family Law,” as well as to individuals who wish to conclude a marital contract.

Thus, the conclusions and recommendations presented in this study may be utilised in the law-making activities of the legislative bodies of the Republic of Uzbekistan when improving family legislation; in judicial practice, in the development of clarifications by the higher judicial authorities concerning the application of the relevant legal norms by the courts; as well as in the educational process in the study of the subject “Family Law” in law universities, lyceums, and technical colleges.³

In the preparation of this work, the methodological basis consisted of the laws and normative legal acts of the Republic of Uzbekistan, as well as those of certain foreign states. In particular, the norms of the Civil Code of the Republic of Uzbekistan, the Family Code of the Republic of Uzbekistan, and the Housing Code of the Republic of Uzbekistan were analysed^{4,5}.

In conducting the research, the works of such legal scholars of the Republic of Uzbekistan as Karakhodzhaev D.M.⁶, Sharakhmetov U.Sh.⁷, Otegenova L.⁸, and others were utilised.

Among foreign authors who have examined the legal regulation of the marital contract, one may refer to the works of Alferov A.V.,⁹ Albikov

³ Civil Code of the Republic of Uzbekistan. National Legislation Database, 28 February 2024, No. 03/24/914/0161.

⁴ Family Code of the Republic of Uzbekistan. National Legislation Database, 07.02.2024, No. 03/24/905/0106.

⁵ Housing Code of the Republic of Uzbekistan. National Legislation Database, 4 March 2022, No. 03/22/759/0213.

⁶ Karakhodzhaeva, D.M. Issues of Regulation of the Institution of Property Rights in the Context of Innovative Transformations in Uzbekistan: Accounting and Analytical Research Tools for Regional Economics. *Eurasian Research Bulletin*, 2023, Vol. 16, pp. 51–57.

⁷ Shorakhmetova, U.Sh. Problems of Improving Legislation Establishing the Consequences of Non-Compliance with the Conditions for Concluding Marriage: Dissertation, 2009.

⁸ Otegenova, L. Marital Agreement under the Family Legislation of the Republic of Uzbekistan. Tashkent: Tashkent State University of Law, 2012.

⁹ Alferov, A.V. The Modern Concept of a Marital Agreement. *Domestic Jurisprudence*, 2017, No. 2, pp. 21–22.

I.R.,¹⁰ Vylkova A.I., Mikhnevich A.V.,¹¹ Rudchik A.A., Trofimova P.F., and others.

In domestic legislation, a marital contract represents an agreement between persons entering into marriage, or an agreement between spouses, which determines the property rights and obligations of the spouses during marriage and/or in the event of its dissolution (Article 29 of the Family Code of the Republic of Uzbekistan)¹². The purpose of the marital contract is to establish a special regime of the spouses' property on the basis of mutual agreement. The Family Code of the Republic of Uzbekistan (Articles 29–36), upon entering into force, specified this provision, introduced the legal definition of the marital contract, and established the fundamental procedure for its conclusion, amendment and termination. The rights and obligations contained therein operate during the period of marriage and may continue after its dissolution, if so provided by the contract.

The legislator has established an open list of provisions that spouses may include in a marital contract; however, all such provisions must relate exclusively to the property rights and obligations of the spouses and must not contradict the fundamental principles of family legislation.

When drawing up a marital contract in the Republic of Uzbekistan, it should be borne in mind that such an opportunity arises for prospective spouses even prior to the conclusion of marriage; however, such an agreement shall acquire legal force only after the official registration of the marriage. At the same time, the fact that a marital contract is concluded before the wedding cannot be regarded as a psychological

¹⁰ Albikov, I.R. The Role and Significance of the Marital Agreement in the Human Rights Activities of the Notary. *Notarius*, 2017, No. 5, pp. 43–45.

¹¹ Vylkova, A.I. The Institution of the Marital Agreement in the System of Legal Protection of Family Relations. *Molodoy Ucheniy (Young Scientist)*, 2018, No. 13 (199), pp. 160–164.

¹² Civil Code of the Republic of Uzbekistan. National Legislation Database, 28 February 2024, No. 03/24/914/0161.

incentive for hastening the registration of the marriage. In such a case, the moment of marriage registration serves merely as the legal mechanism for the entry into force of the agreement. If a marital contract is concluded after the registration of marriage, or at any time during the marriage, it enters into force from the moment of its conclusion. A mandatory requirement for the recognition of a marital contract as valid is the observance of the notarial form.

On the basis of the legislation of the Republic of Uzbekistan and the provisions of foreign legal doctrines, the most appropriate definition of the marital contract may be formulated as follows:

A marital contract is a voluntary agreement entered into by persons intending to conclude a lawful marriage or by spouses, which determines the scope of property rights and obligations of the spouses, including for the event of divorce.

In recent times, when the institution of the family is no longer regarded as one of the highest social values and divorce is no longer attributed an exceptional or extraordinary significance, the conclusion of marital contracts in the Republic of Uzbekistan has become more widespread. It cannot be said that marital contracts are concluded on a mass scale, yet it would also be incorrect to state that they are not concluded at all within the country. With each passing year, the dynamics of the conclusion of marital contracts are slowly, yet steadily, increasing.

The concept of the “marital contract” or “marital agreement” appeared and began to be used in the Republic of Uzbekistan relatively recently, and it has not yet become widely recognised in practice. This is largely connected to the fact that prior to the independence of the State, the institution of marriage and the family was endowed with a special and elevated societal significance. The preservation of the family and its integrity was supported by all social levels — from mahalla communities

to trade unions and even neighbours. Divorce was viewed as a life event capable of damaging an individual's reputation. For this reason, any form of agreement in anticipation of divorce was considered sacrilegious, and a person proposing such an agreement was often perceived as a potential "future divorcee."

Given the contemporary economic and cultural perception of the institution of the family among the population, the marital contract has ceased to be viewed as something unusual or foreign. Increasingly, individuals are choosing to conclude such contracts because they clearly understand that life is unpredictable, and it is prudent to safeguard oneself against unforeseen circumstances, including those in the most personal and unpredictable sphere. While in Europe and the United States the concepts of "marriage" and "marital contract" are closely associated, and in practice may even be regarded as synonymous, in our country such a contract remains a particular and relatively discreet aspect of the private life of spouses.

Whereas domestic family law theory proceeds from the position that a marital contract may not regulate any personal non-property rights and obligations of spouses, in Europe a marital contract may contain provisions relating to matters such as the place and time of the birth of a child, the child's name, and the place of residence of the spouses. It appears that the inclusion of such conditions in a marital contract is fully permissible and even justified, insofar as such matters are inherently encompassed within the marital union and are, by their nature, presumed by it.

In the Republic of Uzbekistan, a marital contract must be notarised and enters into legal force immediately after the marriage is concluded. A marital contract may be either fixed-term or indefinite. It should be noted that the conclusion of a marital contract for a defined term cannot be

disconnected from the moment of dissolution of the marriage, which, by implication, signifies the termination of the marital contract. A marital contract may not limit the ability of either spouse to protect his or her property rights. A different situation arises where a spouse attempts, through the court, to retroactively amend a provision of the contract which, for example, stipulated the unconditional transfer of a particular item of property, such as a vehicle, to the other spouse upon divorce¹³.

The effect of a marital contract may extend both to property already acquired and to property intended to be acquired in the future. It should be noted that if certain property is not mentioned in the marital contract, such property is deemed to be governed by the statutory matrimonial property regime. In other words, in the event of divorce, such property will be divided in the same manner as if no marital contract had been concluded at all.

A marital contract may be concluded or terminated at any time by mutual agreement of the spouses; such agreement, like the contract itself, must be notarised. A marital contract may be amended (or terminated) by the court at the request of one of the spouses in cases where: one of the parties breaches a material term of the marital contract; there has occurred a significant change in circumstances, such that, had the spouses been able to foresee such change, the marital contract would not have been concluded at all or would have been concluded on substantially different terms; or in other cases provided for by law.

It should be emphasised that in a country such as the Republic of Uzbekistan, where relations between spouses are predominantly characterised by trust rather than by economic calculation, the marital

¹³ Otegenova L.Zh. On some issues of changing and terminating a marriage contract. // Review of the legislation of Uzbekistan. - Tashkent, 2008. - No. 3. - P. 48-50.

contract will, for some time, continue to remain a relatively uncommon instrument in the conclusion of marriage¹⁴.

In the Republic of Uzbekistan, the marital contract was for a long time met with resistance, primarily among the general population; however, wealthy businesspersons, by contrast, welcomed this instrument and hastened to safeguard their capital from prospective brides and spouses. Today, fortunately, conservatism is gradually giving way to rational consideration, and long-standing social dogmas are beginning to yield to the realities of modern life. An ever smaller number of couples regard the marital contract as a sign of a marriage of convenience; however, this does not mean that the practice has become widespread. What, then, is the true reason for such a reserved attitude?

The matter lies in the nature of the legal relations governed by the marital contract. In Uzbekistan, by concluding such an act of mutual will, one may protect oneself only from a material standpoint, since the marital contract regulates solely the property relations between spouses; the sphere of non-property interests is, at present, left by national law to the spouses' own self-regulation. The fact that this instrument directly affects only the financial dimension of our often unstable lives gives rise to social prejudice. However, if one considers this gap in our legislation — and there are, undoubtedly, many such gaps — then it is reasonable to approach the question from the opposite perspective. In other words, it is better to ensure the availability of essential household property after divorce than to find oneself without such necessities at all.

¹⁴ Otegenova L.Zh. Marriage contract: concept, essence, content // “Oila konunchiligini rivozhlantirish muammolari” Nomidaghi prof. F. Otahujaevning hotirasig bagishlangan ilmiy-amaliy conference materiallari. -Tashkent, TDUI, 2008. -B.78-81.

Thus, according to the established understanding, it should be noted that it is the woman who is most vulnerable in the event of divorce, particularly when the care of children remains with her.

With regard to foreign experience, at the present stage the practice of concluding marital contracts deserves particular attention. In the United States, a marital contract and marriage are, in essence, closely associated, and the marital contract may, in addition to addressing property matters, contain provisions establishing various other rights and obligations (such as responsibility for cleaning, laundry, walking the dog, preparing meals, and similar matters). Many marital contracts also include sanctions in the event of adultery (sometimes with detailed descriptions of specific scenarios). All of this is considered entirely lawful in the United States.

In order to enter into marriage and conclude a marital contract, future spouses are required to obtain a marriage licence from a local court, with the participation of at least one witness.

The cost of such a licence varies significantly: “the least expensive licence is issued in the State of Massachusetts (USD 4), while the most expensive is in Florida (USD 88.50), with the average cost amounting to approximately USD 30–35. As a rule, a marriage licence cannot be purchased using a credit card or a bank cheque. Most state courts require payment in cash. Interestingly, the authorities of the State of Florida offer a discount of USD 32.50 on the cost of the licence to couples who complete a course entitled ‘The State of Florida Premarital Preparation Course’. This course is conducted by specially trained clerks of local courts and addresses issues relating to marital relations, the upbringing of children, and the management of family conflicts and finances.”¹⁵

¹⁵ Balekov P.S. Family under contract. Social protection. - M.: Jurist., 2022. P.80.

The marriage licence establishes the period within which the marriage may be registered. “In the State of Oklahoma, the marriage licence has the shortest period of validity, requiring couples to complete the registration within ten days; in Missouri, the licence is valid for thirty days; in Montana — for six months; and in Nebraska — for up to one year. Only residents of the District of Columbia, Georgia, and Iowa may remain unconcerned, as the marriage licence there is valid for life.”¹⁶

England, as a centuries-old successor to its legal traditions, recognises only one matrimonial property regime — the regime of joint marital property. This means that all premarital property of both spouses, upon marriage, automatically becomes their joint property, as do assets acquired during the marriage and those received as gifts or inheritance. At present, this issue has become a matter of public concern in England, as many wives, having encountered situations in which their new husbands are required to pay maintenance out of the joint property to a former spouse and children from a previous marriage, are unwilling to accept such consequences.

In France, under current legislation, there exist four types of marital contracts.

A. The regime of community of jointly acquired property (La communauté réduite aux acquêts).

This regime applies automatically, does not require registration with a notary, and is not subject to state fees (it is free of charge). It represents the basic form of the matrimonial regime in which each spouse remains the owner of his or her premarital property, while property acquired during the marriage becomes joint family property. Both spouses may dispose of

¹⁶ Gasparyan A.S., Atrokhova E.S. Marriage contract. Guarantee of family happiness. - M.; MIR.2022. P. 110.

such joint property independently, except in cases of major expenditures, which require the consent and signatures of both spouses.¹⁷

Premarital debts are borne individually by each spouse, while joint debts incurred during the marriage are satisfied from the joint property. In the event of divorce, each spouse retains his or her premarital property, while the marital property is divided equally.

In the event of the death of one spouse, the surviving spouse retains his or her premarital property, while the joint marital property is divided equally; the second half, together with the deceased's premarital share, passes to his or her heirs in accordance with any applicable line of succession.

In Germany, a marital contract (Ehevertrag) is subject to notarisation only in cases where it contains provisions regarding property rights (matrimonial property rights of the spouses) and old-age security. The notarial fee for concluding a marital contract is calculated based on the assessed monetary value of the spouses' combined assets (minus any outstanding debts).

The matrimonial property rights of the spouses include the following regimes:

a) The community of accrued gains (Zugewinnngemeinschaft) — this is the statutory matrimonial property regime which applies when the marital contract does not specify any alternative property arrangements. Under this regime, in the event of divorce, the increase in value of the spouses' assets during the marriage is divided equally.

b) The separation of property (Gütertrennung) — this regime operates only if expressly included in the marital contract. It means that each spouse retains ownership of his or her own property during the

¹⁷ Gasparyan A.S., Atrokhova E.S. Marriage contract. Guarantee of family happiness. - M.; MIR.2022. P. 110.

marriage and does not share it with the other spouse, including in the event of divorce.

c) The community of property (Gütergemeinschaft) — this regime also applies only if expressly agreed upon in the marital contract. It establishes joint ownership of property acquired during the marriage. However, premarital property and property received as a gift or by inheritance during the marriage are excluded from the joint estate if expressly stipulated in the marital contract.

The purpose of the marital contract is to determine the legal regime of the spouses' property and other property-related relations. It should be emphasised that the current legislation does not formulate the concept of “property rights and obligations” nor does it ascribe to them generic legal characteristics, as a result of which it is impossible to compile an exhaustive list of the conditions that may be included in a marital contract. According to paragraph 5 of Article 31 of the Family Code of the Republic of Uzbekistan, a marital contract may not regulate personal non-property relations between spouses. With regard to this provision of the Family Code of the Republic of Uzbekistan, legal scholars continuously debate the issue: some argue that the inclusion of this imperative prohibition on the regulation of personal non-property relations of spouses is justified, while others view it as a deficiency of legal regulation rather than its advantage.

In countries of the Anglo-Saxon legal system, the regulation of personal non-property relations between spouses by means of a marital contract is permitted. It is well known that the primary source of law in this legal system is judicial precedent, rather than normative legal acts, as in the Romano-Germanic legal system. It appears that the resolution of disputes arising from the performance of non-property obligations between spouses in such countries as the United States and the United

Kingdom is less problematic than, for example, in the Republic of Uzbekistan or the Russian Federation.

In our view, it appears difficult to determine the admissibility of including in a particular marital contract a condition of a non-property character, even when such a condition is directed exclusively towards the creation of property-related consequences between the spouses. In such cases, there exists a significant risk that the marital contract may be declared invalid either in its entirety or in the relevant part. We consider that it is impermissible to include in a marital contract “circumstances of a personal character” that are of a non-property nature, such as provisions concerning the birth of children, infidelity of a spouse, or the abuse of alcohol or narcotic substances. In these examples, the legal regulation primarily concerns the personal non-property relations of the spouses and only indirectly affects their property relations, which directly contradicts Article 31 of the Family Code.

Contemporary legal systems, when assessing the legal nature of the marital contract, also analyse the question of whether such a contract may be concluded within the framework of an unregistered (de facto) marital relationship. In different historical periods, this issue has been resolved in different ways. Modern legislation recognises exclusively marriages registered with the civil registry authorities. Accordingly, “persons living in a de facto marital relationship may conclude a marital contract as private individuals, but such a contract will not enter into legal force until the marriage is officially registered, since de facto marital relations are not regulated under Russian law.”

On this issue, Ralko V.V. notes that “following the principle of freedom of civil-law contracts, persons living in a de facto marital relationship may formalise an agreement establishing a regime of separate or shared ownership of property acquired by them, as well as an agreement

regulating obligations between them. However, such an agreement will not constitute a marital contract in the strict sense of the term. This agreement must be governed by the general provisions of civil law.” This situation is not entirely satisfactory, a point upon which participants in the scholarly discussion generally agree, though they propose different regulatory approaches. It is worth noting the one-sidedness of several of these positions.

Thus, Antropova I.R.,¹⁸ Shcherbina G.A.¹⁹ and other authors emphasise the need for legislative protection of “the property interests of women who, for various reasons, are not in officially registered marital relationships.” The academic literature observes that “neither family law nor civil law currently provides a clear and unambiguous answer to this question.”

The provisions of the Family Code of the Republic of Uzbekistan concerning the contractual regime of the property of spouses do not contain any direct indications that would allow for the determination of the legal nature of the marital contract, nor do they include any reference to the norms of civil legislation relating to the general provisions on transactions and contracts.

One of the few references to civil legislation contained in the Family Code of the Republic of Uzbekistan is of a general nature. According to this provision, civil legislation shall apply to property and personal non-property relations arising between members of a family which are not regulated by family legislation, insofar as such application does not contradict the essence of family relations. It is, of course, indisputable that

¹⁸ Antropova I.R. On the Legal Nature of the Marriage Contract in Modern Family Law of Russia // Bulletin of Udmurt University. Series "Economics and Law". 2013. N 2. P. 115. 7 Shcherbina G.A. She is "married", he is free from it, or On de facto marriage // Bulletin of the Essentuki Institute of Management, Business and Law. 2016. N 13. P. 83.

¹⁹ Shcherbina G.A. She is “married”, he is free from it, or About de facto marriage // Bulletin of the Essentuki Institute of Management, Business and Law. 2016. No. 13. P. 83.

civil-law norms not only may, but must be applied to marital contracts, unless the specific nature of the marital contract dictates otherwise; any opposite conclusion would be illogical and unreasonable. However, this does not in itself determine the true legal classification of the marital contract within the sphere of civil law, since the subsidiary application of civil-law norms to a marital contract cannot serve as a definitive basis for classifying marital contracts as civil-law agreements.

Antokolskaya M.V. writes that the marital contract is a civil-law agreement: “The existence of certain specific features in the marital contract does not mean that it constitutes a special contract of family law distinct from civil-law contracts.” We consider that the distinguishing characteristic of the marital contract should be recognised in its complex legal nature: it may include provisions which establish or modify the property regime of the spouses, as well as provisions regulating the spouses’ obligations to provide financial support to each other.²⁰

Chefranova E.A. considers that “by its legal nature, the marital contract is a civil-law agreement aimed at altering the statutory regime of matrimonial property. Its distinctive features include the specific composition of its parties.”²¹ Nechaeva A.M. emphasises that “the matter concerns not a civil-law contract as a transaction of a purely property-related character concluded between private individuals, but a rather specific agreement based on personal relations regarding the fate of property. Such a contract is directly connected to marriage.”²²

²⁰ Antokolskaya, M.V. *Family Law: Textbook*. Moscow, 2023, p. 156. Braginsky, M.I., & Vitryansky, V.V. *Contract Law: General Provisions*, p. 20. Zhilinkova, I.V. *Marital Agreement*. Kharkiv: Ksilon, 2015, pp. 38–40. Sosipatova, N.E. *The Marital Agreement: Legal Nature, Content, Termination*. State and Law, 1999, No. 3, p. 76. Funk, Y.I. *Marital Agreement: Property Relations of Spouses, Their Participation in Business Companies and Partnerships*. Minsk: Amalfiya, 2000, p. 69. Chefranova, E.A. *Mechanism of Family-Law Regulation of Property Relations of Spouses: Monograph*. Moscow, 2007, p. 53. Pchelintseva, L.M. *Commentary on the Family Code of the Russian Federation*. Moscow, 1999, p. 139.

²¹ Chefranova E.A. *Property relations in the Russian family: a practical guide*. Moscow, 2019. P. 33.

²² Nechaeva A.M. *New Family Code // State and Law*. 2019. N 6. P. 57.

Adaev I.K. and Nesterova T.I. note that “it is impossible to fully agree with either position. According to current Russian legislation, spouses may, by means of a marital contract, modify the statutory regime of joint property, define their rights and obligations with respect to mutual maintenance, determine the manner of participation in each other’s income, establish the procedure for bearing family expenses, and specify the property to be assigned to each spouse in the event of divorce (paragraph 1 of Article 42 of the Family Code). Consequently, the subject matter of the marital contract may encompass relations governed by different branches of law — civil law (relations concerning the ownership of property belonging to the spouses) and family law (relations concerning the provision of maintenance).”

Slepakova A.V. argues that “the question of the application of civil-law norms to the marital contract must be resolved in accordance with the legal nature of the marital contract in our legal system. To the extent that the marital contract defines property relations between spouses (civil-law relations), family and civil law should be correlated as special and general law respectively. However, to the extent that the marital contract regulates family relations, the principle of the subsidiary application of civil law must operate in its broad sense: civil legislation is applied to relations not regulated by family legislation insofar as such application does not contradict the essence of family relations (Article 4 of the Family Code).”²³

A middle position on this issue is taken by Maksimovich L.B., who writes that “a marital contract may be defined as a civil-law instrument of family-law regulation of property relations between spouses.”

²³ Slepakova A.V. Legal property relations of spouses: author's abstract. diss. ... candidate of legal sciences. Moscow, 2004. Pp. 24-25.

Myskin A.V. notes that “the temptation to designate the marital contract as a special type of contract — a contract of family law rather than civil law — is considerable, and indeed there exist certain legal grounds for doing so. As is well known, the category of ‘contract’ is predominantly a civil-law concept. However, contractual structures are now encountered not only in civil law, but also in a number of other branches of law and legislation. Moreover, this tendency becomes more apparent with each passing year.”²⁴

Trofimova G.A. emphasises that “the marital contract, in its legal construction, is not equivalent to civil-law contracts concerning the transfer of property. Its essence lies in the establishment of dispositive regulation of the property relations of spouses. In this capacity, its effect cannot be terminated automatically upon the dissolution of marriage, because the dissolution of marriage does not annul the rights and obligations of the spouses acquired under the legal regime established by the marital contract, nor does it automatically terminate other rights and obligations unless they have been fulfilled. The legal regime of individual regulation of the spouses’ property relations begins to operate from the moment the marital contract enters into force and ceases to operate only in respect of future property relations — and already of former spouses — from the moment of the dissolution of the marriage.”

“The marital contract is always a consensual and causal transaction. Although only spouses may be parties to a valid marital contract, it is not a fiduciary agreement, since it cannot be terminated by unilateral refusal of performance. A marital contract may constitute either a bilaterally binding or a unilaterally binding transaction.” There is also no unanimity of views regarding whether the marital contract should be considered a gratuitous

²⁴ Myskin A.V. Marriage contract: civil law contract or special type of contract // Civil law. 2006. No. 2. P. 33.

or a non-gratuitous transaction. Some authors argue that it is a gratuitous transaction, since it does not imply the existence of reciprocal property obligations or any form of counter-performance between the spouses. Others, on the contrary, maintain that the marital contract always involves reciprocal property transfers and is therefore non-gratuitous and reciprocal in nature. There are also scholars who take the view that “the norms of civil legislation governing both gratuitous and non-gratuitous transactions may be applied to the marital contract, depending on the specific terms contained in it.”

We believe that it is not entirely correct to apply such classifications of transactions in their traditional understanding. For example, contractual terms establishing the property regime (whether of separate or joint ownership) do not, by themselves, determine whether the transaction is gratuitous or non-gratuitous.

If one assumes that the marital contract contains provisions only concerning gratuitous property transfer or the provision of maintenance by one spouse to the other, then it should be classified as a gratuitous transaction. However, if the right of a spouse to receive maintenance is conditioned upon a corresponding property right — for instance, the right to reside in residential premises belonging to the spouse providing maintenance — then the contract would be considered non-gratuitous. Yet this raises the problem that the marital contract may be used to conceal transactions such as donations or residential lease agreements.

Spouses are not deprived of the right to enter into civil-law transactions with one another, and in such cases, the need to conclude a marital contract for the purpose of reciprocal exchange of material benefits is removed, since such transactions are already provided for by civil legislation. In this situation, in accordance with the transaction that the

parties actually intended, and taking into account its nature and content, the rules applicable to that transaction shall be applied.

Under English law, agreements in the sphere of matrimonial and family relations are considered invalid and are not regulated by general contractual principles. Such an agreement may be concluded by applying to the court with a request that the agreement be formalised under judicial supervision.

According to Danish legislation, spouses are entitled to conclude a marital contract in which they may fully or partially determine the regime of their property. In Sweden, marital contracts are permitted and constitute a common means of modifying the default regime of community of property between spouses.

In Germany, in addition to the statutory matrimonial property regime, the German Civil Code provides for two types of marital contracts:

- a) complete and simple separation of property;
- b) the regime of community of property.

In practice, the regime of separation of property is more frequently established in marital contracts than the regime of community.

In Austria, the marital contract is directed towards broad regulation of the economic relations within marriage. In the event of divorce, according to Austrian law, the property must be divided by the parties by mutual agreement.²⁵

In France, only about 10% of spouses conclude a marital contract, and this usually occurs when significant property is involved or in the case of remarriage. The legislation of Croatia likewise allows spouses, by means of a marital contract, to modify or terminate the statutory

²⁵ Chefranova E.A. Property relations of spouses: Scientific and practical manual. Moscow, 2018. P. 116.

matrimonial property regime (referred to in the Family Code as the “restricted community of property” regime).

Restrictions on the regulation of marital contracts in Croatia are minimal; however, the practice of concluding such contracts is not widespread.

In the Netherlands, spouses frequently enter into marital contracts in order to modify the default community property regime. Over the past 50 years, the so-called “netting covenant” has become increasingly popular. More than 75% of marital contracts reflect this model. Couples enter into marriage without forming joint community property, and, under such agreements, the income of each spouse, after the deduction of shared household expenses, is annually equalised and divided on a 50/50 basis.

In the Republic of Belarus, the regime of joint marital property is also established by law, but may be modified or excluded by a marital contract. As regards the practical implementation of marital contracts in Belarus, statistical data indicate that the number of marital contracts concluded has been increasing in recent years.

In summary, the contractual regulation of matrimonial property relations in Western and Eastern Europe demonstrates a clear trend towards the separation of the property of spouses.

In accordance with paragraph 1 of § 1408 of the German Civil Code, spouses may regulate only property relations in a marital contract, which is also characteristic of Russian family law. However, in Germany, significant attention is paid to the subjective and objective elements of the marital contract, the overall assessment of which is decisive in determining its invalidity. This is due to the existence of judicial control over the content of marital contracts.

Let us provide an example from a German legal source. The wife did not participate in the negotiations that preceded the conclusion of the

marital contract. Nor did she have any involvement in the drafting of the contract, and the draft was not provided to her prior to execution. The marital contract was read aloud by the notary and signed by the wife, but she did not have the opportunity to read it personally.

During the notarial preparation and execution of the contract, her child was less than one month old, and therefore, she hurried to finalise the document as quickly as possible. In such circumstances, the waiver of maintenance (alimony) in the event of illness (§ 1572 of the German Civil Code), especially given the significant importance that maintenance obligations hold on the objective side, is regarded by German jurists as rendering the marital contract immoral and invalid.

This example demonstrates the significance not only of the substantive (objective) content of the contract, but also of the circumstances and conditions under which it was concluded (the subjective element).

Agreeing with the view of A.V. Myskin that the legal nature of marital contracts is “not entirely incompatible with non-material elements, and that, subject to certain requirements, some conditions of a non-material character may nevertheless be included in marital agreements”, we consider it necessary to refer to the terms of a marital contract presented as a model in German legal literature.²⁶

Thus, in the preamble of the marital contract it is recommended to set out in detail the personal circumstances of the parties, which are not legally necessary. According to practising lawyers, such information may be of importance in any subsequent judicial review of the contract. For instance: information regarding the professional activity of the spouses; their income, debts, and already existing maintenance obligations; the

²⁶ Myskin A.V. Marriage contract in the system of Russian private law. Moscow, 2012. P. 114.

composition of their property; personal circumstances such as pregnancy, the presence of children, or illness; plans for the future, such as intended employment or the desire to have children; as well as the fact that the draft marital contract has been at the disposal of both parties for more than two weeks, which indicates that they had sufficient time to familiarise themselves with its content.

We believe that the recommendations of the German lawyers should be taken into account. Firstly, the provisions in question do not establish personal non-property relations between spouses, and therefore do not contradict the law. Secondly, a detailed description of the status of each party may have a positive effect on the awareness and understanding of the spouse who enters into the contract while being emotionally attached or in love. Thirdly, for the marital contract to be considered valid, it is important that it does not result in discrimination against either spouse, which is more apparent when the above conditions are provided.

In certain cases, German marital agreements contain a separate clause referred to as the “professional situation”. For example, it may specify that the husband is working as a contractor, is the sole shareholder and managing director of a company registered in the commercial register of the district court, and is also the sole owner of the residential property used by the spouses.

The wife has completed training as a kindergarten teacher, but is currently not employed in her profession due to childcare obligations regarding their children. It is planned that she will return to employment on a part-time basis once the children reach the age of nine, and later on a full-time basis when the children reach the age of fifteen. The spouses do not intend to have any additional children.

According to the author of the above-mentioned model contract, clarification of personal circumstances, the structure of the parties’

property and their intended family planning, as well as the incorporation of such information into the notarised instrument, is necessary for assessing the subsequent factual development of marital relations in comparison with the circumstances existing at the time of the contract's conclusion. This, in turn, facilitates the determination of the contract's invalidity, should such an issue arise. It should be emphasised that all of the indicated elements relate to the subjective aspect of the contract. Therefore, they are to be taken into account when the court exercises control over the validity of the marital agreement.

For a more comprehensive understanding of the subjective aspect of a marital contract, the following elements are distinguished:

1. From the perspective of the objective aspect, it is necessary to examine the significance of the contractual terms, identifying which rights a party waives and which of their rights are restricted;

2. From the perspective of the subjective aspect, it is essential to determine the purpose and motives behind the conclusion of the contract, as well as any potential imbalance between the parties. The contract should be assessed in light of standard criteria, in particular:

– the parties must have sufficient time to become acquainted with the draft contract, which should be provided at least two weeks in advance, as well as a reasonable duration of negotiations;

– the contract must be executed before a notary under an appropriate and fair procedure;

– the parties must be advised of the need to obtain independent legal consultation, at least in situations of uncertainty or complexity;

– the presence of unequal bargaining power or pressure must be evaluated. Contracts concluded immediately before marriage or under the threat of divorce (so-called “last-minute agreements”) require special scrutiny. However, the mere desire of one spouse to marry or continue the

marriage on the condition that a marital contract is concluded does not, in itself, indicate that the other spouse is placed in a subordinate position;

- special circumstances, such as pregnancy, a partner who does not speak German, or a situation of particular hardship. The conclusion of a marital contract with a pregnant woman is considered particularly sensitive. Even in such cases, the contract may subsequently be amended by the parties; however, the circumstance indicates unequal negotiation positions and therefore the existence of imbalance at the moment of contracting. Consequently, such contracts must be subjected to enhanced judicial scrutiny of their content. This is especially relevant where a pregnant woman is compelled to choose between marrying with a marital contract or remaining unmarried and giving birth outside of marriage. For a partner who does not speak German, a written translation of the contract must be provided, or at the very least, a certified interpreter must be present during preliminary discussions and notarisation;

- other circumstances that may be relevant, such as the mental health of the parties, alcohol or drug dependency; pronounced social or economic dependence, for example where one spouse is significantly older or the employer of the other; or any situation of special vulnerability;

- a general assessment of the contract may indicate immorality where the interaction of subjective and objective elements is clearly directed toward the unilateral restriction of the rights of one spouse.

Notaries play a significant role in the process of executing prenuptial agreements. Therefore, they are advised to strictly comply with the requirements of the notarial procedure. In its landmark decision of 15 March 2017 (XII ZB 109/16), the Federal Court of Justice emphasized the decisive importance of the subjective conditions of a marital contract. Accordingly, the Higher Regional Court of Bamberg declared a marital contract invalid on the basis of § 138 of the German Civil Code (BGB).

The contract established a regime of separate property between the spouses, excluded any post-marital maintenance, except for childcare support, waived pension equalisation, and provided for a mutual waiver of further obligations. The Federal Court of Justice upheld the overall assessment made by the appellate court, which, based on the evaluation of both objective and subjective elements of the agreement, concluded that the contract violated standards of morality (*Sittenwidrigkeit*).²⁷

The Court's presumption of subjective inequality was based on the specific circumstances of the notarisation procedure, in particular:

- the wife did not participate in drafting the notarial contract, which was essentially prepared on the instructions of the husband's mother;
- the wife did not receive a draft of the contract either during its preparation or at the time of notarisation;
- the personal consequences of the contract were not sufficiently clear to her, as the contract was viewed as part of the "transfer of a family business to the son";
- the wife experienced a certain degree of pressure during notarisation, given that the couple's child was present at the time.

To prevent subsequent objections alleging infringement of the parties' rights and to minimise notarial liability, it is noteworthy that some prenuptial agreements include a reference to the dates on which each party received the draft agreement and the date of the meeting with the notary, during which they were provided with detailed legal advice.

In this way, the parties confirm that the draft marital agreement has been thoroughly reviewed and considered. To mitigate risks of liability, legal practitioners recommend that notaries formally notify the parties in

²⁷ Ignatenko A.A., Skripnikov N.N. Marriage Contract. Legal Regime of Spouses' Property. Comments on the Family Code. Moscow: Filin, 2019. Page 39.

writing of any potential shortcomings or limitations associated with the chosen matrimonial property regime.

In conclusion, it should be noted that the conditions proposed by German legal scholars for inclusion in prenuptial agreements are by no means unequivocal. The inclusion of extensive circumstances surrounding the conclusion of the agreement aligns with the principle of freedom of contract. We believe that the German legal approach may be of practical relevance for legal practice in Uzbekistan. For example, the provision of the German Civil Code (BGB), which restricts prenuptial agreements to the regulation of property matters, corresponds to Article 32 of the Family Code of the Republic of Uzbekistan.

Distinguishing between the objective and subjective elements of a prenuptial agreement allows for a more efficient assessment of its potential invalidity. Furthermore, adherence to the subjective aspect of the agreement will only in exceptional circumstances lead to a violation of moral principles and render the agreement void. Identifying the purposes, motives, weaker contractual positions, and other relevant circumstances helps to accurately evaluate the imbalance of bargaining power between the spouses.

Modern Approaches to Defining Marital and Family Relations.

Despite the continued reality of women's economic vulnerability both within the family structure and in the labour market, there is a noticeable trend among the younger generation towards a different understanding of the regulation of marital and family relations. Research conducted in this area demonstrates that the division of domestic responsibilities and childcare duties is undergoing transformation. According to a number of scholars, the increasing prevalence of cohabiting couples forms part of a broader shift towards a more equitable

distribution of household labour. Thus, it may be argued that the classical ideology of the traditional family is subject to change.

Nevertheless, it remains difficult to imagine a marital union that is entirely based on equality, autonomy and independence. In this regard, the concept of a community property regime appears to be the most suitable system today. This is due not only to the fact that it is the most widespread property regime, but also because it may be considered the “optimal solution” for addressing contemporary issues, such as the persistent de facto inequality between men and women within the family.

When examining the legal nature of the prenuptial (marital) agreement, several specific features of this legal construct were identified. Here, it is appropriate to focus on one distinguishing characteristic, namely the subject composition of the marital contract.

Pursuant to Article 29 of the Family Code of the Republic of Uzbekistan, only two categories of persons are authorised to conclude a marital agreement:

1. individuals who are entering into marriage, and
2. spouses who are already in a legally registered marriage.²⁸

At first glance, the legislative wording appears free of any ambiguity. However, a certain lack of clarity does exist. Specifically, it remains unclear who should be regarded as persons intending to enter into marriage, and from what moment such individuals may conclude a prenuptial agreement.

There is no consensus among civil law scholars on this matter. Some argue that only those individuals who have already submitted an application for marriage registration to the civil registry authorities (ZAGS) should be considered as persons entering into marriage. Others take the

²⁸ Family Code of the Republic of Uzbekistan. National Legislation Database, 07.02.2024, No. 03/24/905/0106.

opposite view, maintaining that the category should also include persons who merely intend to formalise their relationship in the future.

For instance, the civil law scholar A.A. Ignatenko asserts that “persons entering into marriage should be understood as a man and a woman who intend to establish a family, and not necessarily those who have already submitted an application to the civil registry authorities.”

A particularly noteworthy perspective is offered by N.E. Sosipatrova, who writes that “individuals may be regarded as entering into marriage only after they have submitted a marriage application to the civil registry office, since those who merely possess such an intention but have not submitted the corresponding application... are classified in Article 13 of the Family Code of the Russian Federation as ‘persons wishing to enter into marriage’, and an agreement concluded by such individuals should be considered a void transaction (due to a defect in the composition of the parties), which neither creates nor can create legal consequences, even if the marriage is subsequently registered.”²⁹

This viewpoint is not without merit. The mere presence of an intention (in the present context, the intention to form a family) is insufficient, as the expression of will by a legal subject requires the performance of certain actions directed towards achieving a specific legal result. In this case, the manifestation of will by persons intending to create a family is realised through active steps, namely by submitting the relevant application to the civil registry authority. Accordingly, the filing of such an application indicates both the seriousness and the mutual consistency of the parties’ intentions.

It should also be borne in mind that a marital (prenuptial) agreement concluded between spouses enters into force from the moment it is

²⁹ Sosipatrova N.E. Marriage contract: legal nature, content, termination // State and Law. 1999. No. 3. P. 76.

executed in notarial form, whereas a marital agreement concluded between individuals whose marriage has not yet been registered enters into force only upon state registration of the marriage.

Legal scholarship additionally discusses the question of how long a marital agreement concluded between individuals not yet in marriage may exist without acquiring legal force. According to N.E. Sosipatrova, such a situation cannot persist indefinitely. Neither civil law nor family law provisions provide a direct answer to this issue. With regard to the duration of a marital agreement that has not yet entered into legal force, the author notes that if the parties subsequently refuse to enter into marriage, the marital agreement should be regarded as terminated.

At first glance, the issue may appear theoretical. However, the presence of such an agreement does introduce a degree of uncertainty into civil turnover. Nonetheless, this uncertainty primarily concerns only the parties to the agreement, as such a marital contract has no legal relevance for other participants in civil circulation.

Attention should also be drawn to the fact that a marital (prenuptial) contract cannot be concluded between persons whose marriage is prohibited by law. Such persons include, in particular: individuals who are already married; close relatives; full siblings; adoptive parents and adopted children; and persons declared legally incapable by a court due to mental disorder.

The following situation is also of interest: Do individuals who are in de facto marital relationships have the right to conclude a marital agreement? The answer is clear: the conclusion of a marital agreement between a man and a woman who are living in a so-called “civil marriage” (cohabitation) cannot be regarded as a marital contract, since national legislation does not attribute legal significance to such relationships. This seems logical, on the one hand, because a marital agreement is intended to

regulate property relations between spouses who have formalised their marriage in accordance with the law. Individuals who are not legally married are not deprived of the possibility of regulating their property relations through other contractual mechanisms.

However, under contemporary conditions, situations in which a man and a woman cohabit for five or even ten years are far from uncommon. The reasons for their failure to formalise the relationship may vary widely. Nonetheless, it cannot be denied that they maintain a joint household, acquire movable and immovable property, jointly raise children, share income, and so forth. In other words, they engage in the same activities as spouses in a legally registered marriage. Why, then, should they be prohibited from concluding a marital agreement?

This situation could potentially be resolved, for example, by introducing legislative provisions granting individuals in de facto family relationships the right to conclude a marital agreement, provided that such a relationship has existed for a period of more than, for instance, three years, that jointly acquired property exists and is confirmed by relevant documentation, or that the couple has common children. Moreover, the establishment of the fact of a de facto marital relationship should be carried out with the involvement of a competent authority, such as a court, which would determine the legally significant circumstances.

The introduction of such provisions, however, would signify a departure from the fundamental principles of family legislation in the Republic of Uzbekistan, as set out in Article 1 of the Family Code of the Republic of Uzbekistan. Under this provision, marriage is recognised only when it has been registered by the civil registry authorities. In other words, the legislator does not encourage unregistered relationships between a man and a woman, granting greater legal protection to spouses whose marriage has been formally registered. Nevertheless, allowing individuals in de

facto marital relationships to conclude a marital contract would, to some extent, safeguard the interests of such “de facto spouses”.³⁰

Therefore, as an alternative means of regulating the property interests of both spouses in registered marriages and persons in de facto marital relationships, Article 29 of the Family Code of the Republic of Uzbekistan could be supplemented with the following provision:

“A marital contract shall also be recognised as an agreement concluded between persons in de facto marital relations.

De facto marital relations shall be understood as a relationship between a man and a woman who maintain a joint household and cohabit for more than three years, which is confirmed by a court decision that has entered into legal force.”

When concluding a marital contract, particular attention must be given to the legal capacity of the parties.

The family legislation does not contain statutory definitions of family legal capacity or capacity to act. In this regard, legal scholarship generally proceeds from the position that family law, which emerged as a specialised subdivision of civil law, applies the categories of legal capacity and capacity to act as developed within the broader civil law framework. Consequently, any change in a person’s civil legal capacity results in a corresponding change in his or her family law status and legal relations.

As a general rule, the subjects entitled to conclude a marriage contract may only be persons possessing full legal capacity. However, the legislation in force provides for exceptions to this rule, which concern minors who have acquired full legal capacity in the manner prescribed by law prior to attaining the age of 18 years. Thus, the acquisition of full legal

³⁰ Family Code of the Republic of Uzbekistan. National Legislation Database, 07.02.2024, No. 03/24/905/0106.

capacity is possible in the event of a minor entering into marriage before reaching the age of eighteen. In such circumstances, full legal capacity shall be retained even if the marriage is dissolved before the minor attains the age of 18 years. Nevertheless, in this situation, minors may conclude a marriage contract only after the marriage has been entered into; prior to entering into marriage, they shall not be regarded as subjects entitled to conclude a marriage contract.

Recognition of a minor as fully capable may also occur through the procedure of emancipation. The aforementioned grounds for acquiring full legal capacity under civil law confer an identical scope of legal capacity upon minors. In family law, however, the position is somewhat different. A minor who has become fully capable enjoys freedom in concluding a marriage contract, inasmuch as he or she is endowed with transactional capacity, but does not possess marital capacity.

Consequently, a marriage contract concluded by an emancipated person shall enter into force only after the marriage has been entered into, and such marriage shall require the obtaining of appropriate permission in the ordinary manner from the local self-government authorities.

An inconsistent approach may be encountered in the literature concerning the possibility of concluding a marriage contract through a representative. At present, the institution of representation enjoys considerable popularity in commercial circulation, as it enables participants in civil turnover to engage simultaneously in the execution of multiple transactions, to seek assistance from knowledgeable and experienced persons, and in certain cases to effect savings.

In the family sphere, the institution of representation is most frequently employed in relation to persons who, by reason of age, state of health (including mental disorder), or other life circumstances, are unable to exercise their rights and duties independently.

At the same time, civil legislation imposes restrictions on certain types of transactions that may not be effected through a representative. These include, in particular, transactions which by their nature may only be performed in person and transactions expressly designated in law (for example, the prohibition on testamentary disposition by a person lacking capacity).

The provisions of Article 29 of the Family Code of the Republic of Uzbekistan, which regulate the conclusion of a marriage contract, do not establish a direct prohibition on the possibility of concluding a marriage contract through a representative. Accordingly, a prevailing view has emerged in the literature to the effect that, inasmuch as a marriage contract “is purely proprietary in character, does not concern the personal non-proprietary relations of spouses, and may therefore be executed through a representative in the same manner as any other civil-law contract”.³¹

Other authors, however, contend that “unlike the majority of other transactions of a proprietary nature, a marriage contract is inextricably linked to the personality of the participants who are in marital relations and therefore cannot be concluded either with the involvement of a statutory representative or by proxy”.

The first view appears the more persuasive, precisely because the statutory definition of a marriage contract makes clear that spouses may not regulate personal non-proprietary relations. The primary content remains, after all, the proprietary sphere of the spouses. Nevertheless, direct legislative enactment of a prohibition—or, conversely, permission—on the conclusion of a marriage contract through a representative would put an end to the debates on this issue.

³¹ Family Code of the Republic of Uzbekistan. National Legislation Database, 07.02.2024, No. 03/24/905/0106.

In summary of the foregoing, it should be noted that a marriage contract possesses a distinctive and specific composition. Thus, the subjects may only be spouses in a registered marriage, as well as persons entering into marriage. It has been established that the term “persons entering into marriage” must be understood to refer precisely to those who have manifested the requisite intention to create a family through their actions, by submitting an application to the authorised body.

An analysis of the legislation in force permits the conclusion that there is no direct prohibition on concluding a marriage contract through a representative. Nevertheless, given that a marriage contract is by its nature to be classified as a civil-law contract possessing particular specificity—namely, that it bears a personal and fiduciary character—such a prohibition appears expedient. The elimination of this lacuna would facilitate the simplification of civil turnover.

A marriage contract shall be concluded in written form and is subject to notarisation. Failure to comply with the prescribed form of the marriage contract or the absence of notarisation shall render it invalid.

Inasmuch as interested parties have a sufficient number of grounds for challenging a marriage contract or its individual provisions in accordance with the rules established by the norms of civil legislation, genuine mechanisms for preventing judicial disputes are required. As such a mechanism, the legislator has proposed the institution of notarisation of the marriage contract. Thus, “the role of notarisation of transactions is difficult to overstate, for the notariat truly serves as a distinctive guarantor of legality, protecting the rights and legitimate interests of citizens and legal persons and preventing their infringement. Undoubtedly, it is difficult to deny that legislation in the sphere of notarisation of transactions and the regulation of notaries’ activities in this area will be improved in the near future; however, certain inconsistencies remain

which must nonetheless be rectified as soon as possible in order to enhance the effectiveness of notarial procedures”.

The notarial form of a transaction is manifested in the notary’s execution of a certification inscription on the document itself. “A certification inscription is a concise exposition by the notary, as a person safeguarding the rights and legitimate interests of those who have approached him or her, of the essence of the document.

The notary executes the certification inscription as confirmation that the document being certified expresses the intention of the parties. To this end, spouses or persons entering into marriage may apply to a notary practising in a state notarial office or to a notary in private practice.”

“A document certified in this manner, which is generally prepared on paper, ‘reinforces’ the legal significance of the written form of the transaction, inspires greater confidence, and in a certain sense ‘elevates’ it above other evidence. The participation of a notary in the execution of transactions ensures their legal purity, the conformity of the documents with the intention of the persons participating in the transaction, and endows the transaction itself with exceptional robustness.”

Thus, the written form of a transaction certified by a notary gives rise to a document attesting to the bona fide and reasonable conduct of the participants in the transaction at the time of its execution, possessing indisputable value for the purpose of protecting the rights and legitimate interests of its holder.

The legal essence, content, and significance of a notarial act are inextricably linked to the state of the notariat institution at any given period. It is submitted that a notarially certified marriage contract constitutes one of the types of notarial acts.

“A notarial act is a public, authoritative decision of a notary in a specific notarial matter, expressed in written form, founded on law, and

directed towards the creation, alteration, or termination of subjective rights and obligations.”

In accordance with the Law of the Republic of Uzbekistan “On the Notariat”, a notarial act is “a document certified, issued, or attested by a notary or other specially authorised person and entered in the register of notarial acts”.

The enforceability of a notarial act serves as an effective mechanism for protecting the rights of its participants and is, unquestionably, essential for the development of civil turnover, ensuring the prevention of legal conflicts. It is submitted that this applies fully and most directly to a marriage contract as a notarial act.

The existence of a mandatory notarial form should be recognised as a special rights-protection mechanism—a protective measure in the sphere of family legal relations—where, in the view of the State, the rights and interests of subjects must be safeguarded with particular reliability.

At the same time, the notarisation of a marriage contract must not affect the substance of the transaction itself, restrict the freedom of expression of the parties’ intentions, or impair their proprietary autonomy.

The notary is obliged to explain to the parties the meaning and significance of the draft transaction submitted by them and to verify whether its content corresponds to their true intentions and does not contravene the requirements of the law. It is also of no small importance that the notary remind the spouses of their duty to inform creditors of the facts of conclusion, amendment, and termination of the marriage contract, in order to prevent the use of this contractual structure for the purpose of evading civil-law liability. In the event of failure to fulfil this duty, the spouse shall be liable for his or her obligations irrespective of the content of the marriage contract.

All this attests to the special procedure for the notarial certification of such a specific transaction as a marriage contract.

It should be noted that the notarial system in foreign jurisdictions is characterised by a division of notaries into private and state practitioners. In Japan, however, the notariat constitutes an organ of justice, and the concept of “state notary” is statutorily enshrined. The United States is distinguished by the institution of “public notaries”, who are not necessarily qualified lawyers, are vested with limited powers, and in practice serve merely as witnesses enjoying public trust.³²

When applying to a notary for the preparation of a marriage contract, spouses must produce a certificate of registration of marriage or confirm their existing status by endorsements in their passports. A separate issue arises in relation to applications by persons entering into marriage. As rightly observed by E.A. Chefranova³³ and S.Yu. Chashnikova, prospective spouses are not required to substantiate the fact of having submitted an application to the civil registry authorities for registration of marriage.

The notary’s task in this instance is to ascertain that the marriage contract is intended to be concluded by persons who are legally capable, have attained marriageable age, are not closely related, are not party to another registered marriage, and do not stand in the relation of adopter and adopted to one another.

Nevertheless, an alternative viewpoint exists. Thus, B.M. Gongalo contends that prospective spouses must confirm their status by submitting an application to the civil registry authorities (ZAGS).³⁴

³² Latin notaries in the United States. URL: <http://www.justicemaker.ru/view-article.php?id=3&art=4016>

³³ Chefranova E.A., Chashnikova S.Yu. Application of family law in notarial practice: Textbook. Moscow, 2014. P. 42.

³⁴ Gongalo B.M. et al. Notaries and notarial activity: A textbook for advanced training courses for notaries / Edited by V.V. Yarkov, N.Yu. Rasskazova. Moscow, 2009. Page 78.

Accordingly, “prior to the notarial certification of the transaction, the notary is obliged to:

1. establish the identity of the persons applying for notarial certification of the marriage contract;
2. establish the age of the parties to the marriage contract;
3. verify the legal capacity of the parties to the marriage contract;
4. verify the existence of a decision by the guardianship and trusteeship authority or a court decision declaring a minor fully capable, in the event that an emancipated minor applies for notarial certification of the marriage contract;
5. verify the existence of a marriage registration certificate and the absence of a certificate of its dissolution, where the marriage contract is concluded following state registration of the marriage;
6. verify the powers of the statutory representative of a person of limited capacity, where the statutory representative gives consent to the conclusion of the marriage contract”.³⁵

Attention should be drawn to one of the notarial acts performed in the context of concluding a marriage contract. Thus, the verification of the legal capacity of persons is of a highly conditional nature, inasmuch as no legal mechanism currently exists for verifying the capacity of citizens. The only available options are to establish the citizen’s age and to draw certain conclusions regarding capacity during the course of conversation with the citizen applying for notarial certification of the transaction.

In the opinion of A.A. Mokhov and S.V. Kolganova, “a notary has several means of establishing a person’s lack of capacity:

1. obtaining a court decision that has entered into legal force declaring the citizen incapable;

³⁵ Poberezhny S.G. Notarized marriage contract as a type of notarial act and evidentiary presumption in protecting the rights of spouses // Notary. 2018. No. 5. P. 21.

2. obtaining a document confirming the presence (or absence) of the person's registration at a psychoneurological dispensary;

3. obtaining a certificate from a psychiatrist concerning the citizen's state of health".³⁶

At the same time, it must be understood that competent authorities are not obliged, upon a notary's request, to provide information constituting medical confidentiality.

Accordingly, it is submitted that a notary has no lawful basis for obtaining information concerning a citizen's state of health, which complicates the process of verifying the capacity of a person applying to the notary for certification of a transaction.

When applying to a notary, a person who has not attained marriageable age must produce permission from the local self-government authority for entering into marriage before reaching that age. If the fact of a person's lack of capacity is established, the conclusion of a marriage contract shall not be possible. In such circumstances, a guardian may not perform on behalf of the ward any acts connected with the conclusion of a marriage contract, inasmuch as a marriage contract is a personal transaction. Analogous provisions apply to the conclusion of a marriage contract by proxy.

The content of a marriage contract consists of its terms, in accordance with which the parties shall exercise their proprietary rights and obligations; "the content of a marriage contract is the selection and establishment of the legal regime of the spouses' (prospective spouses') property".

³⁶ Antropova I.R. Notarial certification of a marriage contract // Bulletin of Udmurt University. 2014. N 2. P. 114-118.

The legislation on the notariat establishes specific requirements for the drafting of the text of a marriage contract. Among these requirements, the following may be highlighted:

- the text must be written clearly and legibly;
- sums and time limits pertaining to the content of the document must be indicated at least once in words;
- in respect of a natural person, the text of the document must state the surname, first name, patronymic, and place of residence.

In the view of A. Narinyani and A. Dovlatova, such measures are intended to preclude ambiguities and differing interpretations of what is recorded in the marriage contract.³⁷

The principal element of the content of a marriage contract is the establishment of the legal regime of matrimonial property. Such a regime, as determined by the marriage contract, is termed the contractual regime of matrimonial property. In creating a contractual regime, spouses are afforded very extensive rights.

By means of a marriage contract, spouses may alter the statutory regime of joint ownership and establish a regime of joint, shared, or separate ownership in respect of all the spouses' property, particular categories thereof, or the property of each spouse.

The chosen regime may apply to all the spouses' property, to particular categories thereof, or to the property of each spouse.

It is submitted that amendments should be made to the existing formulation. It would be more precise to state that a marriage contract may alter both the regime of common ownership and the regime of separate ownership of each spouse. Accordingly, it may be proposed to establish in the Family Code of the Republic of Uzbekistan "the following types of

³⁷ Narinyani A. *From Wedding to Divorce. Protection of Family Law in Russia*. Moscow: RIPOL Classic, 2014. P. 93.

legal regimes for spouses: in respect of the spouses' joint property—a regime of shared or separate ownership; in respect of property held by the spouses in shared ownership—a regime of joint or separate ownership; in respect of the spouses' personal property—a regime of joint or shared ownership”.

In the opinion of E.A. Chefranova and S.Yu. Chashnikova, any other content in a marriage contract would lead to a restriction of the spouses' proprietary relations. A further contentious issue is whether a marriage contract may provide for the transfer of property belonging to one spouse in his or her separate ownership to the other spouse on the basis of separate ownership. Pursuant to Article 36 of the Family Code of the Republic of Uzbekistan, spouses, as participants in civil turnover, are entitled to enter into any transactions with property held in their separate ownership; accordingly, if spouses transfer property to one another without altering its regime, they must conclude not a marriage contract but other transactions effecting the transfer of ownership (gift, sale and purchase, etc.).

On the basis of the foregoing, a marriage contract containing a provision for the transfer of property to the other spouse, rather than altering the legal regime of the property, is void, inasmuch as it is executed with the intent of disguising another transaction.

The Family Code provides that a marriage contract may include rights and duties in respect of property which the spouses will acquire in the future. Otherwise, property acquired by the spouses after the conclusion of the marriage contract would be subject not to the contractual regime but to the statutory regime of matrimonial property.

The legislation of certain states permits the inclusion in a marriage contract of provisions regulating the spouses' personal non-proprietary relations. Pursuant to paragraph 3 of Article 42 of the Family Code of the

Russian Federation, in Russia the personal rights and duties of spouses may not be regulated by a marriage contract.

“The list of provisions whose inclusion in a marriage contract is impermissible is mandatory in nature. The statutory prohibition on including in a marriage contract provisions regulating the spouses’ personal non-proprietary relations is conditioned not only by the essential characteristics of those relations but also by the impossibility, where necessary, of enforcing duties of a personal character.”

A similar view is held by L.M. Pchelintseva, who observes that the exclusion of personal non-proprietary relations from the scope of a marriage contract “is conditioned by the fact that, where compulsory enforcement of obligations of a personal nature becomes necessary, it will be impossible to achieve (no one can be compelled by a court decision to love, respect, etc.)”.

Nevertheless, diverse relations arise between spouses: some give rise to others, and proprietary relations flow from non-proprietary ones, thus standing in a causal connection.

As rightly noted by A.S. Tsvetkov, “a marriage contract may not incorporate elements of a will: it determines mutual rights and duties in respect of property during marriage or upon divorce, but not in the event of death. In other words, spouses may not employ the structure of a marriage contract to resolve proprietary issues in the event of their death. At the same time, the contractual regime of ownership of matrimonial property established by them affects the estate upon succession. For example, in the case of separate ownership of property, half of the other spouse’s property will accordingly not be inheritable.”³⁸

³⁸ Tsvetkov A.S. Marriage contract as a legal instrument of human rights activities of the notary // Modern law. 2015. No. 10. P. 42.

A marriage contract may be concluded in respect of both existing and future property of the spouses.

Spouses are entitled to determine in their marriage contract their rights and duties regarding mutual maintenance, the manner of participation in each other's income, the procedure for each bearing family expenses; to specify the property that will be transferred to each spouse in the event of dissolution of the marriage; and to include in the marriage contract any other provisions concerning the proprietary relations of the spouses.

Rights and duties provided for in a marriage contract may be limited to specific periods or made dependent on the occurrence or non-occurrence of specified conditions.

A marriage contract may not limit the legal capacity or capacity to act of the spouses, or their right to apply to a court for the protection of their rights; regulate personal non-proprietary relations between the spouses or the rights and duties of spouses in relation to children; contain provisions limiting the right of a disabled and needy spouse to receive maintenance; or include other conditions that place one of the spouses in an extremely disadvantageous position or contravene the fundamental principles of family legislation.

“Any marriage contract must contain a number of important ancillary provisions. First and foremost, these include methods for determining the initial composition of property (as at the moment the contract enters into force) and the final composition (as at the moment the contract ceases to have effect), the procedure for drawing up an inventory of such property, and the procedure for spouses to keep records of their property (income, expenditure, movable items not subject to registration). It is also expedient to include provisions concerning the fate of property in respect of which it is impossible to determine to which spouse it belongs. The absence of

such ancillary provisions may result in a protracted and intractable judicial dispute arising in the course of performance of the contract, whereas the primary purpose of concluding a marriage contract is precisely to avoid such a dispute.”³⁹

The provision in question infringes the principle of equality of spouses and contravenes the peremptory norm of the Family Code of the Republic of Uzbekistan, which requires notarially certified consent of one spouse for the other to effect transactions involving the disposal of immovable property that require notarisation (registration). Moreover, such a condition restricts the legal capacity of the spouse, depriving her of the possibility of applying to a court for a declaration that a transaction entered into without her consent is invalid.

The likelihood of incorporating elements of different contracts into a marriage contract demonstrates its complex structure and permits it to be characterised, from the perspective of its legal nature, as a mixed contract.

Each element of such a contract constitutes, in a sense, “an independent agreement; the aggregate of such mini-agreements, united into a single whole, constitutes the marriage contract. A marriage contract is by no means a standard-form contract; its very text may reflect elements of such civil-law contracts as a contract of gift or gratuitous use, and this complexity distinguishes a marriage contract from other matrimonial agreements.”

The primary objective of a marriage contract is the mutual desire of spouses to alter the statutory regime of property applicable to both parties and to conclude it on specific terms, freely and autonomously, without any impediments. At the present time, a marriage contract constitutes a highly convenient means of regulating the proprietary relations of spouses. By its

³⁹ Adaev I.K., Nesterova T.I. Marriage contract: concept, legal nature and content // Notary. 2014. No. 6. P. 34.

legal nature, a marriage contract is a species of civil-law contract and, accordingly, the rules governing obligations, transactions, and contracts apply to it.

Spouses may now independently determine their proprietary rights and duties during marriage and following its dissolution. This is made possible through the marriage contract.

At present, the majority of couples conclude a marriage contract on the day of marriage registration, whilst others contemplate doing so whilst already in matrimonial relations. The number of marriage contracts concluded increases with each passing year. It should be noted that, in addition to proprietary relations, a marriage contract may regulate relations between parents and children. For example, under the terms of the agreement, the spouse who initiates divorce proceedings may forfeit not only proprietary rights in immovable property or a motor vehicle but also the right to communicate with the children.

Before proceeding with divorce, a potential infringer would think a hundred times whether such sacrifices are warranted or whether every effort should be made to preserve the family. The marriage contract serves not only to record the principal aspects of proprietary relations between spouses but also to strengthen familial bonds.

The specificity of a marriage contract predetermines a number of distinctive features attending its conclusion, which differentiate it from other contracts.

The right to conclude a marriage contract is vested in:

1. fully capable adult citizens;
2. emancipated minor citizens;
3. minors who have obtained permission;
4. adults of limited capacity, with the consent of a trustee.

According to certain authors, “where a marriage contract is concluded prior to registration of the marriage, it may be regarded as a contract entered into subject to a suspensive condition. Where the marriage contract is concluded after registration of the marriage—at any time during the subsistence of the marriage—the general provision of civil legislation applies, whereby it enters into force from the moment of its conclusion”.⁴⁰

A marriage contract concluded prior to state registration of the marriage enters into force on the date of state registration of the marriage. Contemporary studies of the institution of the marriage contract advance the view that “a requirement should be introduced for an endorsement concerning the conclusion of a marriage contract to be entered in the marriage certificate; however, in our opinion, such a position does not merit support, inasmuch as the insertion of an endorsement in the marriage certificate is contrary to the essence of that document. In this regard, the maintenance of public registers of certified marriage contracts appears more acceptable. The foregoing is all the more pertinent given that the structure of the marriage contract is nowadays frequently employed as an effective means of evading the recovery of debts by creditors and the performance by spouses of obligations and judicial decisions.”

Undoubtedly, the division of spouses’ common property on the basis of a marriage contract is preferable to the law-enforcement authorities; however, as observed in the scholarly literature, the use of marriage contracts to alter the statutory regime of property (typically immovable property) leads in practice to judicial disputes owing to “the absence or extreme brevity of legal norms regulating the procedure for their

⁴⁰ Adaev I.K., Nesterova T.I. Marriage contract: concept, legal nature and content // Notary. 2014. No. 6. P. 34.

conclusion and performance”. Accordingly, on the basis of the foregoing, the imperfection of legal regulation may be stated.

One of the contentious issues remains the possibility of extending the effect of a marriage contract to a past period.

In accordance with the norms of the Civil Code, parties are entitled to stipulate that the terms of the contract concluded by them shall apply to relations that arose prior to its conclusion, unless otherwise provided by law or unless it follows from the essence of the relevant relations.

Drawing on this norm, S.V. Sarbash observes that “the provisions of a contract may be extended to a previous period, but only where relations existed between the parties during that period”.

Where property requiring state registration is concerned, “the general rule is that proprietary relations arise only from the moment of state registration; consequently, a spouse cannot be the owner in advance until the fact of state registration has been effected”.

A marriage contract must be signed by the persons concluding it and by the notary who carried out its notarial certification. “If, for a valid reason (due to physical disability, illness, or illiteracy), a citizen is unable to sign personally, the contract may, at his or her request, be signed by another person. The signature of the latter must be attested by a notary or other official authorised to perform such a notarial act, with an indication of the reasons why the person concluding the contract was unable to sign it personally.”

Citizens are entitled to apply to any notary operating within the state notarial system or engaged in private practice for the certification of a marriage contract. A notary may provide assistance in drafting a marriage contract.

The draft marriage contract may be prepared with the aid of the notary who is certifying it. The notary is under a duty to explain the

meaning and purpose of the marriage contract, as well as the legal consequences of its conclusion.

The notary certifying a marriage contract is intended to act as the person capable of rendering necessary assistance in understanding the marriage contract as a legal institution and juridical fact, and of explaining to citizens the legal consequences of including particular provisions in the marriage contract or of establishing proprietary rights and duties. The successful discharge of this function and the improvement of legislation in this sphere depend to a considerable extent on the theoretical analysis of the practice of applying the institution of the marriage contract.

Pursuant to the Constitution of the Republic of Uzbekistan, everyone has the right to respect for private life, personal and family privacy, and the protection of his or her honour and reputation. It is submitted that the conclusion of a marriage contract, together with its content, constitutes a family secret. “A notary, notary’s assistant, and employees of a notarial office are obliged to keep confidential the information contained in a marriage contract which has come to their knowledge in connection with the performance of notarial acts, and shall bear liability for its disclosure. Disclosure of the very fact of a citizen’s application to a notary is not permitted. In order to preserve the confidentiality of a notarial act, no extraneous persons may be present at the time of its performance.”

Nevertheless, the requirement to preserve professional (notarial) secrecy applies only to the circle of persons specified by law and in no way indicates the absolute confidentiality of a marriage contract. The law imposes upon spouses a duty to notify their creditors of the conclusion, amendment, or termination of a marriage contract. This duty is essential for the protection of creditors’ interests, inasmuch as the content of a marriage contract may on occasion affect those interests. A spouse who

fails to fulfil this duty shall be liable for his or her obligations irrespective of the content of the marriage contract.

By reason of the classification of information included in a marriage contract as constituting a family secret, neither the spouses nor the notary who has effected its notarial certification are subject to any obligation to publish information concerning concluded marriage contracts. A different legal position for creditors is enshrined in French legislation. Pursuant to Article 1394 of the French Civil Code, at the time of signing a marriage contract the parties are issued with a certificate containing full particulars of the parties to the contract, including the date of conclusion, the civil-law status, and the place of residence of the prospective spouses. Prior to registration of the marriage, such certificate is transmitted to the registrar of civil status for the purpose of recording and publishing information concerning the conclusion of the marriage contract. Thus, a creditor not only possesses information regarding the conclusion or amendment of a marriage contract but may also acquaint himself or herself with its content.

It may be concluded that agreements of this kind have appeared in our country relatively recently; during the Soviet period, such contractual relations were not regulated by the legislator. At present, this is a widespread practice and is clearly governed by law. The conclusion of such a transaction is a right, not a duty.

In the absence of a contract, the regulation of proprietary relations is effected by the peremptory norms of the Family Code of the Republic of Uzbekistan. An examination of this issue reveals that, in essence, a marriage contract regulates relations that primarily concern property. The initial enshrinement of such a contract in the Civil Code of the Republic of Uzbekistan, followed by its inclusion in the Family Code of the Republic of Uzbekistan, indicates the autonomy of the subjects of such relations, inasmuch as spouses are entitled to choose the modalities of their conduct

themselves. A distinctive feature of this contract is its independence in terms of the timing of its conclusion.⁴¹

In contrast to other contracts regulated by civil law, a marriage contract may be concluded at any time, irrespective of whether matrimonial relations have already arisen between the spouses or whether they merely intend to enter into an official marriage. It cannot be asserted that a marriage contract constitutes a discrete component of the sub-branch of civil law known as family law. The legislator expressly provides in the Civil Code of the Republic of Uzbekistan that the very possibility of concluding such a civil-law contract exists; that the procedure for amendment and termination of the contract is governed by the general principles and rules of civil legislation; and that the Family Code of the Republic of Uzbekistan supplements it with the particularities of the remaining provisions.

It is essential to appreciate that, as noted earlier in the context of Russian legislation, a marriage contract regulates exclusively proprietary legal relations. Relations arising from personal non-proprietary rights, freedoms, and interests of a person and citizen do not constitute the object of such agreements.

A marriage contract must be concluded on the principle of freedom of contract, as expressly indicated by the Civil Code. Coercion into entering into relations of this kind constitutes a direct violation of civil legislation.

An intriguing aspect of this issue is the absence, in either civil or family legislation, of analogous rules governing the legal relations provided for by the agreement. In such cases, the operation of those

⁴¹ Family Code of the Republic of Uzbekistan. National Legislation Database, 07.02.2024, No. 03/24/905/0106.

aspects falls under the general principles of civil and family law, and analogy of law applies.

Accordingly, any rigid demarcation by scholars of boundaries between disputes—asserting that family law and civil law are two distinct branches of law—is misplaced.

However, with respect to the question of the category of legal relations to which a marriage contract belongs, a unequivocal answer may be given: a marriage contract forms an integral part of both civil law and family law.

A further subject of scholarly debate is the conditional nature of a marriage contract where it is concluded prior to the prospective spouses entering into an official marriage, given that the property constituting the subject matter of the contract may, in essence, not yet be an object of joint ownership or property acquired during the marriage. In such circumstances, the contract may possess a consensual character.

A marriage contract, as a form of protection for the proprietary rights and interests of spouses, cannot provide a 100% guarantee that the subjects of the matrimonial relations will ultimately find all aspects satisfactory. Nor is a marriage contract an incontestable instrument.

For instance, in the event of disputes, an action may be brought before a court if one of the spouses or former spouses is dissatisfied with any provisions of the contract, inasmuch as the Constitution of the Republic of Uzbekistan guarantees citizens the right to seek judicial protection of their rights and interests.

A transaction may be declared invalid by a court in whole or in part on grounds provided for invalid transactions under the Civil Code of the Republic of Uzbekistan.

1. Contestable transactions. For example, by appellate decision of the city court dated 16 June 2023 No 33-19507/17, a marriage contract

was declared invalid pursuant to Part 1 of Article 113 of the Civil Code of the Republic of Uzbekistan. The disputed flat was recognised as the personal property of the claimant by reason of a number of circumstances confirming the defendant's commission of violent acts against the claimant and the excusability of the claimant's failure to comply with the limitation period owing to his or her state of health.

2. Void transactions. The Family Code expressly prescribes the role of the notary in certifying the contract. It must be borne in mind that a contract is not valid unless notarially certified. The notary is obliged to explain the essence of the intended transaction and its legal consequences, and to verify whether the provisions set out in the text of the document correspond to the actual intentions of the parties.

The notary plays a significant role in this matter:

- first, the notary makes it possible to avoid errors in drafting the contract (which the spouses may prepare independently);
- secondly, a marriage contract bearing the notary's endorsement possesses legal force, thereby conferring the right to proceed with matrimonial legal relations.

In summary of the foregoing, it should be observed that a marriage contract is nothing other than a species of civil-law relations, founded upon the principles of the civil law of the Republic of Uzbekistan, derived from civil law, and supplemented by the particularities of family-law provisions as part of the regulation of matrimonial relations.

Amendment and Termination of a Marriage Contract.

The regulation of the proprietary relations of married couples during marriage and following its dissolution is enshrined in the norms of the Civil Code of the Republic of Uzbekistan and the Family Code of the Republic of Uzbekistan.

In the Civil Code of the Republic of Uzbekistan, this type of contract is afforded comparatively little space, unlike other kinds of contracts, yet it nonetheless forms an integral part of civil relations.

A marriage contract may be amended or terminated at any time by agreement of the spouses. An agreement to amend or terminate a marriage contract shall be executed in the same form as the marriage contract itself. In this regard, S.P. Stepkin observes that “amendment of a marriage contract by the will of the parties is permitted at any time, inasmuch as such a contract should initially be regarded as a foundation for possible adjustments, clarifications, and additions that may be introduced in the course of the spouses’ joint life. In the same manner, the contract may be terminated at any time by agreement of the parties. An agreement of this kind shall be executed in a form analogous to that of the conclusion of the contract and shall be subject to mandatory notarial certification. Furthermore, at the request of one of the spouses, such a contract may be amended or terminated by judicial decision or in the manner established by the Civil Code of the Republic of Uzbekistan for the amendment and termination of contracts.”

Yu.V. Afonassenko states that “amendment of a contract may be effected by supplementing it with new terms or by adjusting existing ones. It is possible to exclude individual clauses of the marriage contract whilst preserving the contract as a whole. Terms may be altered by reason of various circumstances. One spouse is not entitled unilaterally to refuse performance of the terms of the marriage contract.”

Unilateral refusal to perform a marriage contract is not permitted. At the request of one of the spouses, a marriage contract may be amended or terminated by a court decision on the grounds and in the manner established by the Civil Code of the Republic of Uzbekistan for the amendment and termination of contracts.

The procedure for amending a marriage contract differs from that applicable to the amendment of a civil-law contract and consists in the fact that, “first, an agreement to amend or terminate a marriage contract shall be concluded in the same form as the contract itself (whereas the terms of commercial transactions may provide for a different procedure); secondly, unilateral refusal to perform a marriage contract is not permitted”.⁴²

The effect of a marriage contract ceases upon termination of the marriage, save for those obligations provided for in the marriage contract for the period following termination of the marriage. An analysis of legislative provisions leads to the conclusion that a marriage contract, like any other contract, may be declared invalid.

The question whether a provision of a marriage contract places one of the parties in an extremely disadvantageous position must be resolved in each specific case, having regard to the circumstances.

At the same time, it should be borne in mind that provisions of a marriage contract concerning the regime of joint property that place one of the spouses in an extremely disadvantageous position (for example, where one spouse is entirely deprived of ownership rights in property acquired by the spouses during the marriage) may be declared invalid by a court at the request of that spouse.

It is submitted that provisions contained in a marriage contract that place one of the parties in an extremely disadvantageous position should include those whereby one spouse:

- transfers his or her pre-marital property to the other spouse;
- undertakes to pay all debts incurred by either himself or herself or the other spouse;

⁴² Ivanova S.V. Marriage by contract // Prepared for the Consultant Plus system, 2018. P. 55.

- incentivise dissolution of the marriage, for example by creating a proprietary interest for one spouse in divorce, etc.

Scholarly literature has expressed the view that it is the duty of a notary, when certifying a marriage contract, to explain to the spouses that “the provision they wish to include is one that places one of the spouses in an extremely disadvantageous position. If, however, the spouses insist, the notary may certify such a contract”.⁴³

Judicial practice concerning the application of the limitation period to a marriage contract has developed inconsistently. Whereas one judicial decision holds that the limitation period does not apply to a claim for declaration of invalidity of a marriage contract, inasmuch as this is not provided for in the Family Code, another concludes that the limitation period is applicable to a claim for declaration of invalidity of a marriage contract and that the consequences of nullity of the marriage contract should be applied.

The Family Code does not prescribe a limitation period for a claim seeking declaration of invalidity of a marriage contract; at the same time, such application is permitted pursuant to Article 4 of the Family Code in the interests of stability and legal certainty in civil turnover.

Article 4 of the Family Code provides that “civil legislation shall apply to proprietary and personal non-proprietary relations between family members not regulated by family legislation, insofar as this is not contrary to the essence of family relations”.

Scholarly literature has advanced the view that a special limitation period for actions seeking declaration of invalidity of a marriage contract

⁴³ Chefranova E.A., Chashnikova S.Yu. Application of family law in notarial practice: Textbook. Moscow, 2014. P. 56.

is established by paragraph 1 of Article 44 of the Family Code as a consequence of the application of a referential norm.⁴⁴

It is submitted that this view cannot be regarded as correct. The rule in question establishes the general grounds for invalidity of transactions under the Civil Code, on the basis of which a marriage contract may be declared invalid. Where a marriage contract contains provisions whereby the spouses are entitled to transfer immovable property to one another, the notary must explain to the parties that the transfer of ownership rights in immovable property must be effected by means of state registration. A marriage contract may serve only as the basis for the emergence of private ownership rights.

N.V. Artemyeva considers that a marriage contract is a transaction not subject to state registration; however, rights in immovable property arising on the basis of that transaction are subject to mandatory state registration.

Where a marriage contract was concluded prior to the adoption of the Family Code of the Republic of Uzbekistan, it must be emphasised that amendments to that contract, as well as its supplementation and termination, must be carried out in accordance with the norms of the legislation currently in force.

An agreement to amend or terminate such a contract, like the marriage contract itself, requires written form and notarial certification.

At the request of one of the spouses, a marriage contract may be amended or terminated by a court decision on the grounds and in the manner established by civil legislation for the amendment and termination of contracts. E.A. Krashennnikov considers that amendment and termination of a contract in the aforesaid case “constitutes an exclusively

⁴⁴ Family Code of the Republic of Uzbekistan. National Legislation Database, 07.02.2024, No. 03/24/905/0106.

jurisdictional method of annulling a contractual obligation (for example, the husband's obligation to provide maintenance to the wife) and is effected not by the actions of the parties but by a transformative court decision".⁴⁵

A marriage contract may be terminated by a court in whole or in part if it is proved that performance of one or more of its provisions is impossible.

A contract may be amended or terminated at the request of one of the spouses by judicial procedure on the ground of material breach of the contract by one of the parties or on other grounds provided for by law or by the marriage contract.

The most probable basis for one spouse to substantiate a claim for termination of a marriage contract is the impossibility of performing the contractual obligations owing to a material change in the circumstances from which the parties proceeded at the time of its conclusion. A change of circumstances is recognised as material where they have altered to such an extent that, had the parties been able reasonably to foresee it, the contract would not have been concluded by them at all or would have been concluded on significantly different terms. Thus, a change in financial or family position may serve as confirmation that the circumstances from which the spouses proceeded when concluding the contract have materially changed. The consequence of termination of a marriage contract on the aforesaid ground is the cessation of the contractual proprietary regime and the automatic reversion to the statutory regime.

Spouses who conclude a marriage contract, amend its terms, or intend to terminate it must be informed by the notary of the content of the relevant articles of the Family Code. Pursuant to the aforementioned

⁴⁵ Krashennnikov E.A. Regulatory and protective subjective civil rights // Essays on trade law. Issue 14. Yaroslavl, 2007. P. 14.

article, a spouse is obliged to notify his or her creditor (creditors) of the conclusion, amendment, or termination of a marriage contract. Where this duty is not performed, the spouse shall be liable for his or her obligations irrespective of the content of the marriage contract. The creditor (creditors) of a spouse who is a debtor is entitled to demand amendment of the terms or termination of a contract concluded between them by reason of materially changed circumstances, in the manner established by the articles of the Civil Code.

“The legal consequences of amendment and termination of marriage contracts may be subdivided into general and special. General consequences are those established by law irrespective of the ground for amendment or termination. Special legal consequences of amendment and termination of contracts are prescribed by the legislator with reference to the grounds for such amendment and termination.”

Irrespective of whether a marriage contract has been terminated by agreement of the parties or by court decision, its effect, as a rule, ceases. At the same time, the termination of the contract itself must be distinguished from the termination of obligations under the contract, inasmuch as the spouses’ obligations under a marriage contract may cease not only as a result of its termination.

The obligations of the parties cease depending on the moment of termination of the contract. Where mutual consent exists, the marriage contract terminates from the moment such consent is reached and notarially certified; where the matter is resolved by a court, termination occurs from the moment the court decision enters into legal force.

In certain cases, the effect of a marriage contract ceases automatically. Thus, if a marriage contract contained a single provision—for example, establishing a legal regime of shared ownership in respect of specific immovable property that had previously been the joint property of the

spouses, and the share of each spouse has been registered in the prescribed manner—the effect of that marriage contract ceases upon performance of the contractual obligation.

In the Republic of Uzbekistan, more than half a million marriages are registered annually; however, marriage contracts are concluded by only 5–6% of citizens, and even then predominantly by those who have previously experienced divorce and division of property. Young couples, by contrast, regard the conclusion of a marriage contract as a factor apt to cast a shadow over the pure sentiments of love and to engender distrust.

A marriage contract enables spouses to resolve many material issues while they are still able to listen to one another and reach agreement. According to statistics, proprietary disputes between spouses who have failed to conclude a marriage contract constitute one of the most intractable categories of civil cases. Accordingly, the conclusion of a marriage contract represents the most civilised means of settling a potential dispute.

Thus, a marriage contract may be amended or terminated at any time by agreement of the spouses. An agreement to amend or terminate a marriage contract shall be executed in the same form as the marriage contract itself.

At the request of one of the spouses, a marriage contract may be amended or terminated by a court decision. The effect of a marriage contract ceases upon termination of the marriage, save for those obligations provided for in the marriage contract for the period following termination of the marriage.

A marriage contract may be terminated by judicial procedure on grounds provided for in the provisions of the Civil Code concerning contestable and void transactions. A court may also declare a marriage contract invalid in whole or in part at the request of one of the spouses if

the terms of the contract place that spouse in an extremely disadvantageous position.

Recovery under the obligations of one of the spouses may be levied only on the property of that spouse. If that property is insufficient, the creditor is entitled to demand the allocation of the share of the debtor-spouse which would accrue to the debtor-spouse upon division of the spouses' common property, in order to levy execution thereon. Execution is levied on the spouses' common property in respect of the spouses' joint obligations and also in respect of the obligations of one of the spouses if the court establishes that everything obtained under the obligations of one of the spouses was used for the needs of the family. If that property is insufficient, the spouses shall bear joint and several liability for the aforesaid obligations with the property of each of them.

If a court judgment establishes that the spouses' common property was acquired or increased with funds obtained by one of the spouses through criminal means, execution may be levied accordingly on the spouses' common property or on a part thereof.

During the subsistence of a marriage contract, neither party has the right to refuse performance thereof. This reflects the fundamental principle of contract performance, whereby assumed obligations must be discharged. Nevertheless, the existence of specific contractual obligations does not preclude the possibility of amendment of the marriage contract. As with the conclusion of any other contract, it is impossible to foresee conditions that may affect performance of the marriage contract, particularly given instability in the economic sphere.

The circumstances most frequently prompting spouses to amend the terms of a marriage contract include:

1. a material change in the family's financial position;
2. incapacity of one of the spouses;

3. the state of health of the spouses;
4. the birth of a child, etc.

Pursuant to the norms of the Family Code of the Republic of Uzbekistan, a marriage contract may be amended or terminated at any time by agreement of the spouses. An agreement to amend or terminate a marriage contract shall be executed in the same form as the marriage contract itself. Unilateral refusal to perform a marriage contract is not permitted.

At first glance, the matter appears straightforward. In legal practice, however, contentious situations frequently arise that are not easily resolved.

The legislator has established that amendment of a marriage contract requires the consent of both spouses and compliance with the same form as the marriage contract itself. More precisely, an agreement to amend the terms of a marriage contract must be drawn up in written form and notarially certified. In the event of failure to comply with formal requirements, the marriage contract continues to operate in its original version on the agreed terms. This position is also upheld in judicial practice.

The following case is instructive. The spouses had certified a marriage contract in compliance with all formal requirements. Under the terms of the concluded marriage contract, all property acquired during the marriage was subject to division in the event of dissolution of the marriage. In the event of divorce, B. was to acquire, at A.'s expense, a flat of not less than 60 square metres. This provision was to apply in the event of alienation by B. of the flat belonging to her. The spouses subsequently recorded the latest amendments in simple written form with the signatures of the parties and appended that agreement to the marriage contract. B. subsequently brought an action against A. for recovery from the defendant

of 200.5 million sums for the purchase of a flat. In support of her claims, B. relied on the fact that the marriage had been dissolved on 11 March 2009, whilst the alienation of the flat referred to in the marriage contract had occurred on 4 June 1997. The court of first instance refused to grant the claims. That decision was, however, quashed by the court of cassation, on the ground that civil legislation prescribes that agreements to amend or terminate a contract must be executed in the same form as the contract. It followed that, since documents complying with legal requirements confirming amendment or termination of the contract had not been produced to the court, the marriage contract concluded between the parties in 1996 continued in effect. On that basis, the court held that the marriage contract between A. and B. remained in force, and the claimant's demands were granted.

It is relatively rare for spouses, in the event of a dispute, to reach agreement on amendment of the terms of a marriage contract. Nevertheless, before applying to a court, the so-called "claim" procedure must be observed. In other words, prior to commencing proceedings, a proposal to amend the terms of the contract must be sent to the other spouse, setting out in sufficient detail the new proposed terms and specifying the terms to be amended. This procedure will serve in court to demonstrate good faith and an endeavour to resolve the differences amicably. At the same time, the provisions of the civil legislation in force must be taken into account. No period for response is prescribed in family legislation; in this situation, however, recourse should be had to the provision of the Civil Code stipulating a 30-day period for reply.

Where a dispute concerning amendment of a marriage contract cannot be resolved amicably, the spouses have no alternative but to apply to a court, which will examine the dispute on its merits in accordance with

the procedure established by law and deliver a decision amending or terminating the marriage contract.

In this regard, it must be borne in mind that “a contract may be terminated or amended by a court at the request of the interested party where four conditions are simultaneously satisfied:

1. at the time of conclusion of the contract, the parties proceeded on the basis that such a change in circumstances would not occur;
2. the change in circumstances is caused by reasons which the interested party was unable to overcome after they arose;
3. performance of the contract would so disturb the contractual balance of proprietary interests of the parties and entail such loss for the interested party that it would to a significant extent be deprived of that to which it was entitled to expect upon conclusion of the contract;
4. it does not follow from the terms of the contract that the risk of change in circumstances is borne by the interested party”.⁴⁶

Thus, Kh.L.V. brought an action against the defendants Kh.A.A., G., T.O., T.Yu., Ya. and, having clarified her claims, sought amendment of the terms of a marriage contract concluded between her and the defendant in 2005, under which the ownership regime of jointly acquired property—a non-residential premises located at: Tashkent, F. Street, building ..., room ...—was determined, whereby the claimant was entitled to a 25/100 share and the defendant to a 75/100 share. She grounded her claims on the fact that, subsequent to conclusion of the marriage contract, the circumstances from which the parties had proceeded had changed: a third child had been born; her financial position had altered—she had been dismissed from employment; during the marriage she had been registered

⁴⁶ Yashchenko V.A. Legal basis for changing and terminating a marriage contract // Bulletin of the Ural Institute of Economics, Management and Law Bulletin of the Ural Institute of Economics, Management and Law. 2016. N2 (35). P. 58.

as disabled, necessitating additional expenditure on treatment, medicines, and medical care; following dissolution of the marriage, the children remained residing with her, whilst the defendant incurred no expenditure on the children's maintenance and took no part in their upbringing. The court of first instance concluded that the grounds advanced by the claimant were insufficient to warrant termination (amendment) of the marriage contract, inasmuch as the contract determined the division of a single non-residential premises only, other property not being included in the marriage contract, and the size of the share in the non-residential premises did not materially affect the claimant's rights. The court of appeal upheld the decision of the court of first instance in respect of the claim for amendment of the terms of the marriage contract.

An intriguing dilemma arising in the study of issues concerning amendment of the terms of a marriage contract is the question of the subjects entitled to effect such amendment. Pursuant to the Family Code, the parties to an agreement amending or terminating a marriage contract may only be persons in a registered marriage, that is, the husband and wife. This is primarily explained by the fact that only a contract that has entered into force may be amended or terminated under the law. As is known, a marriage contract enters into force not from the moment of its signature but from the moment of official registration of the marriage in the civil registry authorities. A number of civil-law scholars consider that former spouses may not introduce amendments to a marriage contract following divorce. O.N. Nizamieva adheres to a similar view, stating that "the right to claim amendment or termination of a marriage contract is not granted by law to persons other than the spouses themselves".⁴⁷

⁴⁷ Avliev V.N., Naranova Z.Yu. Changes in the marriage contract in Russia and Belarus: a comparative aspect. // Bulletin of Science and Creativity. 2016. N 5(5). P.23

Furthermore, no amendments may be made to that part of a marriage contract which continues to have effect in the event of divorce. “In such situations, spouses are compelled to employ those types of contractual structures provided for such cases by law: agreements on division of common property, on set-off, etc.”⁴⁸

The courts adhere to this position. Thus, in the examination of a case, the court of appeal observed that, by virtue of the provisions of the Family Code, a marriage contract may be amended or terminated at any time by agreement of the spouses. An agreement to amend or terminate a marriage contract shall be executed in the same form as the marriage contract itself. In other words, amendments to the terms of a marriage contract may be made only by persons in a subsisting marriage.

Accordingly, the principal requirements for the procedure for amending a marriage contract may be summarised as follows:

1. attainment of mutual consent between the spouses;
2. compliance with the notarial form of the agreement to amend the terms of the marriage contract.

Where differences arise between the spouses, amendment of a marriage contract is possible by judicial procedure. An analogous approach is encountered in the legislation of the Republic of Belarus. Thus, Part 5 of Article 13 of the Code of the Republic of Belarus on Marriage and the Family establishes that “...persons entering into marriage, as well as spouses prior to dissolution of the marriage, may by mutual consent introduce amendments and supplements to the Marriage Contract at any time, certifying them notarially”.⁴⁹ At the same time, it should be noted that the range of subjects entitled to amend a marriage contract is

48 Ananskikh I.A., Polugrudova T.A., Semenova M.V. On the issue of changing and terminating a marriage contract under Russian law // Scientific notes of the Faculty of Law. 2015. N 38(48). P.87.

49 Code of the Republic of Belarus on Marriage and Family [Electronic resource] // URL: http://kodeksy-by.com/kodeks_rb_o_brake_i_semje/13.htm (Accessed: 10.10.2016).

somewhat broader here, inasmuch as former spouses may also amend or terminate a marriage contract.

In Ukraine, similarly to the procedure established in the Republic of Uzbekistan and Russia, a marriage contract may be amended by agreement of the spouses, which shall be notarially certified.⁵⁰

Upon amendment of a marriage contract, the rights and duties of the spouses continue to subsist in their amended form. It may be said that the contract retains its effect for the future, but only certain of its terms and the content of the obligations are altered. Termination of a marriage contract, by contrast, constitutes premature cessation of the contract's effect for the future. The rights and duties of the parties were applied and exercised on a lawful basis, but from the moment of termination of the contract they cease to have effect. The procedure for termination of a marriage contract is analogous to that established for amendment of a marriage contract. This may be either a mutual agreement of the spouses executed in the prescribed form or termination of the marriage contract by judicial procedure.

With regard to termination of a marriage contract at the request of one of the spouses, agreement may be expressed with E.A. Krasheninnikov, who considers that amendment and termination of a contract in the aforesaid case “constitutes an exclusively jurisdictional method of annulling a contractual obligation (for example, the husband's obligation to provide maintenance to the wife) and is effected not by the actions of the parties but by a transformative court decision”.

The realisation of this claim is effected by application to a court of general jurisdiction, which examines it in contentious proceedings. At the same time, it should be emphasised that the national legislator, as well as

⁵⁰ Art. 100 Family Code of Ukraine [Electronic resource] //URL:<http://meget.kiev.ua/kodeks/semeyniy-kodeks/razdel-2/#10>. (Accessed: 10.10.2016).

the Russian and Belarusian legislators, provides that an interested party may not apply to a court for amendment or termination of a contract where pre-trial attempts at amicable settlement of the dispute have not been undertaken.

No such rule exists in Ukrainian legislation. One of the parties to a marriage contract has the right to apply directly to a court with a claim for amendment or termination of the marriage contract.

The principal ground for amendment or termination of a marriage contract by judicial procedure is a material breach of the contract by one of the parties. As a general rule, a breach is regarded as material where it occasions such loss to the other party that it is to a significant extent deprived of that to which it was entitled to expect upon conclusion of the contract. Loss in this context may encompass any form, including non-pecuniary damage caused to the other party by breach of the contract's terms.

Upon conclusion of a marriage contract, spouses are empowered, at their discretion, to specify in the contract which breaches shall be deemed material by them and, consequently, constitute grounds for amendment or termination of the marriage contract. One spouse may demand compensation from the other for losses caused by amendment or termination of the contract only where the ground for such amendment or termination was a material breach of the contract by the second spouse.

A special ground for amendment or termination of a contract is the material change in circumstances from which the parties proceeded at the time of its conclusion, as provided for in the norms of the Civil Code. The law determines that a change in circumstances is regarded as material where they have altered to such an extent that, had the parties been able reasonably to foresee it, the contract would not have been concluded by them at all or would have been concluded on significantly different terms.

A marriage contract may also be terminated as a result of dissolution of the marriage by divorce, the manner of such dissolution being of no particular significance. It should be borne in mind that a marriage dissolved in the civil registry authorities ceases on the date of its state registration in the register of civil-status acts. Where a marriage is dissolved by a court, it is deemed terminated from the date on which the court decision enters into legal force.

Where the parties fail to agree on bringing the contract into conformity with materially changed circumstances or on its termination, and are unable to formalise this by agreement, the marriage contract may be terminated by a court at the request of the interested party where the conditions previously enumerated are simultaneously satisfied. At the same time, scholarly literature rightly observes that the conditions provided for in the Civil Code “are primarily directed towards the regulation of commercial contracts. A marriage contract, by reason of its specificity and, above all, its continuing character, may require amendment or termination by a court even in the absence of all such conditions.”

It is worth noting that the proprietary rights and duties of citizens entering into marriage affect the interests not only of themselves but also of third parties, such as children and other heirs, creditors, parties to transactions, state authorities, and local self-government bodies, etc. In this connection, the legal mechanism for protecting the interests of third parties, particularly creditors, merits more detailed consideration.

Pursuant to the norms of the Family Code, a spouse is under a duty to notify his or her creditor (creditors) of the conclusion, amendment, or termination of a marriage contract. In the event of evasion of this duty, the spouse shall be liable for his or her obligations irrespective of the content of the marriage contract, although the marriage contract (or agreement on

its amendment or termination) remains valid in relations between the spouses themselves. At the same time, mere notification of the conclusion, termination, or amendment of a marriage contract is insufficient. The creditor must be “informed” of the altered proprietary position of the spouse.

Thus, K. applied to S.B. and S.O. for the allocation of a share in the spouses’ common property and for execution to be levied on the debtor’s property, grounding his claim on the fact that S.B. was a debtor under a loan agreement dated 31 October 2011, and a settlement agreement had been approved by order of the Yakkasaray District Court of the City of Tashkent dated 9 December 2013. The court of first instance established that, on 31 October 2011, a loan agreement for monetary funds in the amount of ... roubles had been concluded between the claimant and S.B., with a repayment deadline and payment of interest for the use of the funds due on 1 February 2012. The funds were not repaid by S.B. to the claimant within the prescribed period.

These circumstances were not contested. At the same time, the defendants had been married since DD.MM.YYYY. On 5 June 2012, the defendants concluded an agreement under the terms of which all property acquired by them during the marriage became the property of S.O. The terms of that agreement contained no obligations on the part of the spouses to notify their creditors of the conclusion of the present contract. In granting the claims, the court proceeded on the following basis.

Pursuant to the norms of the Family Code, execution under the obligations of one of the spouses may be levied exclusively on the property of that spouse. Where that property is insufficient, the creditor is entitled to demand the allocation of the share of the debtor-spouse which would accrue to the debtor-spouse upon division of the spouses’ common property, in order to levy execution thereon.

By virtue thereof, a spouse is obliged to notify his or her creditor (creditors) of the conclusion, amendment, or termination of a marriage contract. Where this duty is not performed, the spouse shall be liable for his or her obligations irrespective of the content of the marriage contract. Following signature of the loan agreement with the claimant and during performance of the obligations under that agreement, the defendant S.B. failed to inform the claimant of the conclusion of the agreement with S.O. The claimant learned of the existence of the agreement between the spouses and of its terms only in the course of the court hearing examining the dispute.

The existence of such a right in creditors is explained by objective reasons. Thus, spouses may conclude marriage contracts on multiple occasions and introduce amendments thereto. Consequently, it is impossible to monitor which contract is “current”. As a result, creditors lack reliable information concerning the regime of the spouses’ common property.

Having regard to the fact that civil legislation designates as creditors persons entitled to demand performance by a debtor of his or her duties, a literal interpretation of the provisions of the Family Code would imply that a debtor-spouse is under a duty to notify, for example, an organisation with which a contract for the hire of kitchen equipment has been concluded of the conclusion of a marriage agreement. Such a situation, however, appears absurd. The following observation may be encountered in the literature: “it would appear that the practice of applying this article will proceed along the path of guaranteeing the rights of creditors only in respect of transactions that are long-term or concluded by a citizen who is

a sole trader, or in respect of obligations arising from contracts requiring notarial certification or state registration”.⁵¹

It should also be noted that “a creditor is granted the right to demand amendment or termination of the contract concluded by him or her with the debtor-spouse, but not premature performance by the debtor-spouse of the obligation to the creditor”.

At the same time, an analysis of the legislation in force reveals that the debtor-spouse bears liability only in the event of failure to notify the creditor of amendment or termination of the marriage contract. The existence of notification signifies that the debtor-spouse has discharged his or her duty to inform the creditor and bears no liability, notwithstanding the content of the marriage contract.

Accordingly, it should be observed that a marriage contract, by reason of its specificity and having regard to the continuing nature of this contractual structure, may be subject to a series of amendments and, in certain cases, termination. During the period of its operation, situations frequently arise that are capable of affecting the content of the marriage contract: one of the spouses may lose employment; one of the spouses may be registered as disabled; or the provisions of the marriage contract may prove extremely disadvantageous to one of the parties, etc. By incorporating in the marriage contract special provisions consolidated in a section entitled “Procedure for Termination and Amendment of the Marriage Contract”, the spouses will safeguard themselves against future litigation.

The declaration of invalidity of a marriage contract possesses its own particularities. A marriage contract constitutes a civil-law transaction. Consequently, as with any transaction, the conditions of its validity must

⁵¹ Article-by-article commentary to the Family Code of the Russian Federation, the Federal Law "On Guardianship and Trusteeship" and the Federal Law "On Acts of Civil Status" / Ed. P.V. Krasheninnikov. Moscow: Statut, 2012. P. 324.

conform to the requirements of civil legislation. At the same time, inasmuch as a marriage contract is a transaction of a special kind, primarily personal in character, the conditions of validity prescribed by family legislation must also be taken into account.

All invalid transactions, pursuant to the provisions of the Civil Code, are divided into transactions that are void by their nature (void transactions) and transactions whose invalidity must be established by judicial procedure (contestable transactions).

Given that the freedom of spouses in determining the terms of a marriage contract is highly conditional and subject to clear limits, the legislator has, in Part 5 of Article 31 of the Family Code, expressly prescribed the following boundaries: a marriage contract may not limit the legal capacity or capacity to act of the spouses or their right to apply to a court for the protection of their rights; regulate personal non-proprietary relations between the spouses or the rights and duties of spouses in relation to children; contain provisions limiting the right of a disabled and needy spouse to receive maintenance; or include other conditions that place one of the spouses in an extremely disadvantageous position or contravene the fundamental principles of family legislation.

At the same time, S.Yu. Chashkova writes that “the presence in a marriage contract of a family-law essence is confirmed by the introduction of requirements that the terms of the contract conform to the fundamental principles of family legislation”.⁵²

The fundamental principles of family legislation play a significant role in shaping the personal non-proprietary rights of spouses, which likewise may not be the subject of contractual regulation. The provisions of Article 1 of the Family Code have been clarified and specified in other

⁵² Chashkova S. Yu. The system of contractual obligations in Russian family law. Abstract of Cand. Sci. (Law) Dissertation. [Electronic resource]: URL // <http://law.edu.ru/script/cntSource.asp?cntID=100088130>. (Accessed: 12.10.2016).

norms of the Family Code, which impose upon spouses a duty to build their family relations on the foundational principles of mutual respect and mutual assistance, to promote the welfare and strengthening of the family, and to care for the well-being and development of their children. These duties appear more as a moral imperative than as a legal norm. Thus, S.E. Plieva observes that “morality, as is known, consists of the internal spiritual qualities by which a person is guided, the ethical norms and rules of conduct determined by those qualities. Morality may therefore be interpreted in various directions, inasmuch as the concept of morality is evaluative”.⁵³

The norm under consideration contains a large number of evaluative considerations, which renders its practical application difficult, since each married couple has its own conceptions of mutual respect, care for a loved one, etc. “Considerable time will pass before practice develops criteria for what is to be understood by other conditions that place one of the spouses in an extremely disadvantageous position or contravene the fundamental principles of family legislation”.

It appears expedient to apply to a marriage contract the following classification of invalid transactions—those defective in: the composition of subjects; volition; content; form. At the same time, S.N. Bondov has concluded that “of the grounds for declaring a marriage contract invalid, the following are of the greatest significance:

- failure to observe the notarial form of the contract;
- non-conformity of the marriage contract with law or other normative acts (unlawful content of the contract);
- conclusion of the contract by a person lacking capacity;

⁵³ Plieva S.E. Grounds and legal consequences of invalidity of a marriage contract // Society and Law. 2011. N 5.P.117.

- inability to understand the significance of one's actions upon conclusion of the marriage contract;
- conclusion of the marriage contract under the influence of mistake or deception, violence, threat, malicious agreement of the representative of one party with the other, or confluence of grave circumstances".⁵⁴

Provisions of a marriage contract that contravene the special requirements established by family legislation in Part 5 of Article 31 of the Family Code are void. Thus, for example, void provisions would include those determining the spouses' duty to maintain marital fidelity, prohibiting a spouse from working in a particular position, choosing a style of clothing or hairstyle, establishing the spouses' rights and duties in respect of household management, prohibiting entry into a new marriage in the event of dissolution of the existing one, etc.

The following case from notarial practice is of interest.

Spouses approached a notary in the city of Samarkand wishing to conclude a marriage contract on the following terms: the wife prohibited the husband from going hunting more than once a month, whilst the husband prohibited the wife from visiting a cosmetologist more than once a week. The notary refused to certify the marriage contract. The case examined illustrates a transaction defective in content, and the notary's actions were in accordance with the letter of the law.

The next ground for declaring a marriage contract invalid is defect of form. Thus, "a marriage contract that has not been notarially certified is invalid; such a contract is void and entails no legal consequences, inasmuch as the parties have breached the notarial form of the transaction required by law".⁵⁵ However, if one of the parties has fully or partially commenced performance of the terms of a marriage contract requiring

⁵⁴ Bondov S. N. *Marriage Contract: A Textbook for Universities*. Moscow, 2020. P. 67.

⁵⁵ Simonyan S. L. *Property relations between spouses*. Moscow, 1998. P. 52.

notarial certification, and the other party evades such certification, a court is empowered, at the request of the performing spouse, to declare the contract valid. In such circumstances, subsequent notarial certification of the contract shall not be required.

A marriage contract concluded with a person lacking capacity constitutes a transaction defective in the composition of subjects. Such a contract shall be void. At the time of conclusion of a marriage contract, the persons concluding it must possess capacity, understand the significance of their actions and the consequences thereof, and their volition and desire to conclude the contract on the terms provided therein must be formed freely, without the influence of any external factors. At the same time, with regard to the scope of the spouses' capacity, the norms of the family legislation of the Republic of Uzbekistan must be taken into account. Accordingly, conclusion of a marriage contract by a person of limited capacity will conform to the family legislation in force.

A marriage contract concluded by a spouse who is unable to understand the significance of his or her actions or to control them may be declared invalid at the suit of the spouse whose rights or legitimate interests have been infringed as a result of conclusion of the contract, for example, in a state of narcotic intoxication, nervous shock, or other pathological condition.

Upon conclusion of a marriage contract, a situation may arise where one of the spouses lacks, for example, knowledge of jurisprudence and does not understand the essence of the marriage contract. In such circumstances, the spouse, exploiting the trust of the other, persuades him or her to conclude a marriage contract that will "safeguard" proprietary interests in the event of dissolution of the marriage. In reality, however, the deceived spouse is left with nothing under the terms of the marriage contract upon divorce. The presence of circumstances of this kind, in

particular deception, violence, threats, etc., indicates a defect of volition. This may result in the transaction being declared invalid by a court at the suit of the party acting under the influence of mistake, where the mistake was so substantial that that party, reasonably and objectively assessing the situation, would not have entered into the transaction had it known the true state of affairs.

Thus, B.E. brought an action against G.R. and B.D. for declaration of invalidity of a marriage contract dated 31 August 2012. In support of her claims, she submitted that the marriage contract had been drawn up in breach of the requirements of the legislation in force, inasmuch as, at the time of its signature, the notary had not explained to her the essence of the transaction or the legal consequences of signing the contract, nor had the notary ascertained her volition to sign that contract. At the moment of signing the contract, she believed that she was signing a power of attorney in favour of her husband G.R. authorising him to dispose of property. She learned that a marriage contract had been signed only on 18 March 2014, when she obtained a duplicate thereof from the notarial office. In granting the claimant's demands for declaration of invalidity of the marriage contract, the court of first instance proceeded on the basis that the text of the marriage contract dated 31 August 2012 did not indicate that the notary had read it aloud, as required by law, and no reference to such reading appeared in the text of the contract itself; nor did the contract reveal that, upon its conclusion, the spouses had been informed by the notary of the legal consequences of the proprietary regime chosen by them or of the terms of conclusion of the marriage contract; that the parties had determined the legal regime of immovable property in accordance with their own volition and desire; or that the volition of each spouse had been formed freely, independently, and without coercion.

It follows that substantial significance attaches to mistake concerning the nature of the transaction, its essence, or such qualities of its subject matter as significantly reduce the possibilities of its use for the intended purpose. An analysis of the articles of the Civil Code reveals that mistake concerning the motives of the transaction is not decisive. It must, however, be borne in mind that the matter concerns a marriage contract not only as a civil-law transaction but also as an institution of family legislation. M.V. Antokolskaya observes that “in certain cases, motives may play a decisive role, having regard to the personal character of a marriage contract”. As an example, the author considers the case where one of the spouses concludes a marriage contract under the terms of which he or she assumes a duty to maintain the other spouse who is capable of work, guided by feelings of love towards him or her and expecting reciprocity, only subsequently to discover that the second spouse had entered into a marriage of convenience. One cannot but agree with M.V. Antokolskaya’s opinion that, in such a case, the court should pay attention to the circumstances indicated, inasmuch as a marriage contract is characterised by a close interconnection with the personal relations of the spouses. Where similar situations arise, it is necessary “to calculate the extent to which such a position will correspond to the psychological deprivations of the deceived party”.⁵⁶

Where the aforesaid circumstances exist, the provisions of the Civil Code shall apply. Furthermore, the party at whose suit a transaction has been declared invalid is entitled to demand from the other party compensation for the actual loss caused to it, provided that it proves that the mistake arose through the fault of the other party. At the same time, by reason of the particularities of the personal relations of spouses, the burden

⁵⁶ Antokolskaya M.V. Family Law: Textbook. Moscow: Jurist, 2002. Page 163.

of proving the fault of the spouse lies on the injured party, and in practice it is not always possible to prove such a mistake.

For example, Shch. brought an action against Shch. for declaration of invalidity of a marriage contract, grounding his claims on the fact that the parties had been married. At the defendant's suggestion, a marriage contract No. – had been concluded between them on –, certified by notary G. and registered in the register under No. –. Pursuant to clause – of the marriage contract, immovable property acquired by the spouses during the marriage constitutes the individual (separate) ownership of the spouse in whose name it is registered and recorded. The spouses are entitled to dispose of such property without the consent of the other both during the marriage and following its dissolution. He had been misled by Shch., who had promised that the terms of the marriage contract would not provide for division of proprietary rights between the spouses in respect of three-room flat No. – in the housing-construction cooperative located at: city –, street –, building –. However, clause – of the marriage contract provided that the flat at the aforesaid address would remain the property of the defendant following dissolution of the marriage and would not be subject to division, inasmuch as it was registered in her name.

In resolving the dispute and granting the claims, the court of first instance concluded that there existed legal grounds for declaring the marriage contract invalid pursuant to Part 2 of Article 33 of the Family Code, inasmuch as the marriage contract altered the statutory regime of joint ownership, whilst the terms of the marriage contract concerning the regime of joint property placed the claimant in an extremely disadvantageous position, namely, he was deprived of ownership rights in the aforesaid flat acquired by the spouses during the marriage. At the same time, the court rejected the claimant's submission concerning mistake on his part as to the nature and subject matter of the transaction by reason of

failure to prove that circumstance. The court of appeal disagreed with that conclusion. The court observed that the case materials revealed that, upon conclusion of the marriage contract, the spouses had been informed by the notary of the legal consequences of the proprietary regime chosen by them and of the terms of conclusion of the marriage contract; that the parties had determined the legal regime of immovable property in accordance with their own volition and desire; and that the volition of each spouse had been formed freely, independently, and without coercion.

The question of sham and pretended marriage contracts likewise merits particular attention. In judicial practice, the number of cases of this category has increased in recent times. Amidst the unfolding economic crisis, people seek every possible loophole to protect their property or to “conceal” it from prying eyes. Thus, spouses may employ a marriage contract not only for legitimate purposes but also to deceive someone or to mislead.

A marriage contract executed merely “for show” constitutes a sham transaction. A marriage contract concluded with the intent of disguising another transaction shall, pursuant to the provisions of the Civil Code, be regarded as a pretended transaction.

However, as an analysis of judicial practice reveals, proving the sham nature of a marriage contract is highly problematic. A judicial case of interest is the following. P.S.G., F.A.B., and M.A.N. brought an action against the defendants P.D.V. and P.N.V. for declaration of invalidity of a marriage contract, application of the consequences of invalidity of a void transaction, allocation of the debtor’s share in property jointly acquired by the spouses, and levy of execution thereon in respect of obligations under loan agreements. In support of their claims, they submitted that on DD.MM.YYYY the defendant P.D.V. had concluded loan agreements with the claimants with a repayment deadline of DD.MM.YYYY. P.D.V.

had concluded the loan agreements with the claimants during his marriage to P.N.V., which marriage has not been dissolved to date. On DD.MM.YYYY—that is, 34 days prior to the due date for performance of the obligations under the loan agreements to the claimants—the defendant P.D.V. concluded a marriage contract with his spouse P.N.V., under the terms of which all property acquired and to be acquired by the parties during the marriage constitutes the personal property of the spouse in whose name such property is registered and who is its titular owner.

Following conclusion of the loan agreements, the defendant P.D.V. effected transfers of immovable property in favour of the defendant P.N.V. As a result, at the time of examination of the case, the defendant P.N.V. lacked property sufficient to satisfy the creditors' claims.

The claimants contended that the aforesaid marriage contract had been concluded by the defendants merely for show, without intent to create the corresponding legal consequences. The court of first instance concluded that, prior to the conclusion by the defendant P.D.V. of the loan agreements with the claimants, an agreement establishing a separate ownership regime in respect of income and immovable property had been in effect between the spouses P.D.V. and P.N.V. Subsequently, a marriage contract was concluded, the sole purpose of which was to determine a special regime of the spouses' property by agreement of the parties.

No evidence was adduced to the court indicating that the marriage contract had been concluded by P.D.V. and P.N.V. merely for show with the aim of avoiding possible execution in respect of the defendant P.D.V.'s unperformed obligations to the claimants. Accordingly, the claim for declaration of the marriage contract as a sham transaction was refused. Furthermore, the claimants had been notified by the defendant P.D.V. of the conclusion of the marriage contract, as evidenced by copies of written notifications with confirmation of their dispatch to the addressees. From

the moment of receipt in April 2012 of those notifications, the claimants had raised no claims against the defendant P.D.V.

An example of the use of a marriage contract as a “pretended transaction” is the following case described in the literature: “...the sale and purchase of property is clothed by spouses in the form of a marriage contract for the purpose of avoiding payment of tax”. Accordingly, having analysed judicial practice, one cannot but agree with the conclusion of S.L. Simonyan that “it is difficult to have it declared invalid by judicial procedure.... Such a contract will be declared invalid by a court if the creditor is able to prove its fictitiousness”.⁵⁷

In judicial practice, cases are quite frequently encountered where an attempt is made to contest a marriage contract disadvantageous to one party on the ground that it places one of the parties in an “extremely disadvantageous position”. At the same time, the aforesaid category is highly conditional and lacks a statutory definition. With regard to this ground, the following viewpoints may be encountered in legal literature.

According to the first viewpoint, the ground under consideration for declaring a marriage contract invalid is not identical to the civil-law ground providing for the possibility of declaring invalid a civil-law transaction concluded under the influence of a confluence of grave circumstances on extremely disadvantageous terms. L.B. Maksimovich adheres to a similar position, clarifying that “in such a case, a marriage contract may be declared invalid already on the ground that the party to the contract was compelled to sign it, i.e. the contract was concluded with a defect of volition”.⁵⁸

⁵⁷ Zvenigorodskaya N.F. Invalidation of a marriage contract: general and specific // Leningrad Law Journal. 2008. N3. P. 126.

⁵⁸ Maksimovich L. B. Marriage contract in Russian law. P. 130.

Other Russian civilists equate the ground under consideration for declaring a marriage contract invalid with a usurious transaction as a ground for declaring a transaction invalid.

At the same time, the first viewpoint appears preferable, according to which “it is precisely the personal character of the relations that is exploited by the unscrupulous spouse, who is confident that the contract will be signed by the other spouse on any terms whatsoever, not out of desperation or by reason of a confluence of grave circumstances, but as a token of devotion, trust, and love”.

Having analysed the grounds for declaring a marriage contract invalid, as well as the practice of judicial authorities in examining cases of this category, one cannot but agree with the observation of L.Yu. Mikheeva that “there is scarcely a single marriage contract which, under the approaches proposed by the legislator and upheld by the Supreme Court, could not be declared invalid”.

Before examining the question of liability under a marriage contract, it is necessary to clarify what civil-law scholars understand by family-law liability. In the works of jurists, the issue of family-law liability has received insufficient attention. The majority of studies are devoted to sanctions in family law, which in most cases concern the parental sphere. At the same time, there is no unanimous opinion on the independence of family-law liability.

Thus, D.A. Lipinsky concluded that “family-law liability does not exist; for family-law violations, administrative or criminal liability ensues”. To family-law means of ensuring permissions and prohibitions he attributed deprivation of parental rights, restriction of parental rights, etc.

Another jurist concluded that family-law liability as such does not exist; to persons who have breached family-law obligations, measures of civil, criminal, and family law are, as a rule, applied.

Yu.F. Bespalov disagrees with this viewpoint and adduces a series of arguments in favour of the independence of family-law liability. As arguments, he advances the following:

“1. family legislation provides for measures of liability for participants in family relations;

1. family law is an independent branch of Russian law, and there undoubtedly exists an independent type of legal liability—family-law liability”.⁵⁹

At the same time, the author does not deny that “...a family-law offence in certain cases entails the application of norms of administrative, civil, and criminal law. Nevertheless, this does not preclude the application of measures of family-law liability”.

The author defines family-law liability as “the aggregate of personal non-proprietary and (or) proprietary measures of compulsion that restrict or deprive certain family rights, or impose additional duties, provided for by family legislation and, in isolated cases, by civil legislation, applied by a court or other authorised body to persons who have committed a family-law offence or permitted other action (or inaction) recognised by family legislation as a ground for liability”.

This viewpoint cannot be accepted, inasmuch as, in the majority of cases, family-law liability in its pure form is not applied. With respect to violators, measures of civil, criminal, or administrative liability are applied, having regard to the personal character of family legal relations.

As regards a marriage contract, inasmuch as by its legal nature a marriage contract constitutes one of the types of civil-law contracts, it follows that it implies liability of the parties in the event of non-

⁵⁹ Bespalov Yu.F. Family legal liability and limitation of family rights // Journal of Russian Law. 2014. N 2. P.46.

performance or improper performance of obligations under the contract by one of the parties.

Since a marriage contract constitutes a transaction, the norms establishing general provisions on transactions and contracts, which are enshrined in civil legislation, apply to it.

An analysis of the provisions of the Family Code has revealed that the Family Code contains no norms providing for liability for breach of obligations under a marriage contract. This state of the legislation nevertheless does not deprive the parties of the right to provide independently for liability in the event of breach of obligations under the marriage contract.

Attention must here be drawn to the provisions of the norms of the Civil Code which permit the parties, at their discretion, to determine the terms of a contract, save where the content of the relevant term is prescribed by law or other legal acts. At the same time, it should be borne in mind that a contract must conform to rules binding on the parties established by law and other legal acts in force at the time of its conclusion.

In this regard, I.R. Albikov rightly observes that “the law does not prohibit the parties from determining liability; accordingly, the parties to a marriage contract, guided by the general norms on liability for breach of obligations, are entitled to include in the marriage contract a provision on liability for non-performance of obligations”.⁶⁰

Spouses concluding marriage contracts, however, rarely advert to liability in the event of non-performance of the marriage contract, confining themselves to provisions concerning the regime of the spouses’ property. Where a dispute arises, the parties are compelled to rely solely on the general provisions concerning performance of obligations, which

⁶⁰ Albikov I.R. Liability under a marriage contract // Family and housing law. 2021. No. 1. P. 6.

are not always capable of resolving a dispute relating to the liability of the parties for non-performance of obligations.

A striking example of a case where the parties to a marriage contract failed to provide for liability of the parties is the following instance from judicial practice. G.E.S. brought an action before a court on the grounds that the parties had been married, which marriage was terminated on 23 August 2012. Prior to conclusion of the marriage, on 10 February 2011, a marriage contract certified by a notary had been concluded between the claimant and the defendant, under the terms of which, upon dissolution of the marriage, K. assumed the obligation to provide G.E.S. with a one-room fully equipped flat of improved layout with an area of not more than 45 square metres. The choice of residential premises was to be determined by G.E.S. (clause 11 of the contract). The claimant selected a residential premises in the form of a one-room flat located at the address: the area of that flat being 35.1 square metres. The claimant proposed to the defendant that the matter be resolved out of court; however, he refused to perform the obligations assumed by him, in consequence of which G.E.S. was compelled to bring an action for specific performance of the marriage contract.

Accordingly, one cannot but agree with the opinion expressed in the literature that “for a marriage contract, provisions on liability of the parties depend directly on the content of the obligations under the contract. For example, the determination by the parties of terms on liability must be linked to the principal provisions of the marriage contract, namely concerning the manner, procedure, and deadlines for transfer of property in the event of dissolution of the marriage”.

An analysis of judicial practice leads to the conclusion that, where a marriage contract is concluded the terms of which do not provide for liability of the parties for non-performance or improper performance of the

contract's terms, the parties are effectively deprived of any legal protection.

As a rule, non-performance of an obligation entails certain losses for the party to the contract. Compensation for losses constitutes a universal form of civil-law liability applied in civil turnover. At the same time, losses, as a form of proprietary liability, may be applied alongside other forms of proprietary liability. For improper performance or non-performance of the terms of a marriage contract, the parties may also provide for a penalty. In so doing, the parties must bear in mind that payment of a penalty and compensation for losses do not release the debtor from performance of the obligation in kind.

Furthermore, in establishing liability in a marriage contract, spouses must understand that it is necessary to distinguish between relations between the spouses under the marriage contract and relations of the spouses with third parties concerning the same property, which by their nature are not family-law relations. For example, the spouses have agreed to divide "family expenses" in the following manner: one of them pays for communal services and internet and communication services, whilst the other pays for the children's education. Where a situation arises in which a spouse fails to pay communal charges and internet and communication services, it appears that the defendant in an action for recovery of those payments will by no means be the person obliged under the marriage contract, but the person obliged in accordance with the provisions of housing and civil legislation.

Undoubtedly, a marriage contract regulates proprietary relations between spouses; however, in the present case, what is evident is not family legal relations but relations arising in the sphere of provision of services and in the housing sphere. It follows that a bona fide spouse who

has made payment in place of a mala fide spouse is entitled to recover the expenses incurred from the latter on the basis of the marriage contract.

On the basis of the foregoing, it appears expedient to incorporate additional norms into family legislation whereby “in the event of non-performance of obligations imposed by the provisions of a marriage contract, where the rights of third parties (for example, providers of domestic services, the state) are infringed, they shall be entitled to demand performance of the obligation irrespective of the content of the family-law contract from the person obliged to perform the obligation in accordance with the norms of the relevant sectoral legislation”.⁶¹

In summarising the foregoing, attention should be drawn to the fact that, upon conclusion of a marriage contract, the parties must determine in great detail and with precision the terms of liability and the consequences of non-performance or improper performance of the contract’s terms. This is because “a major practical problem of a marriage contract is the interpretation of its lawful content in the event of a dispute between spouses”.

⁶¹ Sitkova O.Yu. Principles of fulfillment of family contractual obligations in light of innovations in civil legislation on obligations // Family and housing law. 2015. N 3. P.20.

1.2 Historical Preconditions for the Emergence of the Marriage Contract (Agreement)

The coming of age of the Family Code is inseparably linked to the development and maturation of the marriage contract.

The emergence of marital relations characterized by stability, and by the interaction of socially and individually significant rights and obligations of spouses, served as the foundation for the establishment of the institution of the marriage contract.

Like any other legal institution, the marriage contract has its own history, without which it is impossible to understand its purpose in modern society. Since ancient times, it has performed the function of formalizing predetermined patterns, particularly in marital and family property relations. It should be noted that the reproductive mission of humankind contributed to the development of marriage first as a custom, and later as a legally regulated institution. In terms of legal classification, marriage was considered one of the forms of agreements aimed at establishing marital relations. It should be regarded as one of the earliest types of contracts, since historically, other types of agreements in conditions of a natural economy were rather sporadic.

The first references to a marriage contract can already be found in the ancient world.

For instance, Paragraph 128 of the Laws of Hammurabi states: “If a man takes a wife and does not conclude a contract with her, that woman is not a wife.” A scribe at the city gates would write the texts of marriage contracts in cuneiform on clay tablets, which were then fired and stored in case of potential future disputes.⁶²

A more modern form of the marriage contract appeared in Roman law.

⁶² The Laws of Hammurabi [Electronic resource]. – Access mode: www.hist.msu.ru

The reference to Roman private law is explained by the fact that contemporary legislation borrowed this institution precisely from Roman private law. It was there that the concept of the marriage contract took shape. It should be noted that in the private law of ancient Rome, marital agreements were the most justified, logical, and rational. During the Roman period, there existed contracts (agreements) related to the conclusion of marriage, the property relations of spouses during marriage, as well as marital arrangements determining the amount and form of the dowry and the pre-marital gift. These types of agreements served as prototypes of the modern marriage contract.

If we turn to the history of marital relations in Ancient Rome, there already existed the concept of a marriage contract (lat. *tabulae nuptiales*). Although it was not mandatory, it was widely used. This can be explained by the fact that marriages between individuals of different social classes were common at that time. Despite the fact that all conditions and formalities were usually negotiated by the parents before the marriage, the union itself was viewed largely as a transaction. Therefore, such contracts were often drawn up to regulate issues related to the dowry and the procedures for its return in the event of divorce.

During the wedding ceremony, the contract was read aloud, after which ten witnesses affixed their seals. The marriage contract was written on tablets, none of which have survived to the present day. The dowry belonged to the wife and was intended to protect her interests in the event of a possible divorce. Divorces did occur in Egypt, and during the New Kingdom period they could even be initiated by women.

In Ancient Greece, according to a law attributed to the Spartan reformer Lycurgus, young men in Sparta were required to choose their wives from poor families. This requirement undoubtedly had deep economic significance, as it prevented the concentration of wealth within a

single family. The accumulation of private property was inconsistent with the fundamental principle of Spartan legislation—the principle of social equality among free citizens.⁶³

A sample of a marriage contract has been preserved, written on papyrus in 311 BCE on the island of Elephantine and certified, as required by law, by six witnesses. The document states that a certain Heraclides takes as his wife the free-born woman Demetria, daughter of Leptines and Philotida from the island of Cos. “A free man takes her as a free woman,” with a dowry consisting of clothing and jewelry valued at one thousand drachmas. In turn, Heraclides will provide Demetria with everything befitting a free-born woman, and they will live together wherever, by mutual agreement, the son-in-law and father-in-law deem appropriate.

If Demetria commits any wrongdoing that brings disgrace upon her husband, she will lose everything she brought with her. However, Heraclides must prove the validity of the accusations against Demetria before three respected men chosen by mutual consent of both parties. Heraclides has no right to bring another woman into the household, nor to acknowledge as his own any children born to him by another woman, as such actions would disgrace Demetria; nor may he cause harm to his wife under any pretext whatsoever. If it is shown that the husband has committed any such misconduct, and Demetria can prove this before three men in whom both sides place their trust, then Heraclides shall be required to return Demetria’s dowry and, in addition, pay a penalty of one thousand drachmas. This contract was to be observed under all circumstances.

The earliest known text that discusses marriage was created in Egypt in the third millennium BCE. It is the “Instructions of Ptahhotep,” written by a sage who lived during the Old Kingdom period. The text states:

⁶³ Trofimova, P.F. History of the emergence and development of the marriage contract in foreign countries / P.F. Trofimova // Academic journalism. - 2019. - No. 11. - P. 221.

“If you are a man of high standing, you should establish your household and love your wife as is fitting. Fill her stomach and clothe her body; anoint her skin with oil. Let her heart rejoice as long as you live, for she is a fertile field for her master. You must not bring her before the courts; do not cause her anger. Share with her whatever falls to your lot; this will ensure that she remains long in your house.”

The Egyptian marriage contract generally provided for the separate ownership of property. Additionally, in the event of divorce, one-third of all property acquired during the marriage was, by law, to be given to the wife. This was a considerable amount, especially considering that the wife typically did not work but managed the household.

Marriage contracts were submitted for approval to the jati — the pharaoh’s deputy, who simultaneously held judicial authority. The jati ensured that the contract specified the husband’s obligations for the maintenance of his wife and that the wife’s dowry was described in detail (in case of possible divorce). Divorces did occur in Egypt, and during the New Kingdom period, they could even be initiated by the woman.

In Ancient Greece, according to a law attributed to the Spartan reformer Lycurgus, young men in Sparta were required to choose their wives from poor families. This requirement undoubtedly had profound economic significance, as it prevented the concentration of wealth within a single family. The accumulation of private property was incompatible with the fundamental principle of Spartan legislation—the principle of social equality among free citizens.

However, the study of the gnoseological roots of the marriage contract cannot be limited to the example of Roman law alone. In order to understand the true origins of marital relations in society, it is necessary to analyze the historical development of marital agreements across various ethnic groups.

Thus, the charter (privilege) of Grand Duke of Lithuania Alexander Kazimirovich of 1492 (one of the oldest written legal monuments in Belarus) established that a wife brought a dowry into the family, which was inherited by the children in the same manner as the husband's property. The husband, in turn, was required to ensure the preservation of his wife's dowry by pledging a part of his own property, a practice known as the *veno* record (венная запись). In the event of the husband's death, his property remained at the disposal of the widow as long as she did not remarry, provided that she had children. If there were no children, the husband's property passed to his relatives. However, if the husband had left a *veno*, the widow was free to dispose of this property at her own discretion. According to N. Rulan, the *veno* record was essentially a form of marriage contract.

In France and England—countries where the existence of the marriage contract has a long-standing history—its emergence was driven by the need to preserve for a woman entering into marriage, as well as for her relatives, the right to manage her premarital property.

In England, until 1882, under the rules of common law, the property of the spouses was considered to belong to the husband. A married woman was practically deprived of economic independence: she could not own property, nor could she dispose of it at her discretion. Everything she possessed before marriage passed into her husband's ownership. There was no concept of joint marital property as such. The personality of the wife was absorbed into that of her husband, and her property into his property.

For this reason, the courts of equity began to recognize as valid those marriage contracts which allowed part of the wife's property to remain outside the control of her husband. However, all the rules developed by the courts of equity applied only to property that was not part of the

ordinary family assets, but constituted a form of capital. Therefore, in England, until the end of the 19th century, there actually existed two regimes of marital property.

In 1882, the Parliament adopted the Married Women's Property Act. It provided that from that time forward, upon entering into marriage, all property belonging to a woman at the moment of marriage, as well as any property acquired by her thereafter, would be governed by the same regime as property under a marriage contract establishing the separation of spouses' assets. Thus, a regime of separate ownership was established.

The emergence of the marriage contract in the legislation of foreign countries was determined by the nature of bourgeois society, in which different social groups required different approaches to resolving their property matters.

Of particular interest is the work of K. P. Pobedonostsev Course of Civil Law, specifically its second volume entitled Family, Inheritance, and Testamentary Rights (1871). Pobedonostsev notes that the conditions of a marriage contract were exclusively of a property-based nature, which is characteristic of the modern regulation of marriage contracts in most Western countries. Given that the peasantry constituted the dominant part of the population in Russia, it can reasonably be assumed that this custom was widespread in practice.

Unfortunately, Pobedonostsev does not indicate the historical point at which this custom first appeared in everyday life, which makes it practically impossible to determine the exact time of the emergence of the marriage contract within the Russian legal order.

It should be noted that the provisions of marital agreements of that period were less democratic than those of the modern marriage contract. This was expressed, first, in the fact that the decision to marry was made by the parents of the young couple rather than by the prospective spouses

themselves, which contradicts one of the fundamental principles of contemporary family law—the principle of voluntary marital union. Second, the agreement to enter into marriage had a coercive character, since the individuals entering the marriage acted not as subjects, but as objects: their consent or dissent, as well as personal affection, was not taken into account.

For the first time, agreements concluded between spouses for the regulation of property relations within marriage came to be referred to as marriage contracts in the French Civil Code of 1804. Article 1101 of the French Civil Code defined a contract as an obligation established between specific persons. The marriage contract was defined in the Code as a contract executed in notarial form, determining the matrimonial property regime. In the absence of such a contract, a so-called legal community of property was established, which extended to premarital property and movable property acquired during the marriage.

Thus, the property relations formed between spouses were regulated by a contract known as the *contrat de mariage*. Certain conditions were required for such a contract to have legal force: it had to be concluded in written form, notarized, and executed in the presence of witnesses. As a rule, marriage contracts were concluded among the middle and upper bourgeoisie. If the spouses did not conclude a marriage contract, their property relations were governed by the legal community regime.

Provisions concerning marriage contracts were also contained in the German Civil Code (*Bürgerliches Gesetzbuch*, BGB), adopted in 1896 and entering into force in 1900. Moreover, rules governing marriage contracts were present in earlier legal documents preceding the federal BGB—specifically, in the Prussian, Territorial (Land), and Saxon Civil Codes, which were in force in the respective regions of Germany.

When speaking about Eastern countries, we may take Uzbekistan as a primary example for examination. The historical roots of the marriage contract in Uzbekistan are to be sought in the customary law of the nation. It is also necessary to address the norms of Muslim law—adat and sharia—since their influence on the regulation of family and marital relations among Uzbeks was significant.

The most widespread form of marriage among Uzbeks was marriage arranged through matchmaking and the payment of a bride-price (kalym puli). Under customary law, marriage was regarded as a property transaction between the parents or close relatives of the bride and groom. By virtue of this transaction, the bride's family transferred her to the groom's household in exchange for the kalym. The kalym was an essential condition of marriage, without which the very idea of entering into marriage was inconceivable. The kalym, more precisely kalym puli, held primary importance among all forms of bride-price, as it alone granted the right to conclude a marriage. Payment of the kalym was considered equivalent to the act of marriage itself. Marriage within Uzbek society was regarded as a matter of the entire kinship group.

Customary Uzbek law did not provide the bride or groom with a choice. Matchmaking could take place even before the birth of the children—typically between closely allied families—or during infancy, or already in adulthood.

In Muslim law, the marriage contract was considered identical in meaning to marriage itself. According to the provisions of the Qur'an, marriage is understood as a private civil-legal agreement, under which the husband undertakes to pay the wife compensation and support her, in exchange for the legal right to have relations with her that were prohibited prior to marriage.

Since marriage under Muslim law is regarded as a civil-legal contract, the rights and obligations of the spouses arise from the marriage contract concluded at the time of marriage. A marriage contract may include any conditions—whether of a property or non-property nature—that do not contradict the essence of such a contract, the purpose of marriage, or the law.

The roots of the marriage contract go deep into history. The concepts of “marriage” and “marriage contract” were once considered identical; in other words, a marriage contract was understood as an agreement regarding marriage (a pact, bride-price contract, or marriage contract in ancient Rome). Naturally, time has introduced its own additions and modifications. In contemporary understanding, the marriage contract performs a qualitatively evolved function in the legal context, differing from the marital agreements that existed previously. At the same time, the fundamental distinction of the term “marriage contract,” as applied in the legislation of most modern countries, including Uzbekistan, is that marriage and a marriage contract are not equivalent.

Regarding the period of the USSR, regulation of marital relations was carried out in a mandatory manner, based on the joint property regime of spouses. However, Article 34 of the Marriage and Family Code of the Republic of Uzbekistan established that spouses may enter into any property-related contractual relations permitted by law. Agreements between spouses aimed at diminishing the property rights of either the wife or the husband are invalid and unenforceable, both for third parties and for the spouses themselves, who may refuse to perform them at any time.

It can be said that with the adoption of the Marriage and Family Code of the Republic of Uzbekistan, a new stage in the development of spouses’ property relations began. At the same time, the Code extended the marital

property regime to the property of persons who are, in fact, in marital relationships, even if these relationships are not officially registered.

The Marriage and Family Code of the Republic of Uzbekistan established a regime of joint marital property for assets acquired by spouses during marriage and granted equal rights to each spouse to own, use, and dispose of such property, even if one of them was engaged in household duties, childcare, or for other valid reasons did not have independent earnings (Article 25). When dividing property classified as joint marital property, the shares of the spouses are considered equal; the principle of equal shares may be departed from in certain cases, taking into account the interests of minor children or other legitimate interests of one of the spouses—for example, increasing the share of one spouse if the other avoided socially useful work or spent joint property to the detriment of family interests (Article 27).

Personal property of each spouse, according to the Marriage and Family Code, includes property owned prior to marriage, property received as gifts or inherited during the marriage, as well as items for individual use, except for jewelry and other luxury items (Article 29). Personal property may be reclassified as joint marital property if it is established that investments were made during the marriage that significantly increased its value, such as major repairs or additions (Article 25). The Code also established rules for the seizure of spouses' property to satisfy obligations of one of them (Article 33).

Thus, during the Soviet period, the legal regime of joint marital property for assets acquired during marriage was firmly established by mandatory norms. The institution of the marriage contract did not exist in Soviet law.

Both the Civil Code of the Republic of Uzbekistan (1964) and the Marriage and Family Code of the Republic of Uzbekistan (1969) were

based on the socialist legal model that prioritized the principle of collective ownership and equality within the family. In this system, the joint regime of marital property was established as the only legally recognized form of property relations between spouses. According to this principle, all property acquired during the marriage was deemed common property, regardless of which spouse earned the income or whose name appeared on ownership documents. The law presumed equality of spouses in the use, possession, and disposal of jointly acquired assets.

At the same time, judicial deviations from the principle of equal shares were narrowly limited. Courts could alter the equality of shares only in exceptional circumstances — for instance, when such deviation was necessary to protect the interests of minor children or to safeguard other vital interests of one of the spouses, such as in cases of disability, unemployment due to child-rearing, or other justifiable reasons. This rule reflected the broader Soviet legal philosophy, which sought to combine formal equality with elements of social justice, ensuring that weaker members of the family were not left without means of support.

Nevertheless, even under the socialist legal system, the practice of contractual arrangements between spouses was not entirely absent. Archival and notarial records from the late 1970s and 1980s reveal instances where couples entered into “agreements on the legal regime of marital property.” These early forms of marital contracts were, however, limited in scope and primarily concerned practical matters such as division of jointly built houses, use of specific property, or obligations in case of separation. Importantly, such agreements required mandatory notarization, which ensured both legal validity and state oversight of private arrangements. Despite their limited nature, these agreements foreshadowed the emergence of a more flexible, contract-based regulation of marital relations.

The collapse of the USSR in 1991 and the transition of Uzbekistan to a market economy fundamentally transformed the socio-economic foundations of family life. The introduction of private property, the rise of individual entrepreneurship, and the diversification of income sources led to the emergence of families with significant private wealth and business interests. Consequently, the issue of the division of property upon divorce began to acquire increasing importance, both from the legal and social perspectives. The earlier uniform approach, based solely on joint ownership, proved inadequate in regulating complex property relations, particularly when one or both spouses were involved in entrepreneurial activity or owned business assets.

These changes necessitated a comprehensive revision of the civil and family legislation of Uzbekistan. The adoption of the new Civil Code (1996) and the Family Code (1998) marked a decisive shift toward the principles of private autonomy and equality before the law. The new legal framework recognized the dispositive nature of civil and family law relations, allowing citizens greater freedom to determine their rights and obligations through agreements.

One of the most significant innovations of this period was the introduction of the contractual regime of marital property, which complemented — and in some cases replaced — the traditional statutory regime of joint ownership. Under Articles 29–31 of the Family Code of the Republic of Uzbekistan, spouses or persons intending to marry were granted the right to define, by mutual consent, the content of their property relations both during marriage and in the event of its dissolution. This principle embodied a profound conceptual shift: property relations within marriage were no longer dictated solely by law, but could be individually

tailored to the specific circumstances and mutual understanding of the parties.⁶⁴

The legal recognition of the marriage contract in Uzbekistan is therefore dated to April 30, 1998, the day of the official adoption of the Family Code. For the first time in the history of national family law, the Code introduced the term “marriage contract” (*nikoh shartnomasi*), which is a literal translation of the English term *marriage contract* and closely corresponds to the Russian *brachnyy dogovor*. The inclusion of this concept symbolized Uzbekistan’s movement toward harmonization of its family law with international standards and the global trend of recognizing the contractual autonomy of spouses.

Thus, the institution of the marriage contract in Uzbekistan emerged as both a legal and socio-economic response to the realities of post-Soviet transformation. It reflects the growing recognition of individual choice, responsibility, and equality between men and women in family and property relations. At the same time, it continues to balance private autonomy with the protection of socially significant interests — such as the welfare of children and the stability of the family — which remain central to the legal philosophy of the Republic.

In practice, the primary purpose of the contract is to arrange property matters within the marital relationship. Such an agreement provides a flexible way to resolve many property issues before entering into marriage, thereby preventing complications in the event of divorce. Often, divorce proceedings—even in cases with clear circumstances—can last several years and fail to satisfy either spouse. A marriage contract can facilitate such legal disputes, regulating family relations and making them more flexible. The moral aspect of the contract will continue to be debated for

⁶⁴ Family Code of the Republic of Uzbekistan. National Legislation Database, 07.02.2024, No. 03/24/905/0106.

some time; however, there is already a noticeable increase in the number of people who support the idea of drafting a contract upon marriage. It is clear that the majority of supporters are among young people, whereas opponents are primarily older individuals and pensioners, raised in the USSR, where the concept of a marriage contract simply did not exist.

Thus, the Uzbek legislator adopted the norms of foreign legislation on marriage contracts, granting spouses the right to determine the regime of their marital property at their discretion.

CHAPTER 2. FEATURES OF REGULATING THE CONCLUSION OF A MARRIAGE CONTRACT IN THE REPUBLIC OF UZBEKISTAN, IN CERTAIN ISLAMIC COUNTRIES, AND IN EUROPEAN COUNTRIES

2.1. Contractual Regulation of Property Relations Between Spouses in the Republic of Uzbekistan: Theoretical and Practical Aspects

In national legislation, a marriage contract is an agreement concluded either by persons entering into marriage or by spouses themselves, which defines the property rights and obligations of the spouses during marriage and/or in the event of its dissolution. The rights and obligations contained in the contract operate during the marriage and, if stipulated in the agreement, also after its dissolution. The law establishes an open list of rules that spouses may determine in the marriage contract; however, all provisions must exclusively concern the property rights and obligations of the spouses and must not contradict the fundamental principles of family law.

Unfortunately, marriage contracts are not yet popular in our country, but it is hoped that this is only a matter of time.

Families are intended to last a lifetime. However, for various reasons, this is not always achieved, as statistics objectively demonstrate. In the course of my professional duties, I often participate in processes analyzing the causes and consequences of divorce. It is becoming increasingly clear that there is a need to improve the legal and regulatory framework governing family creation in order to prevent discrimination against one of the parties in marital relations.

Many experts, drawing on international experience, recommend promoting the institution of the marriage contract, including not only property matters but also issues related to family relations within such an agreement.

This would make it possible to prevent such negative situations as interference by third parties in family relations, the deprivation of one spouse—and often children—of housing or even financial support after divorce, as well as a number of other issues that citizens, particularly women, frequently bring to various authorities.

G. Ishanhanova believes that it is time to review the provisions of the Family Code concerning the marriage contract. It may be more logical to move toward the mandatory conclusion of a marriage contract, regulating not only the property rights of spouses during marriage and in the event of divorce, but also the mutual obligations of spouses regarding the maintenance and upbringing of children within the marriage. This would include the right of spouses to communicate with their children after divorce, the mandatory establishment of the right to housing for the spouse with children following divorce, and the right to increase a share of property considering the fault of the spouse in the breakdown of the family, for example, infidelity, the expert emphasized. It should also be legally established that persons living in de facto family relationships are entitled to conclude a family agreement as a guarantee of protection of spouses' rights in the event of the dissolution of such a family.

The Family Code of Uzbekistan was adopted in 1998, and at that time it already included Chapter 6, “Contractual Regime of Marital Property,” dedicated to the marriage contract. The contract may be concluded either before the state registration of the marriage or during the marriage. It must be executed in written form and notarized.

Under this contract, spouses have the right to modify the regime of joint marital property established in Article 23 of the Family Code, and to establish a regime of joint, shared, or separate ownership for all property, for specific types of property, or for the property of each spouse

individually. This includes both existing and future property of the spouses.

It is possible to define one's rights and obligations regarding mutual support, bearing family expenses, participation in each other's income, to determine the property that will be allocated to each spouse in the event of divorce, as well as to include other provisions concerning property relations in the marriage contract.

A marriage contract may be amended or terminated at any time by mutual agreement of the spouses. An agreement to amend or terminate the marriage contract must be executed in the same form as its original conclusion.

Unilateral refusal to perform the obligations under this document is not permitted. At the request of one spouse, the contract may be amended or terminated by a court decision in accordance with the procedure established by the Civil Code of the Republic of Uzbekistan.

The contract ceases to have effect upon the dissolution of the marriage, except for those obligations that are expressly provided in the marriage contract for the period after the dissolution of the marriage.

A marriage contract may be declared invalid, in whole or in part, by a court on the grounds provided by the Civil Code of the Republic of Uzbekistan, or at the request of one spouse if the terms of the contract contradict the requirements of the law or infringe upon the rights of one of the spouses.

With respect to the obligations of one spouse, enforcement may only be directed at the property of that spouse. If the property is insufficient, the creditor has the right to request the allocation of the debtor-spouse's share from the joint marital property for the purpose of satisfying the claim.

Enforcement is directed at the joint property of the spouses for joint obligations, as well as for the obligations of one spouse, if the court determines that all assets obtained under the obligations of one spouse were used for the needs of the family. If these assets are insufficient, the spouses bear joint liability with respect to these obligations using each of their individual property.

If a court judgment establishes that the joint property of the spouses was acquired or increased using funds obtained by one of the spouses through criminal means, enforcement may be directed accordingly at the joint property of the spouses or at a portion thereof.

Spouses' liability for harm caused by their minor children is determined in accordance with civil legislation.

A spouse is obliged to notify their creditor(s) about the conclusion, amendment, or termination of a marriage contract. Failure to fulfill this obligation renders the spouse liable for their obligations regardless of the content of the marriage contract.

The creditor(s) of the debtor-spouse have the right to request modification of the terms or termination of the marriage contract due to significantly changed circumstances, in the manner prescribed by law.

Spouses have the right to enter into any property-related contractual relations permitted by law.

Agreements between spouses aimed at infringing upon the rights of one spouse or the other are invalid.

Spouses may include in the marriage contract, among other things, provisions concerning property relations. However, the marriage contract may not include conditions regarding the frequency of performance of "marital duties" by one spouse, obligations that the wife must bear a first-born son or daughter, or any other conditions restricting the rights of one spouse as guaranteed by the Constitution of the Republic of Uzbekistan.

By its nature, a marriage contract is a civil law contract, which means that it is governed by both the provisions of the Family Code and the Civil Code of the Republic of Uzbekistan. When concluding a marriage contract, one must follow the provisions of the Civil Code regarding the conclusion of contracts and transactions, and the provisions of Chapter 6 of the Family Code.

A marriage contract is considered concluded when the following conditions are met:

- The free will of both spouses is present, i.e., both spouses agree to enter into the contract;
- Both spouses are personally present at the signing of the contract;
- The contract is notarized (without notarization, the contract is invalid and therefore has no legal force).

Unilateral refusal to fulfill obligations under the marriage contract is not permitted. At the same time, spouses have the opportunity to amend the existing terms of the marriage contract. To do this, the spouses must re-sign the contract and ensure that it is notarized.

The termination of a marriage contract is possible through the court, and convincing arguments for termination are required. The contract ceases to have effect upon the dissolution of the marriage, except for those obligations explicitly provided in the marriage contract for the period after the dissolution of the marriage.

A spouse is obliged to notify their creditor(s) of the conclusion, amendment, or termination of the marriage contract. Failure to fulfill this duty makes the spouse liable for their obligations regardless of the content of the marriage contract.

The creditor(s) of a debtor-spouse have the right to demand the amendment or termination of the marriage contract in connection with

substantially changed circumstances, in accordance with the procedure established by law.

What hinders the popularization of marriage contracts in Uzbekistan?

Probably the main reason is national mentality. Indeed, if one starts a conversation about marriage contracts in Uzbekistan, people often react with bewilderment. Moreover, in our country, marriage is considered a sacred sacrament, and it is deemed “improper” to think in advance about negative outcomes (i.e., divorce), since marriage, according to local mentality, is for life.

The second reason is the low legal awareness of citizens. Unfortunately, not all residents of Uzbekistan know their rights, including the fact that they can enter into such contracts. Uzbekistan is only beginning this complex and long process, and gaps in citizens’ legal literacy must be addressed at the state level.

The third reason is that not all young couples possess their own property (real estate, etc.), as in Uzbekistan most married couples live in the husband’s parents’ house.

Another reason is that couples who do not have property at the time of marriage often do not think about acquiring it or dividing it in the event of a potential divorce.

It is well known that the study of issues related to the conclusion, amendment, and termination of marriage contracts in the post-Soviet period was, by its nature, a new area, which is why the extent of research on the problem can be considered conditional. To be fair, it should be noted that issues regarding the contractual regime of spouses’ property were, to some extent, addressed in the scientific works of Soviet-era scholars such as E.M. Vorozheikin, G.K. Matveev, V.A. Ryasentsev, O.M. Tolstikova, V.A. Tarkhov, and others. The peculiarity of these views was that, through the lens of Soviet ideology, they reflected the idea of denying

the property basis of family relations and limited the definition of the family solely to a unit of Soviet society.

Currently, these issues have become the focus of close attention by authors from CIS countries, including M.V. Antakolskaya, E.R. Belopolsky, S.N. Bondov, O.G. Kurilenko, L.B. Maksimovich, A.V. Myskin, A.M. Nechaeva, L.M. Pchelintseva, Ya.L. Svonyan, A.P. Sergeev, I.V. Sokolova, S.A. Tyurintsev, Yu.K. Tolstoy, Kh.R. Shnatko, and others.

Among domestic scholars who have addressed issues of marriage contracts, notable scientific works include those of F.M. Atakhodzhaev, N.A. Ashurova, T. Ayubova, M.S. Vasikova, I.B. Dzhuraeva, I.B. Zakirov, D.V. Zakirova, G. Inomzhanova, D.M. Karakhodzhaeva, T.V. Kochergina, R. Mukhamedov, N.S. Narmatov, A.R. Rakhmanov, Kh.-A.R. Rakhmankulov, N.Kh. Rakhmonkulova, S.I. Sobirova, B.R. Topildiev, Sh.A. Tukhtasheva, K.Sh. Khamraeva, Zh. Sharopova, Z.Sh. Shamukhamedova, U.Sh. Shorakhmetova, Z.N. Esanova, Sh.R. Yuldasheva, and others.

In conclusion, it should be noted that the conclusion of a marriage contract is not permitted by the legislation of all countries. In the so-called progressive world, the institution of the marriage contract has its own characteristics, related to its form, procedure for execution, and the composition of its parties. In some countries, it is prohibited to alter the statutory regime of spouses' property (Argentina, Cuba, Romania), while in others, a marriage contract may only be concluded prior to the registration of the marriage (Brazil, Japan, Portugal). In France, Belgium, Greece, Israel, Monaco, and other countries, judicial oversight is considered mandatory for the conclusion of a marriage contract, whereas in Germany, Italy, Hungary, and Switzerland, such oversight is not provided for by the legislator.

In cases where foreign citizens marry citizens of the Republic of Uzbekistan, it is important that the text of the marriage contract specifies which country's law will apply. This may be the law of the country of which one of the spouses is a citizen, the country where their property is registered, or the law of another state. The Family Code of the Republic of Uzbekistan allows spouses to modify the choice-of-law agreement at any time. However, if the law specified in the contract is not Uzbek, one must act within the framework of foreign legislation.

The analysis of foreign legislation and legal practice reveals a wide diversity of approaches to defining the parties, subject matter, and permissible content of marriage contracts. These differences stem from the unique historical evolution of family law in each jurisdiction, the influence of religion and social norms, and the prevailing understanding of the balance between public interest and private autonomy in family relations. Despite this variety, one can observe a general global trend: the recognition of the marriage contract as a flexible legal instrument that allows spouses to individualize their marital property regime within the limits established by law.

In most countries that have legislatively recognized the marriage contract, such as France, Germany, Japan, and the United States, the primary requirement for the parties is their full legal capacity and attainment of marriageable age. The rationale behind these requirements is rooted in the contractual nature of the institution itself: the conclusion of a marriage contract presupposes the ability of the parties to understand and evaluate the legal consequences of their decisions, to exercise free will, and to act independently in their legal and property affairs.

However, in both theoretical discussions and judicial practice, a complex legal question arises: can a marriage contract be concluded by individuals who have not reached the general marriageable age but have

been granted permission to marry early by a competent authority or court? Similarly, what about individuals who have acquired full or partial legal capacity through emancipation — for instance, as a result of engaging in entrepreneurial activities or entering employment prior to adulthood? These cases highlight a tension between the principles of age-based capacity and functional autonomy, forcing legislators to determine whether emancipation or early marriage should automatically confer the right to enter into a marriage contract.

A comparative examination shows that Western European countries (notably Germany, France, and the Netherlands) tend to follow a liberal approach, allowing emancipated minors or those married under special authorization to enter into marriage contracts on an equal footing with adults. For example, Article 414 of the German Civil Code (BGB) and Article 1398 of the French Civil Code allow minors who have been granted full legal capacity through marriage or emancipation to conclude contracts, including marital agreements, without the need for additional consent. Similarly, the Japanese Civil Code explicitly recognizes the contractual autonomy of such individuals, emphasizing the principle of personal independence upon marriage.

In contrast, Uzbek law remains more conservative on this issue. Although the Family Code and Civil Code of the Republic of Uzbekistan recognize the possibility of emancipation (e.g., for minors engaged in business activities), they do not explicitly provide for the right of such persons to conclude a marriage contract. This omission creates a legal gap, particularly in light of modern social realities where young entrepreneurs or early married individuals may possess significant personal assets requiring legal protection. Drawing on comparative legal experience, it seems reasonable for the national legislator to clarify this issue and extend the right to conclude marriage contracts to emancipated or partially

capable individuals, following the examples of European and Japanese civil law systems.

Regarding the subject matter and content of marriage contracts, a clear division between legal traditions can also be observed. In most continental European jurisdictions, including Uzbekistan, the marriage contract primarily serves as a mechanism for regulating the property relations of spouses — defining ownership regimes, distribution of income, management of family assets, liability for debts, and financial settlements in the event of divorce. This narrow focus is rooted in the civil law understanding of family relations as a sphere partially governed by public order, where freedom of contract is permitted only within limits established to protect the weaker party and the institution of the family itself.

By contrast, Muslim legal systems and certain common law jurisdictions adopt a broader conception of the marriage contract, one that extends beyond property to include personal rights and obligations of the spouses. Under Islamic law (Sharia), for example, the *nikah* contract may include stipulations regarding residence, maintenance, education, monogamy, or mutual conduct, provided they do not contradict the core principles of the Qur'an and Sunnah. Similarly, in the United States (particularly under the Uniform Premarital Agreement Act) and Israel, spouses may include personal clauses concerning domestic arrangements, child-rearing, or religious observance, so long as such clauses do not violate public policy or infringe upon basic human rights.

The Uzbek legislator, however, deliberately excluded the regulation of personal rights and duties from the scope of the marriage contract, thereby aligning national legislation with the European continental legal tradition. This choice reflects both the cultural and ethical values of Uzbek society and the historical continuity of its legal system, which regards

marriage not merely as a contract between individuals, but as a social institution with moral and demographic significance. The emphasis on the property nature of the marriage contract ensures legal certainty, prevents abuse of private autonomy, and safeguards the public function of family law.

Therefore, while the marriage contract in Uzbekistan shares common features with international practice, it retains a distinct legal identity shaped by national values and traditions. The challenge for modern Uzbek law is to maintain this delicate balance: to preserve the moral and social foundations of the family while expanding the scope of contractual freedom in line with global trends and the evolving needs of contemporary society.

2.2. Contractual Regulation of Spousal Property in Islamic Countries: Conclusion and Content of the Marriage Contract (Agreement)

A distinctive feature of Muslim law was that it combined the rules of Islamic religion with legal norms. In the 7th century, Muslim jurists attempted to separate legal norms from religious ones⁶⁵.

The most important monument of Muslim law is considered to be "Hidaya fi furul al-fiqh" (Hidaya) - commentaries on Muslim law, an original work of legal and historical character, written in the 12th century by the famous faqih-jurist of Maverannahr, Burhanuddin Marghinani, in which special attention was paid to issues of marital and family relations.

The collection of commentaries on Muslim law was also reflected in "Mukhtassar ul Wiqaya." The work of the scholar Rizauddin ibn-Fakhruddin "Family" contained issues of marital-family and moral relations. The norms of Muslim law regulating marital and family relations were religious in nature, based on the provisions of Islamic religion, and this was especially evident in the legal regulation of marriage contract matters.

As noted in the literature, according to Muslim law, marriage had the character of a contract, specifically a contract of sale and purchase. On one side, the bride was offered as an object of trade, of sale, and on the other side - the groom as a buyer who gives a certain price for the bride, with the main condition of this contract being recognized as payment for the bride - kalym and mahr (makhr). Kalym represented a ransom for the bride, paid to her parents, relatives, or guardians in money, livestock, or other property, as well as personal labor in their favor. Mahr was the name given to the dowry assigned upon conclusion of marriage conditions, to

⁶⁵ Hidayat. Commentaries on Muslim Law. Volume 1. – T.: 1994. – P.35

the wife from her husband, from his property, the latter being considered the wife's property regardless of the consequences of the marriage.

Marriage in Muslim law was based on the inequality of the sexes, and the marriage act as a contract created the husband's right to possess his wife. In marital life, the husband acted as master, and the wife as his monopoly property⁶⁶.

The contractual nature of marriage under Muslim law was particularly vividly expressed in the conditions of entering into it, as well as in the legal relations of spouses. To enter into marriage, Sharia required those entering into marriage to comply with a number of conditions, the main ones being: mutual consent of the marrying parties; reaching the marriageable age established by Sharia norms; conclusion of marriage in the presence of witnesses; payment of kalym and mahr for the bride; absence of close kinship, etc.

The Islamic marriage contract is considered an integral part of Islamic marriage and defines the rights and obligations of husband and wife or other parties involved in marriage procedures in accordance with Sharia. Whether this is considered an official, binding contract depends on the jurisdiction. Marriage contracts of the Islamic faith are invalid under English law, nor under American legislation⁶⁷. Because of this, some Islamic couples will conclude a marriage only after the couple has entered into a legal marriage in court.

In Sunni Islam, when concluding a marriage contract, there must be at least two witnesses. Proper witnessing is crucial for confirming the marriage and also serves as protection against suspicions of marital infidelity.

⁶⁶ Atakhodjaev F. M. The Development of Marriage Legislation of the Republic of Uzbekistan and the Problems of Its Further Improvement: Abstract of the Dissertation for the Degree of Doctor of Legal Sciences. – Tashkent, 2000, p. 12.

⁶⁷ Her Majesty's Attorney General v. Akhter & Khan: Marriages under Islamic faith are invalid under English law — Court of Appeal ruling, February 14, 2020.

In Shia Islam, marriage witnesses are not required⁶⁸. It is also believed that temporary marriage, or Nikah Mut'ah (a type of contract with more relaxed requirements), was prohibited in Sunni Islam, and the requirement for witnessing was introduced by Sunni caliphs, particularly Umar, to ensure that no couple would enter into a secret union.

Marriages are usually not conducted in mosques (depending on the country and culture of both where the wedding takes place and the parties involved), because typically men and women are separated during the ceremony and reception. In Sunni Islam, there is no official clergy, so any Muslim who understands Islamic traditions can be the officiant at a wedding. However, if a Muslim wedding is conducted in a mosque, the wedding may be presided over by an officiant known as a qadi, qazi, or ma'dhun (Arabic: مأذون)⁶⁹.

Women's rights with the advent of Islam fundamentally changed compared to their position in society in the twenty-first century. Before the advent of Islam, men were allowed to marry or divorce at will, which led to a number of problems in society. However, the current status of marriage in Islam is considered equal and fair for both men and women and signals the creation of a family.

The Quran states that you should love your husband or wife, however divorce is not forbidden. The lifestyle of men and women after divorce is very different; women must observe a period of abstinence and remain unmarried for a certain period of time. This period of abstinence and solitude allows the father, if the wife was pregnant before the divorce, to know whether the future child belongs to them or not⁷⁰.

⁶⁸ "Marriage under Shiite and Sunni Law – Fundamental Provisions." November 29, 2020.

⁶⁹ Vows and Toasts: Hundreds of Ways to Say "I Do" and Cheers to You! Sellers, Incorporated Publishing, May 14, 2014. ISBN 978-1-4162-0715-3.

⁷⁰ El-Ali, Lina (2021). No Truth Without Beauty: God, the Qur'an and Women's Rights. Basingstoke: Palgrave Macmillan. pp. 179–197. ISBN 9783030835828.

Among the conditions that may be included in a marriage contract are the waiver of certain obligations or the requirement for their fulfillment⁷¹. The contract can also be used to regulate the couple's physical relationship if necessary.

The marriage contract may also specify where the couple will live, whether the first wife will allow the husband to take a second wife without her consent. The wife has the right to initiate divorce, this is called khula. She either returns the dowry (mahr) or not, depending on the reason for divorce. The man has the right to divorce. The marriage contract is somewhat reminiscent of marriage agreements that were once concluded for upper-class Western brides, but can extend to non-financial matters usually ignored by marriage agreements or prenuptial agreements.

One of the important purposes of the contract is to make sexual intercourse lawful. This is confirmed by various hadiths and quotes:

Sahih Bukhari, Book 62, No. 81⁷²: • Narrated by Uqba: The Prophet (peace and blessings of Allah be upon him) said: "The conditions [in a marriage contract] that most deserve to be fulfilled are those by which you are granted the right to enjoy the intimate parts of the body (of a woman)"⁷³.

Al-Mughni (by Ibn Qudamah), Kitab al-Nikah:⁷⁴ • ... The Prophet, may Allah bless him and grant him peace, [said]: "The most worthy conditions that must be fulfilled are those by which sexual intercourse becomes permissible for you."

Cited in (Al-Akad, 2014), a common problem in translating marriage contracts is related to the variety of synonymous words in the legal Arabic system that have no equivalent in the English system in terms of marriage

⁷¹ Al-Mughni by Ibn Qudamah, Vol. 9, p. 483.

⁷² Sahih al-Bukhari, Book 62, No. 81. Archived from the original on June 14, 2007.

⁷³ Sahih al-Bukhari, Volume 4. Academic Circles. Retrieved July 12, 2020.

⁷⁴ Archived Marriage: According to the Qur'an and Sunnah. February 14, 2012, at the Wayback Machine, Muttaqun.com.

contracts, such as: مهر, شيبته, صداق - Mahr, Shabka, Sadaq - (dowry), whereas all these examples are attributed to the culture and traditions of the Arabic language and are subject to influence⁷⁵.

Interfaith marriage has become an increasingly popular concept in recent years, however, according to the Quran, Muslim women should only marry Muslim men, and failure to meet this requirement can lead to problems within families and beyond. Although technically Muslim men are allowed to marry Muslim, Christian, Jewish women (and, according to a minority opinion, Zoroastrian women, also known as Ahl al-Kitab (People of the Book)), this is strongly discouraged to the extent that some scholars (mainly from the Hanbali school of fiqh) have ruled that this permission is applicable only in Dar al-Islam (a community where Islam dominates and Islamic values are present). Even in these marriages, there are a number of restrictions (for example, children are raised as Muslims), which often makes such a marriage impractical⁷⁶.

One of the main problems of interfaith marriage considered in the Islamic community is the fear that someone may renounce their faith or their children will not grow up in it.

Another problem that may arise is conflict directly between the two married people if their religious traditions get in the way of the other, leading to a discussion about which religion should be more prominent in the relationship.

There are conditions for concluding a marriage contract. For a marriage contract (nikah) to be considered valid under Sharia, the following conditions must be observed:

⁷⁵ Al-Akad, Mohammed H. (2014). "Translating Legal Texts from Arabic into English: A Case Study of Marriage Contracts." Arab World English Journal, 5(2), 110–121.

⁷⁶ "When Muslims Enter into Mixed Marriages." Interfaith Observer.

First - the pronouncement of specific words through which the marriage takes place.

Second - the absence of impediments to marriage for the woman, namely: a) that she not be a close relative to whom marriage is forbidden, whether blood relatives, kin, or milk relatives (mother, grandmother, sister, daughter, aunt, niece, mother-in-law, daughter of wife); b) completion of the iddah period after divorce or death of husband; c) profession of Islam, i.e., she must be a Muslim or a woman of the Scripture.

A Muslim is not permitted to marry a fire worshipper, idolatress, apostate, the daughter whose father is a fire worshipper and mother is from the People of the Scripture, and vice versa.

Third - the absence of impediments to marriage for the man, namely: a) he must not be among those whom it is forbidden for a woman to marry (father, grandfather, brother, son, nephew, father-in-law, son of former husband); b) he must not have more than four wives simultaneously (that is, he cannot take a fifth or more wives); c) he must be a Muslim.

Fourth - the girl's consent. The hadith of the Prophet (peace and blessings of Allah be upon him) states: "A widow is not given in marriage until she commands it, a virgin is not given in marriage until her permission is asked." He was asked: "O Messenger of Allah! And what is her permission?" He answered: "Her silence" (Imams Muslim, at-Tirmidhi).

Sharia prohibits giving in marriage a girl who was previously married if she does not express her consent aloud. If it concerns a virgin, her silence is sufficient for her consent, because she may be shy to express her consent aloud. Also, the father or grandfather (and no one else) has the right to give a virgin in marriage without her consent to a man worthy of her, because they are more concerned about her and her prosperous marriage.

Fifth - a guardian. According to the statement of the Prophet (peace and blessings of Allah be upon him): "Marriage - only in the presence of a guardian," it is impossible to enter into marriage without a guardian.

Abu Hurairah (may Allah be pleased with him) narrates that the Messenger of Allah (peace and blessings of Allah be upon him) said: "A woman does not give another woman in marriage and does not give herself in marriage" (Ibn Majah). A guardian is an adult, mature, sane, righteous Muslim man from among the woman's relatives on the father's side: father, grandfather, full brother, son of full brother (nephew), full brother of father (uncle), as well as their sons and descendants. If there are none or the guardian who has the right to give her in marriage is absent (i.e., is at a distance of 84 km or more), then the girl has the right to be given in marriage by the imam of the locality where the girl is located. A guardian cannot be any of the brothers on the maternal side, nor their children, nor the grandfather on the maternal side, nor the uncle on the maternal side, because they are not among the relatives on the father's side.

The bride's guardian should pay attention to the qualities of the groom and not give her in marriage to someone who is known for bad character or weakness of faith, or to someone who will not properly care for her. If someone gives his daughter in marriage to an unjust person, a wicked person, an adherent of innovations in religion, or one who is inclined to commit obvious major sins, then he commits a crime against his religion and brings upon himself the wrath of the Almighty for not fulfilling his duty towards the one for whom he is responsible.

One man asked Hasan al-Basri: "Several men have proposed to my daughter. So to which of them should I give her in marriage?" "To the one who fears Allah. And if he loves her, he will respect her, and if he hates her - he will not offend her," he answered. If a worthy man proposes to a girl, suitable for her in class, equality of lineage, culture, religion, modesty

and freedom, and her father without reason refuses to give her in marriage and this is repeated several times, in this case the father's guardianship is removed. The marriage contract (nikah) becomes invalid and the imam of the given locality has the right to give her in marriage.

Sixth - the presence of two witnesses from among righteous Muslim men when concluding nikah. The Messenger of Allah (peace and blessings of Allah be upon him) said: "There is no nikah without a wali and two fair witnesses" (al-Bayhaqi).

Seventh - the necessity of paying mahr.

The conditions stipulated in the marriage contract are either related to the wife's right to divorce or are simply conditions that are spoken (agreements).

Let us consider both types of conditions and how they affect marriage (its validity).

Conditions with the wife's right to divorce. Basically, there are three types of conditions established by the marriage contract (without mentioning divorce).

A) Conditions emphasizing those rights of spouses that they are obliged to fulfill anyway simply because the nikah contract obliges them to do so, for example, that the wife will receive material support, clothing and shelter, that the husband will care for the wife properly (ma'ruf) and, similarly, that the wife will be obedient to the husband in everything permissible concerning their marriage, etc.

The hukm of these conditions (there is ijma on this matter) - is that both spouses are obliged to fulfill them, even if these conditions are not written in the contract. If the husband does not act in accordance with these

conditions, then the wife has the right to demand divorce by Law⁷⁷ [in a Sharia court or from an imam].

B) Conditions contradicting the idea of marriage according to Sharia. In other words, contradicting the conditions named in point A. For example, such as that the wife will not receive mahr, that the husband will not materially support the wife, or that the husband will not have the right to intimate relations with the wife, or that he must divorce his first wife, etc.

The decision (hukm) of Sharia on this matter is that they are invalid, and the marriage is valid. They have no effect on the validity of the marriage, and neither spouse is obliged to fulfill them.

Imam al-Bukhari, rahimahullah, devoted a separate chapter in his "Sahih" to the impermissibility of such conditions under the title "Chapter examining conditions not permissible in a marriage contract."

Then he cited the following hadith.

Sayyiduna Abu Hurairah narrates from the Messenger of Allah, may Allah bless him and greet him:

"It is not permissible for a woman to request divorce for her [Islamic] sister (i.e., the wife of her future husband) with the sole purpose of receiving everything from him herself, for she will receive only what is predestined (prepared) for her."

He also cites the statement of Sayyiduna Ibn Mas'ud:

"A woman entering into marriage should not set a condition that her sister [in faith] be given a divorce⁷⁸."

C) The third category of contract conditions - these are conditions not belonging to either the first or second category, as they do not reinforce the recognized rights of spouses on the one hand, and do not contradict

⁷⁷ See: Fath al-Bari, 9/217; Umdat al-Qari, 14/106; and Radd al-Muhtar, 2/45.

⁷⁸ Sahih al-Bukhari, 4857.

them on the other. These are conditions in which there is a certain benefit (usually) for the wife, such as the condition not to marry again or that the husband will not force her to leave her native city, etc.

As for the fulfillment of this group of conditions, there are different opinions of fuqaha on this matter.

In the opinion of Imam Ahmad Ibn Hanbal, rahimahullah, these conditions are obligatory to fulfill, and if the husband in any way neglects them, the wife has the right to request annulment of the marriage⁷⁹.

However, according to the other three schools of Islamic law (Hanafi, Maliki, Shafi'i), fulfilling conditions like these is a religious obligation of the husband, but not legally binding on him, as it is not something a court can oblige him to do, and the wife cannot request annulment of the marriage⁸⁰.

Let us present the arguments supporting this opinion:

The Messenger of Allah, may Allah bless him and greet him, said:

"Any condition that is not in the Book of Allah is invalid⁸¹."

The Messenger of Allah, may Allah bless him and greet him, said:

"All conditions agreed upon by Muslims must be observed, except conditions that prohibit what is permitted and permit what is forbidden."

It is said that taking a second wife is lawful for the husband, and stipulating a condition that does not allow him to exercise this right is not permissible.

However, it concerns the moral obligation of the husband to fulfill his promise, as Allah the Almighty said (meaning):

"And be true to your obligations. Indeed, Allah will ask the person who violated a promise or contract about this and will punish him for this violation⁸²."

⁷⁹ Ibn Qudamah, al-Mughni, 7/71.

⁸⁰ For Hanafi: Radd al-Muhtar, 3/203; for Shafi'i: Al-Majmu'; for Maliki: Bidayat al-Mujtahid, 2/59.

⁸¹ Sahih al-Bukhari.

The Messenger of Allah, may Allah bless him and greet him, said that failure to keep promises is a sign of a hypocrite.

Thus, a person commits a sin by not fulfilling these conditions (of the third group), but this does not affect the validity of the marriage.

Conditions related to the wife's right to divorce herself.

Often in the contract, conditions are written in such a way that if the husband does not fulfill them, the wife has the right to divorce herself. This (transfer of the right to divorce to the wife) in fiqh terminology is called tafwid.

And there are three situations.

A) When tafwid occurred after the marriage was concluded. This, without any doubt, can be done. However, here there is no talk of any conditions, as the marriage has already been concluded.

When the husband transfers the right to divorce to the wife, this right is valid only in a specific place [and time] (in the given majlis). If she did not exercise it, then it is lost.

However, if the husband gave this right for a certain period, for example, 5 years or permanently, then she has this right throughout this period.

B) When tafwid occurs at the time of marriage conclusion, when the wife sets conditions and demands the transfer to her of the right to divorce in case the conditions are not fulfilled.

This is also a permissible and valid type of tafwid, but only if the proposal to enter into marriage together with the demand for tafwid came from the woman, and the man only accepts it. If the opposite happens (the proposal comes from the man), then this is not considered⁸³.

⁸² Surah Al-Isra, Ayah 34.

⁸³ Ibn Abidin, Radd al-Muhtar, 2/285, and Bahr ar-Ra'iq, 3/318.

In this case, if marriage with tafwid conditions is concluded at the woman's initiative, then she receives tafwid automatically if the conditions are violated.

C) Tafwid takes place before the marriage is concluded. In other words, the woman puts forward certain conditions, and in case of marriage conclusion and further non-fulfillment of these conditions, she has the right to self-divorce.

This is also permissible, but only under one condition - the husband links tafwid with nikah, that is, he means: "If I marry you and cannot fulfill such and such conditions, then you will have the right to divorce yourself⁸⁴."

In this case, if they enter into marriage and the husband cannot fulfill the conditions, then the wife has the right to divorce herself.

It is worth noting here that, although the right to give divorce initially belongs to the husband, he can transfer it to the wife, with or without conditions. Since the husband transferred this right to the wife, it cannot be taken back, unless she herself returns it to him.

If you give the right to divorce to your wife, linking this right to your marriage, then she will have this right, with or without conditions. If you link this right to certain conditions, then she will have this right only if these conditions are not fulfilled. However, if you do not transfer the right to divorce to her, and conditions are simply mentioned, then the condition not to have children violates the conditions of the first group and will be considered invalid. The reason for this is that the husband's right to intimacy with his wife without contraception is an establishment of Sharia. It should be remembered that a marriage not burdened by conditions is the best marriage. And the best ways to organize relationships are mutual

⁸⁴ Radd al-Muhtar, 2/681, Bab at-Ta'liq.

understanding and the manifestation of the character, manners and disposition of the best of those created, who became an example for all humanity [the Prophet, may Allah bless him and greet him].

The marriage contract (in Arabic "aqdu-z-zawaj") is a sacred contract concluded between two parties before Allah, where the contracting parties take upon themselves the responsibility to observe all obligations imposed on them by the Almighty. The procedure for concluding marriage contracts is also regulated by the legal systems of Muslim countries (Syria, Jordan, South Africa, Algeria, Egypt, etc.). As everywhere in the world, a Muslim marriage contract is an agreement by which each of the spouses assumes obligations for which he is responsible.

"The most important norms are the stability of marriage and the fulfillment by each spouse of the contract conditions. A large role is given to issues of establishing inheritance between the two parties. The man is obliged to assume the maintenance of his wife in all forms (food, clothing, housing, etc.). Obligations of the spouses are provided to allow each to enjoy each other. The wife is obliged to confirm the husband's right to her upbringing, because in Muslim countries the husband is the head of the family."

In addition, the marriage contract discusses kalym and the time of its payment, the wife's right to divorce when she wishes, etc.

Marriage is concluded in a Sharia court in the presence of two witnesses - Muslims, usually relatives of the newlyweds.

Muslims cannot marry atheists, Buddhists, Hindus, idolaters, polytheists, and apostates. Sharia permits marriages of Muslims with Jews and Christians, since the faith of the latter "has scripture." But if children from such a marriage adopt another faith (non-Muslim), then the marriage itself is considered invalid. A marriage is also considered invalid if it was

performed in a church or a Muslim woman is in a civil marriage with a non-Muslim.

2.3. Contractual Property Relations Between Spouses Based on a Marriage Contract (Agreement) According to the Legislation of European Countries.

Regarding the main stages of development of the marriage contract, the establishment of the institution of the marriage contract as a legal instrument regulating the contractual regime of spousal property began only in the late 18th - early 19th century in France, England, Germany, Austria, etc. As noted in the literature, the appearance of the marriage contract in the legislation of foreign countries was primarily due to the nature of social development at that time, whose various strata needed different solutions to their property problems.

It was for this purpose that "courts of equity" began to recognize as valid marriage contracts under which part of the wife's property remained outside the husband's control. All rules developed by "courts of equity" applied only to property not included in the ordinary property of the family, but constituting one or another form of capital⁸⁵. Therefore, in England until the end of the 19th century, there were actually two regimes of marital property: "common law" - for the majority of the population, and "equity" - for the upper echelons of the propertied classes. Regarding Eastern Europe, sources indicate that after the adoption of Christianity, a church form of marriage conclusion was introduced. Marriage came under the jurisdiction of the church. The Orthodox Church was then under the direct subordination of the Constantinople (Byzantine) church. Through the efforts of secular and church authorities, Byzantine legislation on

⁸⁵ Douglas, G., Lowe, N. *Bromley's Family Law*. 9th ed. Butterworths, London, Edinburgh, Dublin, 1998.

marriage and family subsequently became an active source of marriage law⁸⁶.

According to US legislation, it is still possible to provide for almost everything in a marriage contract in this country, not only property obligations of spouses, but also obligatory ones. Only participation in raising children and deciding which spouse they will remain with as a result of divorce cannot be delimited. However, as noted in the literature, this does not mean that one can carelessly fall into bondage - American courts have the right to decide how fair the terms of the marriage contract are⁸⁷.

The relevance of the study of family law has great historical significance. In particular, of considerable interest is the history of the appearance of the marriage contract, which arose thousands of years ago in Ancient Greece and Rome: "a man and a woman, before starting a family, drew up an agreement where they defined their property relations, including such issues as inheritance of jointly acquired property in the future⁸⁸." This was not considered shameful, and such "insurance" was very common before Christianity. The concept of a contract as an expression of will that obliges a person to observe the obligations assumed is one of universal human values. Even Demosthenes (Ancient Greece) wrote: "What they agree upon, that prevails." Cicero (Ancient Rome) said: "the basis of law is fidelity to one's word and contract." All this proves that contractual legal relations in family law arose long before Christianity and still exist, based on the wisdom of the ancient inhabitants of the planet.

⁸⁶ Yushkov, S.V. History of the State and Law of Russia (9th–19th Centuries). Rostov-on-Don, 2003, p. 331.

⁸⁷ Sullivan, B.K. Do You Need a Prenuptial Agreement? Retrieved from <http://www.womenof.com>.

⁸⁸ Gasparyan, A.S., Atrokhova, E.S. Marriage Contract: A Guarantee of Family Happiness. Rostov-on-Don: Phoenix, 2004, p. 75.

At the turn of the 7th-9th centuries in Germany, the personal relationships of spouses derived from paragraph 1354 of the "German Civil Code," which established the dominant position of the husband in the family and the property relations of spouses, which even then were determined by the marriage contract. Basically, this was a system of separate property rights of spouses.

Currently, many countries use contractual legal relations in family legislation. Marriage in foreign countries is a transaction (contract). Among Western lawyers, actions to change family relations are called marital-family transactions (their content comes down to determining the legal regime of spousal property and regulating their property relations).

In world practice, three types (except for France) of legal regimes of spousal property are used: community, separation, and mixed regime (called the "deferred community" regime). The legal basis for applying a specific regime is either a marriage contract or the law of a specific country (legal regime). The marriage contract determines the status of premarital property of husband and wife, the regime of property acquired in marriage, as well as property sanctions in case of divorce. The legal regime of community property of spouses is used by the legislation of France, Spain, some US states, the separation regime - by the legislation of some US states and other countries. The mixed regime ("deferred community") exists in Germany, Finland, Iceland, Sweden, Denmark, Norway, etc.

Under the community regime, spouses have the right of joint ownership of property acquired in marriage, but property received during marriage as a gift or by inheritance remains in separate ownership. The separation regime means that spouses separately account for their premarital property and property acquired in marriage with their own funds. The mixed regime ("deferred community") means that while

married, spouses manage property separately, and in case of divorce, their property becomes common and is divided equally.

At the present stage, the practice of concluding marriage contracts deserves special attention. In particular, in the USA, a marriage contract and marriage are essentially the same thing, and their marriage contract, "in addition to property issues, can provide for other rights and obligations (laundry-cleaning, dog walking, cooking dinner, etc.). Many define sanctions in the marriage contract in case of infidelity, and even limits on lovemaking (sometimes with an exact description of options), all of this is quite legal in America⁸⁹."

To enter into marriage and conclude a marriage contract, newlyweds need to buy a marriage license in the local court with the participation of at least one witness.

"The cheapest license is in Massachusetts (\$4), the most expensive in Florida (\$88.5), the average price is \$30-35. As a rule, it is impossible to buy a marriage license with a credit card or bank check. Courts in most states require payment in cash. Curiously, Florida state authorities offer a \$32.5 discount on their license to couples who have completed a course called 'Florida Premarital Preparation.' This course is conducted by specially trained clerks of local courts and covers issues of relationships between spouses, raising children, managing family conflicts and finances. Couples wishing to prepare for marriage independently, instead of personal lectures, can choose audio or video materials or receive the lecture content by email⁹⁰."

In the states of Connecticut, Massachusetts, Missouri, Minnesota and others, the license is sold only to persons who have passed a special blood

⁸⁹ Gasparyan, A.S., Atrokhova, E.S. Marriage Contract: A Guarantee of Family Happiness. Rostov-on-Don: Phoenix, 2004, p. 75.

⁹⁰ Gasparyan, A.S., Atrokhova, E.S. Marriage Contract: A Guarantee of Family Happiness. Rostov-on-Don: Phoenix, 2004, p. 75.

test. If these tests show kinship between the groom and bride, they will be refused marriage registration. In Utah, marriage between first cousins is permitted if they are 65 years old. In Connecticut, newlyweds must be tested for syphilis and rubella tolerance, receiving a "Premarital Health Certificate." In Mississippi, marriage is permitted only from the age of 21; before that, people are considered children. In Texas, newlyweds must notarize a certificate of financial support for future children in the presence of two witnesses. In all states, it is also necessary to pay a wedding fee and provide the local court with a certificate of payment of all taxes.

The marriage license establishes a period during which marriage can be registered. "In Oklahoma - the shortest validity period of a marriage license, which requires couples to complete it within 10 days; in Missouri the license is valid for 30 days, in Montana - 6 months, in Nebraska - up to a year. And only residents of Columbia, Georgia, Iowa can sleep peacefully, as there the license is valid for life."

England, being a centuries-old heir to its traditions, does not recognize marriage regimes except one - joint ownership of spouses. This means that all premarital property of both spouses after the wedding automatically becomes common property, as does property acquired in marriage and received as a gift or by inheritance. Currently, this issue has come to the fore for the English, as ladies, faced with the fact that a new husband pays alimony to his former wife and children from his first marriage from common property, do not want to put up with this.

In France, under current legislation, there are four types of marriage contracts.

A. Common ownership of jointly acquired property (La communauté réduite aux acquêts).

This marriage regime is concluded automatically, is not registered with a notary and is not subject to an official fee (it is free). This is the basic version of a marriage agreement in which each spouse remains the owner of premarital property, and property acquired in marriage becomes common family property. Both spouses manage it independently, except for large expenses, where the consent and signatures of both spouses are required simultaneously. Premarital debts are repaid by spouses individually, and joint marital debts - from joint property. In case of divorce, premarital property remains with each, and common property of spouses is divided in half. In case of death of one of the spouses, premarital property remains with the survivor, and common property of spouses is divided in half, with the second half and the premarital part of the deceased given to his heirs from any line of kinship.

B. Separate ownership of property (La séparation des biens).

In this marriage regime, each spouse retains full rights to premarital property and to their share in common family property. Each spouse is responsible for debts and credit obligations with their own property, without touching the other spouse's share. One spouse can transfer part of their property to the other spouse only by drawing up a deed of gift through a notary. This is the most popular marriage contract regime in France.

C. Participation in ownership of jointly acquired property (La participation aux acquêts).

This type of marriage contract provides for a separate regime of property ownership in marriage and management of one's income. During dissolution of marriage, the property of each spouse is assessed, and premarital property is deducted from it. Whichever of the former spouses has a larger share compensates the difference to the other, equalizing the

shares. This marriage regime is not very popular in France, as the French have difficulty understanding it.

D. Common ownership of property (La communauté universelle).

Under such a marriage contract, all property is considered common, including premarital, acquired jointly in marriage, received by both spouses as a gift and by inheritance. Debts, both premarital and arising in marriage, are considered common. Premarital property that one of the spouses wishes to keep personally must be indicated in such a marriage contract as a separate item. If in case of death one spouse left all property to the other, the surviving one, then the inheritance occurs automatically without fees and without a notary.

French marriage regimes are considered complex. Although marriage in France, with all the general pragmatism and rationalism of the French, is, first of all, the conclusion of a marriage contract.

The features of all French marriage contracts are as follows: if one of the spouses is a merchant, the marriage contract must be published in special editions for public viewing under threat of a significant fine. The same thing happens if the spouse became a merchant during the marriage. In Germany, a marriage contract (Ehevertrag) is subject to notarial certification only if it contains provisions on property rights (property rights of spouses) and on support in old age. The notarial fee for concluding a marriage contract is calculated based on the monetary assessment of the state of the marrying parties (minus possible debts). The property rights of spouses include:

a) community of acquired value (form of property relations of spouses by law; applies if property relations are not specified in the marriage contract; here, in case of divorce, property is divided in half); b) division of property (valid only if spouses included it in the marriage contract; it means that each spouse owns only their own property in

marriage and does not share it with the other even in case of divorce); c) property community (valid only if included in the marriage agreement and represents a regime of joint ownership of spouses; only premarital property included in the marriage contract and received as a gift or by inheritance during marriage is excluded from it).

In Austria, a marriage contract (Ehepakt) can be concluded both before marriage registration and during it in the formalized form of a notarial act. This contract is subject to mandatory notarial certification. It is an agreement between spouses regulating property relations during marriage and after its dissolution (including determining the shares of spouses in common property, living conditions of both in a joint apartment upon dissolution of marriage, as well as rules of mutual inheritance of common and divided property in case of death of one of the spouses).

Austrian family law separately accounts for divided property acquired by spouses before marriage registration, unless otherwise established by the marriage contract. Property acquired by spouses during marriage is considered their joint ownership (except for that received by gift or as inheritance).

A feature of the marriage contract in Austria is that this contract does not concern other economic and legal transactions of spouses, in particular, gift agreements between spouses or their conclusion of a founding agreement with shared ownership when creating a family firm, etc.

In Italy, the conclusion of marriage contracts is provided for by the Civil Code. As in national legislation, Chapter VI of the Civil Code of Italy provides for a legal property regime of the family (in the absence of a marriage contract), based on common property of spouses. "Article 162 of the Civil Code of Italy regulates the procedure for concluding marriage agreements (contracts), which must be concluded through an official act under pain of invalidity. The marriage contract must be registered with the

local authority, and if the contract concerns real estate, it must also be registered with the authorities registering real estate transactions⁹¹." The marriage contract must necessarily include: the date of the contract, the name of the notary who drew up the act, and general personal data of the marrying parties. The procedure for changing marriage agreements is specified in Article 163 of the Civil Code of Italy. The choice of property regime must also be included in the marriage contract; there are two of them: *Comunione dei beni* (only what was acquired after the wedding is divided in half in case of divorce) and *Separazione dei beni* (in case of divorce, each takes their own). Property owned by each spouse before marriage is not included in common property and is not subject to division upon dissolution of marriage. A feature of marriage agreements in Italy is that during official registration with the local authority, it is signed by all persons who are parties, i.e., both spouses and their heirs, and changes to such an act become legal upon their approval in court, provided that all the same persons sign them there as well.

In Sweden, a marriage contract is prepared in written form, signed by both spouses and two witnesses. Only issues of dividing property into common and personal, as well as methods of managing them, can be included in it. This document is registered in the district court in a general register, unified for the entire country. Spouses can change or terminate this contract at any time. A feature of Sweden's marriage contract is the priority of personal property of each spouse, not subject to division upon termination of marriage. That is, Swedes establish a regime of complete separate property, leaving each other the right of joint use, but not ownership of property.

⁹¹ Gasparyan, A.S., Atrokhova, E.S. *Marriage Contract: A Guarantee of Family Happiness*. Rostov-on-Don: Phoenix, 2004, p. 101.

In Denmark and Switzerland, the marriage contract is drawn up according to the same rules as in Sweden and is a necessary addition to the marriage certificate issued by state authorities. Swiss family law is characterized by the mandatory consent of both spouses to dispose of property in joint ownership.

The legislation of foreign countries has many common features regarding the marriage contract. For example, one of such common features is the location of norms devoted to the marriage contract in civil legislation, which is primarily due to the understanding of family law as an institution of civil law, and not as a separate branch of law.

However, there are also features of legal regulation of the marriage contract in various foreign countries.

For example, in many foreign countries, unlike Russia, where the secrecy of the marriage contract is enshrined, free access to familiarize oneself with its content is provided. This rule takes into account, first of all, the interests of the spouses' creditors. For example, in France, if one of the spouses is a merchant at the time of marriage or becomes one later, the marriage contract must be published on conditions and under threat of sanctions provided for by regulations relating to the commercial register.

Protection of creditors' interests when concluding a marriage contract is provided in most continental European countries. The text of the marriage contract is published in a special state body or public register; information about its conclusion, change, and termination is entered in the same order. In Western European countries and the USA, all changes to the marriage contract before marriage can be made in the same order required for its conclusion. After marriage, making changes to the contract is allowed only by court decision.

In some foreign countries, the marriage contract, in addition to property issues, necessarily also regulates other rights and obligations of

spouses. That is, the marriage contract actually represents protection from problems related to spousal disputes about their property, children, as well as alimony obligations. Each spouse can provide in the contract for punishment in case of infidelity, write how many times a week each spouse will, for example, wash dishes, go to the store, walk the dog. The marriage contract has the greatest freedom in the USA, where its subject can be any relations between spouses⁹².

Legal force to the marriage contract in common law countries is given by the court. However, the court is not strictly bound by the presence of the marriage contract and its conditions and has the right to fully or partially change it. Therefore, the parties are not guaranteed that in case of a dispute, the provisions of the marriage contract may be deprived of legal force, and the contract may be declared invalid by the court as a whole. As a general rule, it is provided that the marriage contract must be reasonable and fair in all respects.

In the USA, a standard marriage contract provides for the spouses to resolve several issues, primarily how property will be divided in case of divorce or death of one of the spouses. Those entering into marriage must decide whether they will jointly or separately own a bank account, real estate, car, jewelry, who will pay loans acquired even before the wedding - both spouses or the one who borrowed. If the spouses have children from a previous marriage, the contract is supplemented with articles on how the children's education will be paid for⁹³.

In general, it is practically impossible to list the variety of provisions that can be fixed in a marriage contract in the USA, since the contract also

⁹² Dzhuraeva, I.B. Personal and Property Rights of Spouses under National Legislation and Private International Law: Abstract of the Dissertation for the Degree of Candidate of Legal Sciences. Tashkent, 2001, 24 p.

⁹³ Laletina, A.S. A Comparative Legal Study of Contractual Regulation of Property Relations between Spouses under the Law of the Russian Federation and France: Abstract of the Dissertation for the Degree of Candidate of Legal Sciences. Moscow, 2004.

regulates non-property personal relations. But here too there are certain prohibitions. Thus, it is impossible to include in the contract an obligation concerning causing harm to the life and health of the US president.

In American law, so-called "prenuptial agreements" have also developed, which can provide for any conditions of the future joint life of spouses. In practice, such agreements often contain conditions on raising and supporting children, sometimes detailed conditions on the distribution of responsibilities when running a common household. But in case of disputes, they are not always taken into account by the court. As a general rule, it is provided that the marriage contract must be reasonable and fair in all respects.

There are also so-called marriage policies in the USA. For example, a spouse can receive insurance payments for the death of his wife in a traffic accident, but an indispensable condition is maintaining widower status for five years. The insurance company monitors possible violations.

Under French legislation, the marriage contract does not provide for monetary compensation to the spouse in case of divorce, conditions on child custody and payment of a certain amount of alimony for them. In case of divorce, the court appoints monetary compensation to the spouse and alimony for children (as well as their living conditions), the amount of which depends on the income and expenses of both spouses. Issues of alimony and custody can also be resolved on a contractual basis, but only when the judicial divorce procedure has already begun. Any agreements reached outside the divorce procedure will be considered invalid⁹⁴.

In a marriage contract, it is possible to provide for provisions in case of death of one of the spouses, according to which all property or part of the property of the deceased spouse passes into the ownership of the

⁹⁴ Tolstikova, O.M. *The Legal Nature of the Marriage Contract in Russian Law: Abstract of the Dissertation for the Degree of Candidate of Legal Sciences*. Moscow, 2016. p. 7.

surviving spouse. Gift provisions provided for by the marriage contract must respect the rights of children from previous marriages to their mandatory share in the inheritance, but they lose their force upon divorce, unless the spouse-owner wishes to preserve them himself.

The same fate befalls upon divorce the very common gift contract to the last survivor in France, according to which upon the death of one of the spouses, the surviving spouse becomes the owner of the property belonging to the deceased (subject to the share due to mandatory heirs). The subject of this contract can be both already existing and future property. But unlike gift provisions established by the marriage contract, this gift contract can be annulled by the donor at any time and not only upon divorce. The provisions of the marriage contract cannot be annulled otherwise than upon divorce⁹⁵.

In France, there are four marriage regimes regulated by the Civil Code.

1. Common ownership of jointly acquired property is exercised in the absence of a marriage contract, when each spouse remains the owner of the property that belonged to him before marriage. Property acquired in marriage is considered common. Both spouses dispose of it at their discretion, but for significant expenses or acceptance of credit and other obligations, the consent of both spouses is required.

2. Debts are also considered joint, and all jointly acquired property is used to repay them, regardless of which spouse created these debts and credit obligations. Upon dissolution of marriage, each spouse receives at their disposal personal property that belonged to them before marriage, and jointly acquired property is divided into two equal parts.

⁹⁵ Khamraev, K.Sh. The Concept, Content of the Right of Family Property, and Problems of Its Legal Protection: Abstract of the Dissertation for the Degree of Candidate of Legal Sciences. Tashkent, 1994. 25 p.

3. Separate ownership of property completely excludes joint ownership or use. Each spouse retains absolute rights to their own property, including that acquired during marriage, is responsible only for their own debts and credit obligations. Accordingly, the other spouse does not risk their share. With common property, property is divided according to the percentage ratio of funds invested by each party.

The inheritance provisions are the same under all regimes, but they are especially relevant under this regime, particularly if one of the spouses does not own any property. In the event of the death of one spouse, the surviving spouse has the right either to one-quarter of the property in full ownership, or to all the property in usufruct (only the right of use). The surviving spouse also has the right to remain in the joint dwelling for one year after the death of the other spouse (provided that the spouses lived together before the death of one of them). If the property is rented, the rent is paid out of another part of the inheritance. After one year, the surviving spouse has the right to remain in the joint dwelling until their own death.

However, if the surviving spouse chose one-quarter of the property in full ownership as their inheritance, the value of the right of residence will be deducted from the total inheritance estate at the time of property division. If the value of the right of ownership and residence exceeds the value of the inheritance estate, the spouse is not obliged to compensate the other heirs. Nevertheless, the spouse is not considered a forced heir and can therefore be disinherited by the other spouse at any moment (with the exception of the one-year right of residence). Therefore, property can be donated, provided the conditions applicable to these contracts are observed. In other matrimonial property regimes, the division of spousal property takes place before the inheritance estate is divided, and only then does the surviving spouse choose between the right of ownership or usufruct from the remaining inheritance estate.

3. Participation in acquired property (*La participation aux acquêts*) during the marriage represents a separate property regime. Upon termination of the marriage, the jointly acquired property is divided, similar to the community property regime.

4. Community of all property stipulates that all property, including property owned by the spouses before the marriage, property acquired during the marriage, and any property received by the spouses through inheritance or gift, will be considered common. Any debts are also considered common⁹⁶.

When concluding a marital contract, it is possible to exclude from common ownership the part of personal property that one of the spouses considers to belong only to them personally. This must be specified in a separate paragraph. It is also possible to include a clause, in the event of the death of one spouse, for the other spouse to receive a certain part of the property before the division of the inheritance estate among the remaining heirs, or a clause on unequal division, under which the surviving spouse receives, for example, three-quarters of all property, instead of one-half. In doing so, one must not forget about the rights of children from a first marriage and their reserved portion of the inheritance. Otherwise, they may demand the allocation of this share from the property. Such a claim is possible both during the lifetime and after the death of the managing spouse. Joint children cannot claim the property, as it is assumed that they will receive their share of the inheritance after the death of the second parent. However, the inheritance tax under this regime for joint children will be very high.

⁹⁶ Khamraev, K.Sh. The Concept, Content of the Right of Family Property, and Problems of Its Legal Protection: Abstract of the Dissertation for the Degree of Candidate of Legal Sciences. Tashkent, 1994. 25 p.

It should be noted that French civil law has retained the old rules that the provisions of a marital contract cannot contradict “good morals,” nor violate civil and family law. Restriction of the rights and duties arising from marriage, and the rights and duties of parents regarding their children, is not permitted. The provisions of the marital contract must not violate the equality of spouses in resolving family issues, restrict their rights and duties in raising and supporting children, or the freedom of each of them in choosing a profession and occupation.

The marital contract is regulated in detail in Germany. The civil legislation contains an entire section with articles directly relating to the regulation of the forms, types, content, and consequences of the marital contract, as well as a number of accompanying articles concerning the management, division, donation, inheritance, and transfer of spousal property; their rights, duties, and responsibilities towards third parties, etc.

The model for a marital contract is the joint regulation of the partners' property relations, namely the exclusion of the legally provided regulation and the determination of individual community or separation of property. Such individual regulation within the contract covers all other marital-related relations of the spouses or their relations with third parties.

The following agreements may be enshrined in the marital contract:

- Community of property, separation of property, or modification of individual provisions of property regulation, for example, granting the right to manage property to one of the spouses, changing the quota for dividing joint property, defining property not included in the joint estate before or after the marriage, agreement on determining the value of certain property positions of the partners, on the type or timing of determining joint property;

- Regulation of pension provision and distribution, shares, rights to pension provision or other provident benefits earned during the marriage;

- Alimony and maintenance obligations for the time after the dissolution of the marriage, their exclusion or modification of obligations already established by law; regulation of the time or conditions for such obligations to take effect, for example, with the birth of children, reaching a certain time or period⁹⁷.

In Israel, a marriage is essentially impossible without the religious marital contract – the "Ketubah." Moreover, the Ketubah exclusively lists the husband's duties towards his wife, which were established several millennia ago. The Ketubah is certified by two witnesses and consists of a main part and two supplements. The content of the main part has not changed since the compilation of the Talmud – a collection of Jewish religious-dogmatic and legal provisions (4th–5th centuries AD). The supplements are drawn up by the marrying individuals, which is why they vary significantly, although they primarily concern monetary relations.

In the event of a divorce, the wife cannot be left without means of subsistence – the husband is obliged to support her until she remarries. However, the Ketubah usually says nothing about the division of property, so modern Israelis draw up secular marital agreements to avoid the 50/50 division of property in divorce cases.

In Spain, marital contracts are generally concluded by wealthy citizens. Their main purpose is to determine the regime of spousal property, including the regime of property relations in case of divorce or other circumstances. Such a legal document can be concluded even before the marriage. In Spain, the regime of property belonging to the spouses differs in different provinces. For example, in Madrid, all property

⁹⁷ Khamraev, K.Sh. The Concept, Content of the Right of Family Property, and Problems of Its Legal Protection: Abstract of the Dissertation for the Degree of Candidate of Legal Sciences. Tashkent, 1994. 25 p.

acquired during the marriage falls under the community property regime, while in Catalonia, such property is considered separate by default.

Overall, it should be noted that in different countries, the institution of the marital contract has its own features, but its main goal is to provide spouses with sufficiently broad opportunities to define their property and non-property relations in marriage. It should also be noted that in the modern legislation of a number of states, spouses are offered various options for a marital contract.

The institution of the contractual property regime of spouses is also enshrined in the legislation of CIS countries. This institution became known to Russian legislation relatively recently. Just a few centuries ago, such a concept did not exist, and any property relations between spouses were regulated exclusively by law. This is the conclusion that can be drawn by analyzing the previously existing marital and family legislation. For example, the "Code of Laws of the Russian Empire" defined the personal and property rights of spouses, as well as their duties towards each other⁹⁸. According to this principle, a woman who did not have an independent source of income, and who was therefore exclusively engaged in household management, could have no rights to the family property. Only some time later did people realize that the norm enshrined in this law significantly violated the interests of these women, and therefore subsequently, during the reform in the field of family law, the regime of spousal property was substantially transformed.

In modern Russia, considerable attention has been paid to the legal provision of family and marital relations, both in scientific and practical aspects, including the legal structure of the marital contract. "Despite the

⁹⁸ Gartseva, Yu.Yu. Rights and Duties of Spouses under the Code of Laws of the Russian Empire. Legal Science and Practice: Bulletin of the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia, 2016, No. 1 (33). URL: <https://cyberleninka.ru/article/n/prava-i-obyazannosti-suprugov-posvodu-zakonov-rossiyskoy-imperii> (accessed August 11, 2020).

unquestionable relevance of the marital contract and its growing popularity, it is worth noting that in Russia, their share is still only 4% of married couples. In Europe and the USA, the number of concluded marital contracts reaches 70%"⁹⁹.

The legal regulation of the marital contract in modern Russia is linked to the entry into force of the first part of the Civil Code of the Russian Federation (CC RF), which enshrined the right of the husband and wife to "establish a contractual regime for spousal property"¹⁰⁰. The Family Code of the Russian Federation (FC RF), which came into force on March 1, 1996, defined the concept of the "marital contract," which is "an agreement between persons entering into a marriage, or an agreement between spouses, determining the property rights and obligations of the spouses in the marriage and/or in the event of its dissolution"¹⁰¹. Consequently, the adoption of a marital contract allows spouses to establish a special regime for subsequent property relations arising during their joint family life.

Almost simultaneously with the legislative entrenchment of the contractual property regime of spouses in the Russian Federation, the legislative entrenchment of the contractual property regime of spouses also occurred in other states. Thus, it should be clarified that the meaning of the term "marital contract" is identical in all states, only certain aspects of the marital contract differ (all other aspects have similar features). To confirm these words, it is necessary to cite as an example some norms of

⁹⁹ Lapaeva, A.V. The Marriage Contract as a Means of Protecting the Rights of Spouses in the International Arena. Law: History and Modernity, 2019, No. 2. URL: <https://cyberleninka.ru/article/n/brachnyy-dogovor-kak-sposob-zaschity-prav-suprugovv-mezhdunarodnom-prostranstve> (accessed August 7, 2020).

¹⁰⁰ Civil Code of the Russian Federation (Part One) dated November 30, 1994, No. 51-FZ (as amended on December 16, 2019, with changes from May 12, 2020). URL: <http://base.garant.ru/10164072/> (accessed August 6, 2020).

¹⁰¹ Family Code of the Russian Federation dated December 29, 1995, No. 223-FZ (as amended on February 6, 2020). URL: <http://base.garant.ru/10105807/> (accessed August 9, 2020).

the legislation of various foreign countries and illustrate them with specific examples of judicial practice in a single state. First, it is necessary to consider those states that share a large number of common features with Russian legislation and only after them to consider those states that share a smaller number of common features with the legislation establishing the provisions on the marital contract in the Russian Federation.

CIS member states share common features with the Russian legislation regulating the contractual property regime of spouses. Ukraine is one such country. Regarding the list of subjects who have the right to conclude a marital contract in Ukraine, it should be noted that it is analogous to the subject composition in Russia. They are both persons intending to marry and persons already married – spouses. Furthermore, when studying the main provisions on the marital contract in this country, one must mention how Ukrainian legislation regulates the process of modification and termination of the marital contract.

In Ukrainian legislation, as in Russian, a marital contract cannot be terminated or amended unilaterally. According to the provisions of the Family Code of Ukraine (FCU¹⁰²), spouses may, by mutual consent, terminate the marital contract or amend it by submitting an application to a notary. If the terms of the marital contract substantially violate the rights of one of the spouses or their children, such a marital contract may be terminated or amended on the basis of a court decision.

A feature of Ukrainian legislation is that the right of ownership of real estate subject to state registration cannot be acquired under a marital contract. In order to understand this norm most clearly, it is necessary to illustrate its application in practice.

¹⁰² Family Code of Ukraine dated January 10, 2002, No. 2947-III (as amended on March 30, 2020). URL: <http://pravoved.in.ua/section-kodeks/77-sku.html> (accessed August 11, 2020).

An example is the judicial "decision of the panel of judges of the Civil Cases Judicial Chamber of the High Specialized Court of Ukraine for Civil and Criminal Cases (HSSU)"¹⁰³. The facts of the case were as follows. Person_3 and Person_4 were in a registered marriage, during which they lived in a house belonging to the mother of Person_4. During their residence, a major renovation was carried out and a second floor was added to the house using common family funds and funds from Person_4's sister. Later, Person_4 received 1/2 share of the specified house and the land plot on which it is located under a gift agreement. A few weeks later, Person_3 and Person_4 concluded a marital contract, according to which all property belonging to each of them, acquired during the marriage, including by gift and inheritance, is their common joint property. As a result, in his statement of claim filed with the district court, Person_3 asked the court to recognize 1/2 share of this residential building as an object of the spouses' common joint property right and, accordingly, to allocate to him 1/4 share of the said house and 1/4 share of the land plot on which the house is located, as his property. The district court granted the claim. In her cassation appeal, Person_4 asks to overturn the previous court decision and deny the claim.

Based on the results of the case review, the court issued the following decision. Guided by the provisions of Part 5 of Article 93 and Part 2 of Article 97 of the FCU, when concluding a marital contract "the parties may agree not to extend the provisions of Article 57 and Article 60 of the FCU to property acquired by them during the marriage, however, the transfer of ownership of real estate and other property subject to state registration to one of the spouses is impossible on the basis of a marital

¹⁰³ Decision of the High Specialized Court of Ukraine dated February 22, 2017, in case No. 758/4906/15-ts. URL: https://protocol.ua/ru/vssu_za_shlyubnim_dogovorom_ne_moge_nabuvatis_pravo_vlasnosti_na_neruhome_mayno_yake_pidlyagae_dergavniy_reestratsii/ (accessed August 11, 2020).

contract"¹⁰⁴. Accordingly, establishing the legal regime of spousal property in a marital contract does not create the legal consequences defined by this contract.

To identify certain trends in the formation of the legal structure of the marital contract institution in the CIS countries, along with the analysis of the specifics of the legal regulation of the marital contract in Russia and Ukraine, it is also necessary to analyze the features of the legal provision of the marital contract in several other CIS countries, for example, the Republic of Moldova and the Republic of Tajikistan.

Thus, a norm enshrined in the Family Code of the Republic of Moldova (FC of the Republic of Moldova) is unusual for Russian legislation, which defines "the right of spouses to establish property sanctions in the marital contract for the spouse guilty of the dissolution of the marriage"¹⁰⁵.

Also unusual for Russian legislation is the provision of the Family Code of the Republic of Tajikistan (FC of the Republic of Tajikistan) that "if one of the parties is a foreign citizen or a stateless person when entering into marriage, the following conditions must be provided for when they conclude a marital contract: property legal relations of the parties, their rights and obligations in relation to property; obligations of the parties to provide for children; provision of the spouse and children with their own housing; maintenance of a disabled spouse in need of care"¹⁰⁶.

¹⁰⁴ Decision of the High Specialized Court of Ukraine dated February 22, 2017, in case No. 758/4906/15-ts. URL: https://protocol.ua/ru/vssu_za_shlyubnim_dogovorom_ne_moge_nabuvatis_pravo_vlasnosti_na_neruhome_mayno_yake_pidlyagae_dergavniy_reestratsii/ (accessed August 11, 2020).

¹⁰⁵ Семейный кодекс Республики Молдова от 26 октября 2000 года № 1316-XIV // URL: https://online.zakon.kz/Document/?doc_id=30398164 (дата обращения: 11.08.2020).

¹⁰⁶ Family Code of the Republic of Tajikistan (adopted by the Law of the Republic of Tajikistan on November 13, 1998, No. 682). URL: https://online.zakon.kz/document/?doc_id=30445181 (accessed August 9, 2020).

Considering the peculiarities of the legal regulation of the marital contract only on the basis of the legislation of the CIS countries will be incomplete and will not allow for a holistic vision of the emerging trends in this area of legal relations. Therefore, it seems necessary to consider the peculiarities of the marital contract in other countries, for example, in the member states of the European Union (EU).

A marital contract in Germany may provide for the inclusion of some conditions that are unusual for Russian law. For example, one such condition is the "professional situation." Most often, this condition is highlighted in a separate clause. In order to most clearly reveal the essence of such a condition as the "professional situation," I consider it necessary to illustrate it with a specific example.

For instance, "in the marital contract, the spouses can include a clause about when and under what conditions the wife will be able to start working. If the wife previously studied to be a kindergarten teacher and has now completed her education but is unable to work in her profession because she is busy caring for the spouses' joint children. It is clarified that her husband is currently the sole shareholder and managing director of a company registered in the district court's commercial register, and at the same time he works as a contractor"¹⁰⁷. The marital contract stipulates that "when the children reach the age of nine, the wife will have to start working part-time, and when they reach the age of fifteen, the wife will have to start working full-time. In addition, the spouses clarify in the marital contract that they are not planning to have more children"¹⁰⁸.

In this regard, one can agree with the opinion of V. R. Nabiullina that "clarification of personal circumstances, property structure, and intended

¹⁰⁷ Ehevertrag mit Änderungen zum Zugewinnausgleich Herausnahme von Grundstücken und Betriebsvermögen. Tobias Fembacher, Beck'sche Online-Formulare Vertrag 46. Edition 2018. Доступ из Beck-online: die Datenbank

¹⁰⁸ Nabiullina, V.R. The Marriage Contract in Germany: A Subjective Aspect. State Agrarian University of the Northern Trans-Urals, 2018, No. 12 (130), p. 110.

family planning, as well as their reproduction in a notarial act, are necessary for a further assessment of the actual development of marital relations compared to the circumstances at the time of concluding the contract, which will help establish its invalidity"¹⁰⁹.

Another country belonging to the EU is Spain. The marital contract is not as widespread in this country, but despite this, it is still regulated by law. As in other countries, a marital contract in Spain can be concluded both before and after marriage registration. It is also worth noting that the terms of the contract can be changed several times. If we compare the provisions on the marital contract between the legislation of Russia and Spain, the procedure for concluding a marital contract between minors is of interest in Spanish legislation, in that "citizens aged 14–16 must obtain permission from a judge, and at the age of 16–18 – mandatory confirmation of financial independence from parents is assumed"¹¹⁰. It is further specified that the presence of the legal representatives of minors aged 14-16 in the court session is mandatory when they conclude a marital contract.

Another interesting state to consider is Great Britain, which was previously a member of the EU, but has now left it. Currently, UK legislation recognizes both a "postnuptial" agreement, concluded by spouses after marriage, and a "prenuptial" agreement, concluded by the parties before marriage. Within the framework of the ongoing study, it is advisable to analyze the "prenuptial" agreement with a specific example. But in this case, the difference will be that we will consider it in a case

¹⁰⁹ Nabiullina, V.R. The Marriage Contract in Germany: A Subjective Aspect. State Agrarian University of the Northern Trans-Urals, 2018, No. 12 (130), p. 110.

¹¹⁰ Pitinova, A.S. Comparative Aspect of Legal Regulation of the Marriage Contract in Russia and Abroad. *Molodoy Ucheny (Young Scientist)*, 2017, No. 51 (185), p. 236.

where the "prenuptial" agreement appeared for the first time. This case was the judicial case F v F of 1995¹¹¹.

The facts of the case were as follows. Spouses from Germany and France married and decided to live in England. Shortly before this, in Germany, they signed a prenuptial agreement, which could be valid in any country of their origin. According to the terms of this agreement, the wife was to receive a German retired judge's pension in the event of divorce (at the time of marriage, the wife was in state judicial service). Several years later, while living in England, the wife wanted 2.5 million for the purchase of a house for herself and the children. She did not have the funds to buy the house, but her husband did. In connection with this, she filed a claim for additional support for her. Three months before the scheduled hearing date, she requested a lump-sum provision, and then, as an alternative, put forward an order to allocate funds for the property she wished to acquire.

When considering this case, the judge came to the following conclusions. In this case, "the rights and obligations of persons whose financial affairs are regulated by law cannot depend on contractual terms. The necessity of contractual terms lies in the fact that they were developed for the direct control and restriction of universal norms, which, in turn, are necessary for general application in current society"¹¹².

Moreover, he believes that the purchase of property before this hearing may be subject to some tactical maneuvers. Thus, if the husband believes that the cost of the proposed property is less than the amount the judge may establish for its purchase, he approves the purchase. If he thinks this amount is more than the judge may establish, he does not approve the purchase. In addition, if all liquid and illiquid assets belong to the husband,

¹¹¹ F v F (Ancillary Relief: Substantial Assets) [1995] 2 FLR. // URL: https://www.legal500.com/law-journals/cases_referred/f-v-f-ancillary-relief-substantialassets-1995-2-flr-45/

¹¹² F v F (Ancillary Relief: Substantial Assets) [1995] 2 FLR. // URL: https://www.legal500.com/law-journals/cases_referred/f-v-f-ancillary-relief-substantialassets-1995-2-flr-45/

there is a possibility that he may exert unfair pressure on the wife, who, in turn, may be forced to sign the contract in advance for certain reasons. Therefore, in this specific case, the marital contract cannot be taken into account, because according to the terms of the contract, and due to the husband's wealth, the wife would have received much less.

In the United States of America (hereinafter - USA), like in Great Britain, both a "prenuptial" agreement and a "postnuptial" agreement are in effect. In a marital contract, citizens of this state can stipulate a large number of conditions, for example, how their household duties will be distributed. In addition, each US state has its own specific set of laws that regulate the procedure for concluding, functioning, and terminating a marital contract. In order for a marital contract to be enforceable, it must comply with all the conditions of a particular state law. It is also worth noting that in the USA, as in other countries, by concluding a marital contract, spouses thereby establish their own "laws" that will be valid in all states¹¹³. Let us give one example of this type of contract. A woman and a man decided to marry. The future wife has two children from a previous marriage. In this case, even despite the trust in her future husband, the woman wants to be sure that after her death, the greater part of her property will pass to her children, so in this case, it seems necessary for her and her husband to conclude a marital contract.

Analyzing the peculiarities of concluding a marital contract in European countries, it seems necessary to consider them using the example of several Asian countries. Thus, the legislation of South Korea has the most similar features to the Russian legislation regulating issues of the marital contract. All terms of the contract, the grounds for its entry into force and termination, as well as the obligations of the spouses are

¹¹³ Novikova, N.F. The Marriage Contract in the USA on the Example of the State of Colorado. Studentcheskiy: Electronic Scientific Journal, 2019, No. 42(86).

determined by the content of the contract. One of the main requirements for the contract is that it must be drawn up voluntarily in compliance with all necessary legal formalities.

Despite the fact that the contractual property regime of spouses is legally regulated in South Korea, in practice it has not received widespread application. The reason for this is the established traditions and customs of this state, according to which marriage is concluded on the basis of love and, accordingly, preparing for divorce in advance is considered wrong. In contrast to South Korea, concluding a marital contract is not considered wrong in China. It is customary to conclude it in this country.

Slight differences from Russian and European legislation regulating the issue of the contractual property regime of spouses are visible in the legislation of Japan. Thus, Article 755 of the Civil Code of Japan establishes that "a marital contract is recognized as valid only if it is concluded before filing an application for marriage. If it is concluded after this time, the concluded marital contract will be recognized as invalid"¹¹⁴. After filing an application for marriage, spouses cannot change the marital contract (the exception occurs only for those contracts in which the conditions for its amendment are initially stipulated, and if these conditions comply with the established procedure).

To summarize, it must be noted that currently, both in the Russian Federation and in foreign countries, interest in the contractual property regime of spouses is growing. This is due to several reasons. One of the main reasons is the possibility of settling the property interests of each spouse during divorce. Another equally important reason for concluding a marital contract is that, thanks to it, each spouse has the opportunity to

¹¹⁴ Zelenov, M.V. *The State and Law of Japan in 1890–2011: A Reader*. Textbook. St. Petersburg: A.S. Pushkin Leningrad State University Publishing House, 2012. 278 p.

protect their property in the event of family breakdown. In countries where the provisions on the contractual property regime of spouses are legally regulated, the marital contract provides spouses with significant opportunities for regulating their property relations. At the same time, the national peculiarities of each state form the specifics of the legal regulation of family and marital relations, including the regulation of spousal property relations through the conclusion of a marital contract.

Analyzing the family legislation of the CIS countries, one can conclude that the regulatory and legal regulation of the issue of changing or terminating a marital contract is identical. For example, the termination of the latter or a unilateral refusal by one of the spouses to perform an obligation arising from the marital contract is not allowed in these countries. A distinguishing feature is the fact that some provisions of family legislation concerning the regulation of this issue in Kazakhstan are not imperative, as the law provides for a number of cases where such a refusal is still permitted.

In five jurisdictions of the countries under consideration, the change in rights and obligations depends on the occurrence of certain conditions; this restriction is also provided for by specific terms in the legislation of Russia and Kazakhstan. This provision is important for determining the term of the agreement, as, by general rule, it terminates after the dissolution of marriage in all Eurasian Economic Union (EAEU) member countries. If such an agreement contains the rights and obligations of the spouses, the agreement terminates from the moment the spouses' obligations are fulfilled (Art. Code on Marriage and Family of the Republic of Belarus, paragraph 3 of Art. 43 of the Family Code of the

Russian Federation, paragraph 3 of Art. 42 of the Code on Marriage and Family of the Republic of Kazakhstan)¹¹⁵.

The legislation of all countries provides for a judicial procedure for the dissolution of a marital contract. The procedure for judicial dissolution is regulated in accordance with the civil legislation of the countries under consideration.

In addition to the provisions regulating the dissolution of the marital contract, the legislation of all countries provides for the procedure for this agreement to enter into force. Thus, according to Art. Code on Marriage and Family of the Republic of Belarus, paragraph 1 of Art. 41 of the Family Code of the Russian Federation, paragraph 1 of Art. 40 of the Code on Marriage and Family of the Republic of Kazakhstan, this type of agreement enters into force from the date of marriage registration between the persons who concluded it.

An important procedure is the order of concluding and amending such an agreement.

In all countries under consideration, a marital contract must be concluded only in written form and certified by a notary. This is evidenced by the provisions of Article 131 of the Code on Marriage and Family of the Republic of Belarus, paragraph 2 of Art. 41 of the Family Code of the Russian Federation, and paragraph 2 of Art. 40 of the Code on Marriage and Family of the Republic of Kazakhstan. The legislation of Belarus has the only peculiarity in regulating this issue. Thus, in this state, in certain cases, this type of agreement is subject to state registration. As for the registration procedure, as a general rule, this type of agreement is registered either after the marriage is concluded or after the marriage is

¹¹⁵ Code of the Republic of Belarus on Marriage and Family of July 9, 1999 No. 278-Z // www.pravo.levonevsky.org/kodeksby/kobis/20130317/index.htm (accessed May 8, 2016) // para. 3, art. 43.

dissolved, in the event that it establishes the existence of the rights and obligations of the spouses towards each other after the dissolution of the marriage.

Also in Belarus, cases are regulated when minors express their will to conclude this type of agreement. In such a situation, the consent of a parent or legal representative is required for the registration of the agreement, and the legislation does not regulate in what form this consent should be expressed.

In Russia, Kazakhstan, Armenia, and Kyrgyzstan, there is a mandatory condition regarding the amendment or dissolution of the agreement. It is related to the conclusion of an additional agreement in the same form as the main marital contract. Thus, in these countries, amendments can be made to the agreement at any time by mutual consent of the parties. If one of the parties does not give their consent to amend the marital contract, the party receiving the refusal can seek to achieve these amendments through judicial procedure. It is worth noting that the grounds and procedure for amending the marital contract will be regulated by the civil legislation of that particular country. As for the regulation of this issue in the Republic of Belarus, the family legislation of this country does not contain norms regulating this issue, as is enshrined in the family codes of other countries. Nevertheless, as in other CIS states, the introduction of amendments to the marital contract is established within the framework of the Civil Code of the Republic of Belarus.

Articles of family legislation are devoted to a separate, yet important, issue: the recognition of a marital contract as invalid. Recognizing the contract as such carries important legal consequences for all parties who have concluded such agreements.

Thus, according to the codified acts in the field of family legislation of all considered countries except Belarus, a marital contract can be

recognized as invalid, wholly or partially, only through a judicial procedure based on the norms of civil legislation. The norms on the invalidity of transactions are used to resolve this issue. Also, in cases where the contract:

- limits legal capacity, capacity to act, and the right to appeal to court,
- regulates non-property relations between spouses,
- restricts the rights and obligations of spouses in relation to children,
- provides for provisions restricting the right of a disabled, needy spouse to receive maintenance;
- contains other conditions that place one of the spouses in an extremely unfavorable position or contradict the fundamental principles of family legislation — such conditions are recognized as void by the court.

As for the family legislation of the Republic of Belarus, there are no provisions regulating the amendment of the marital contract.

The legal consequences of recognizing such a transaction as invalid are identical in all the considered countries.

If the marital contract was recognized as invalid by the court, such a transaction cannot generate any legal consequences from the moment of its conclusion. Thus, if the court recognizes the agreement between the spouses as invalid, each spouse will be obliged to return to the other party what was received by them during the term of such an agreement. This means that the rule of bilateral restitution applies in all these countries. In cases where the court in these countries establishes the invalidity of a part of the contract, i.e., a specific condition, the spouses are obliged to return to each other only the property that was obtained based on the provision included in the contract that the court recognized as invalid.

Thus, after the court establishes a discrepancy between the contract's provisions and the current legislation, the spouses' property regime

automatically ceases to be contractual. The statutory regime begins to apply to the legal relations between the husband and wife, meaning all jointly acquired property will be considered common property, which the owners possess in equal shares.

The phrase "marital contract" in Western countries practically no longer causes surprise, which cannot be said about the society we live in.

In pre-revolutionary Russia and Ukraine, the concept of a "marital contract (agreement)" did not exist; marriages were concluded by the church. In the Soviet period, under the previously existing legislation, the property relations of spouses were regulated only by law. Any agreements on the management and disposal of joint property contradicted the law and were invalid. The main reason for this was that the spouses' property mainly consisted of consumer goods (clothing, furniture, dishes, etc.), so there was generally nothing to divide. Furthermore, it was assumed that in the Soviet family, the spiritual principle prevailed over the material. However, with the development of private property relations, the situation changed. Families appeared that possessed significant incomes and sought to protect their wealth, their capital. Nowadays, the marital contract is most widespread in the countries of Western Europe, America, and Canada¹¹⁶.

Currently, according to sociologists, every second marriage breaks up, and in most cases, property disputes are the reason for divorce. In this regard, drawing up a marital contract becomes the most civilized way to solve property problems even before they arise. Despite this, the marital contract still remains an institution in low demand both in Russia and in the CIS countries. Therefore, studying the potential of this agreement, the

¹¹⁶ Leanovich, E. International Legal Development of the Marriage Contract // Belarusian Journal of International Law and International Relations, 2008, No. 4, pp. 73–74.

conclusion of which is entrenched in the minds of most people in the post-Soviet space as unethical, acquires considerable importance.

And although many works in Russia are currently devoted to the problems of legal regulation of the marital contract, this legal institution remains insufficiently studied in the CIS countries. Furthermore, a number of issues remain debatable, and the lack of a unified theoretical position and clear legislative regulation makes it difficult to resolve specific situations in practice. Thus, in legal literature there is no consensus on the industry affiliation of the marital contract; the issue of the possibility of concluding a marital contract through representatives of the spouses has not been resolved; it is not established who should be considered persons entering into marriage; the housing relations of former spouses are not regulated, and so on.

After the collapse of the Soviet Union, all former Soviet republics adopted new family legislation, taking into account national specifics and regulating emerging relations in the most acceptable way. The possibility of establishing a contractual regime for spousal property is currently provided for by the legislation of all CIS and Baltic countries, but the legal regulation of the marital contract in these countries has some differences. A comparative analysis of the legal regulation of the marital contract by the legislation of the Russian Federation, the CIS countries, and the Baltics is also becoming significant due to the increasing number of marriages concluded by Russian citizens with citizens of these countries. In this regard, the need to study these norms arises.

The marriage and family legislation of the CIS member states has fundamentally changed over the past 20 years, and a fundamentally new attitude towards private property has developed: spouses now own objects such as apartments, land plots, buildings, structures, other real estate, securities, shares, deposits, shares in capital contributed to credit

institutions, and other commercial organizations. New codified acts laid the legal foundations for the contractual regulation of spousal property relations.

A novelty of the modern legislation of the CIS member states is the dispositivity in determining the spouses' property regime. The institution of the contractual property regime of spouses is presented as an alternative to the statutory regime and, in essence, regulates the exercise of the right of spouses and persons entering into marriage to independently establish the content of their property relations in marriage and/or in the event of its dissolution by concluding a marital contract.

In our opinion, the legal regulation of the marital contract institution in the CIS countries with which Russia has historically had the closest relations—the Republic of Belarus, Ukraine, Kazakhstan, and others—is of the greatest interest.

Despite the fact that family legal relations are one of the most complex areas of social life from the point of view of legal regulation, it should be noted that in recent years there has been increasing discussion in the CIS territory about how relevant the marital contract is. "For Western countries, it has long become a familiar phenomenon, and its advantages have been appreciated by millions of families. In Europe, every third married couple concludes a marital contract, and in the USA, every fifth. For the CIS, the marital contract is still a young and developing institution, the percentage of conclusions of which is growing every year. For example, analyzing statistical data provided by notary offices in the city of Minsk, there is currently a trend towards an increase in the total number of marital contracts concluded.

In the legal regulation of the marital contract under the legislation of Russia, Ukraine, and the Republic of Belarus, common points include the

requirements for the form of the marital contract, the rules concerning its modification and termination, and its recognition as invalid¹¹⁷.

The small number of concluded marital contracts indicates that this institution is still young, but the growing interest of people suggests that it has a future.

In legal literature, one can find both the term "marital contract" (*брачный договор*) and the term "marriage contract" (*брачный контракт*). The concept of "marriage contract" is used in world practice; in essence, they are one and the same. Both terms are also used in the text of the legislative acts of the CIS member states. Thus, the states that are part of the CIS, except Ukraine, refer to the corresponding agreement as a marital agreement (*брачный договор*). Regarding Ukraine, the Family Code of Ukraine¹¹⁸ uses the name "marriage contract" (*брачный контракт*).

The author of the article "Marital Contract: Advantages, Content, Functions," Selezneva T.Yu., considers the term "marital contract" (*брачный договор*) to be the most correct, since, in accordance with the established practice in the law of the Republic of Belarus, the term "contract" is used either in the field of labor law or in the economic sphere and is completely unacceptable to use this term in family law to denote an agreement, the subject of which may be relations with a moral and ethical connotation (for example, forms and methods of raising children, etc.)¹¹⁹. Furthermore, this term is established by the Code on Marriage and Family

¹¹⁷ Shershen, T.V. The Marriage Contract as a Regulator of Family Relations in Russia and the Republic of Belarus // Family and Housing Law. 2007. No. 3. P. 6.

¹¹⁸ Family Code of Ukraine dated January 10, 2002 No. 2947-III // <http://www.minjust.ru>.

¹¹⁹ Selezneva T. Yu. Marriage Contract: Advantages, Content, and Functions // Bulletin of Regulatory and Legal Information. 2003. No. 11. Pp. 7–11.

of the Republic of Belarus¹²⁰ and in the Family Code of the Russian Federation.

The Code on Marriage and Family of the Republic of Belarus does not define the marital contract. Unlike the Family Code of the Russian Federation, in which five articles are devoted to this agreement, only one article is devoted to the marital contract in the Code on Marriage and Family of the Republic of Belarus. A marital contract can be defined as a coordinated model of behavior of spouses in the field of property and personal non-property relations both during the registered marriage and after its dissolution¹²¹. Particular attention should be paid to the norm providing for the possibility of regulating personal non-property relations in the marital contract. Russian family legislation prohibits the regulation of personal non-property relations in a marriage contract.

Dzyadevich D.V. offers the following definition of a marital contract: "A marital contract is a comprehensive, long-term agreement between spouses that defines the property and non-property rights and obligations of the spouses in marriage or in the event of its dissolution"¹²². It seems that this concept should be treated quite critically. A marriage contract may also be a long-term agreement. Furthermore, the possibility of regulating the spouses' personal non-property rights and obligations in a marital contract should be treated very critically. The purpose of such an agreement is to strengthen the family, improve the culture of family relations, and raise the spouses' awareness of their rights and obligations, and responsibility for their children and each other.

¹²⁰ Code on Marriage and Family of the Republic of Belarus dated July 9, 1999 No. 278-3 // www.minjust.ru.

¹²¹ Code on Marriage and Family of the Republic of Belarus dated July 9, 1999 No. 278-3 // www.minjust.ru.

¹²² Dzyadevich D. V. Marriage Contract: Legal Concept and Mechanism of Operation // Bulletin of the Belarusian University. 2002. No. 3. Pp. 34–35.

Among the undoubted advantages of the Code on Marriage and Family of the Republic of Belarus is the definition and enshrinement of the purpose of concluding a marital contract, which includes strengthening marriage and family, improving the culture of family relations, raising the spouses' awareness of their rights and obligations, and responsibility for their children and each other (Article 13).

The concept of a marital contract in the Republic of Moldova is enshrined in Article 27 of the Family Code of the Republic of Moldova¹²³. A marital contract is an agreement voluntarily concluded by persons who are entering into marriage or by spouses, defining their property rights and obligations during the marriage and/or in the event of its dissolution.

The Law of the Republic of Kazakhstan dated December 17, 1998, No. 321 "On Marriage and Family"¹²⁴ and the Family Code of the Kyrgyz Republic dated August 30, 2003, No. 201¹²⁵ provide the concept of a contractual property regime—this is the property regime of the spouses and children born to them in this marriage, established by a marital contract (Article 1).

Article 38 of the Family Code of the Republic of Azerbaijan¹²⁶ defines a marital contract as an agreement concluded between persons entering into marriage, establishing the property rights and obligations of the spouses during the marriage and/or upon dissolution of the marriage.

The wording of the concept of a marital contract in Tajikistan does not essentially differ from the above.

¹²³ Family Code of the Republic of Moldova dated October 26, 2001 No. 1316-XIV // <http://www.minjust.ru>.

¹²⁴ Law of the Republic of Kazakhstan dated December 17, 1998 No. 321 "On Marriage and Family" // http://www.invalid.kz/modules/editor/editor/wysiwygpro/site_files/Zakon/akt/10.3.htm.

¹²⁵ Family Code of the Kyrgyz Republic dated August 30, 2003 No. 201 // <http://www.minjust.ru>.

¹²⁶ Family Code of the Republic of Azerbaijan (adopted by the Law of the Republic of Azerbaijan on December 28, 1999 No. 781-IQ) // www.ganun.ru.

In the Republic of Tajikistan, due to a number of changes that have occurred in family legislation, there is lively scientific debate about the marital contract and the conclusion of a marital contract with foreign citizens. Analyzing the legal nature of a marital contract in international relations, many authors note that this institution has such specific features as different citizenships and places of residence of the contracting parties; personal non-property and property relations (including those concerning property located abroad) as the subject of the contract; a form that complies with the law of the place where the contract was concluded; the presence of a clause on applicable law; and the possibility of restricting the application of the contract or part of it by a clause on the public policy of the country¹²⁷.

The marital contract in these countries has not generated interest in practical terms and currently largely has a negative perception. This position can be explained by the following reasons.

The majority of the population of the republics are Muslims. Muslim marriage and family relations are the most complex, as only an unambiguous and superficial assessment of them cannot give a complete picture of the current state of affairs. It is necessary, first of all, to refer to the primary sources and legislation of Muslim countries. The Quran, the Sunnah (sayings and deeds of Muhammad), Qiyas (analogy), Ijma (agreed opinion of major jurists and theologians), fatwas (legal opinions of the highest spiritual leaders), etc., are the main sources, the analysis of which can provide an objective picture of the existing marriage and family relations, and the conclusion of a marital contract is no exception.

Since Muslim law does not provide for the legal structure of a marital contract, the regulation of property and personal non-property relations

¹²⁷ “Family Code of the Republic of Tajikistan” [Electronic resource] // Information and Analytical Portal Asia Realty. Access mode: <http://www.asia-realty.ru/co-zakon-tajikistan.php?Id=351>

between spouses in the territory of Kazakhstan was at one time carried out by the norms of religious law and customs. There could be no talk of any contractual regime for the spouses' property. In the Soviet period in Kazakhstan, for obvious reasons, there could also be no business agreements between spouses¹²⁸.

The Code on Marriage and Family of the Kazakh SSR of 1969 defined the only possible legal regime for the spouses' property for everyone. This was the community regime. It arose from the moment of marriage registration and continued throughout the marriage, and, accordingly, the division of property was carried out based on this regime. And no one, under any circumstances, could change anything, except in cases where the court could reduce one of the spouses' share of the property, taking into account the interests of one of the minor children. Therefore, there can be no talk of any marital contracts. The right to conclude an additional document—a marital contract—first arose only in 1993 with the introduction of amendments to the Code on Marriage and Family of the Kazakh SSR. Finally, the legal relations regulating the contractual property regime of spouses are currently enshrined in the Law of the Republic of Kazakhstan "On Marriage and Family," adopted on December 17, 1998, and are regulated quite comprehensively, unlike the now-defunct Code on Marriage and Family, which devoted only one article to the marital contract.

Thus, the following CIS member states have a legal definition of a "marital contract": Russia (Art. 40 of the Family Code of the Russian Federation), Moldova (Art. 27 of the Family Code of the Republic of Moldova), Armenia (Art. 27 of the Family Code of the Republic of Armenia), Uzbekistan (Art. 29 of the Family Code of the Republic of

¹²⁸ Babadzhanova D. Marriage Contract and the Formation of the Contractual Regime of Spouses' Property. *Law of Obligations // Issues of Theory and Practice of Application*. 2009. No. 5. P. 64.

Uzbekistan), Kazakhstan (Article 38 of the Law of the Republic of Kazakhstan "On Marriage and Family"), Tajikistan (Art. 40 of the Family Code of the Republic of Tajikistan), Azerbaijan (Art. 38 of the Family Code of the Republic of Azerbaijan), Kyrgyzstan (Art. 43 of the Family Code of the Kyrgyz Republic).

It should be noted that the definitions of "marital contract" in the legislation of the above-mentioned states have the same semantic meaning, being synonyms in relation to each other. Thus, a marital contract is recognized as an agreement between persons entering into marriage or an agreement between spouses, determining the property rights and obligations of the spouses in marriage and/or upon its dissolution.

As already noted, the Family Code of Ukraine and the Code on Marriage and Family of the Republic of Belarus do not provide a definition for the concept of a "marital contract." In these states, the legislator enshrines the goals of concluding a marital contract. These goals include strengthening marriage and family, improving the culture of family relations, and raising the spouses' awareness of their rights and obligations, and responsibility for their children and each other.

The main legal purpose of a marital contract under Russian law is to determine the legal regime of the spouses' property and their other property relations.

According to the Family Code of Ukraine, the purpose of a marital contract can be the property relations between the spouses, as well as the property rights and obligations of the spouses as parents.

According to the Code on Marriage and Family of the Republic of Belarus, the purpose of a marital contract is significantly broader: a marital contract may determine agreements on: joint property and the property of each spouse; the procedure for dividing the spouses' joint property in the event of divorce; the forms, methods, and means of raising

children; the children's place of residence, the amount of alimony for them, the procedure for communicating with the non-resident parent, as well as other issues of the maintenance and upbringing of children in the event of divorce. The marital contract may also regulate other issues of spousal relations if this does not contradict the legislation on marriage and family.

It must be emphasized that the Republic of Belarus, the only CIS member state, has allowed the inclusion of not only property issues (concerning money and things) but also non-property issues in the marital contract, such as the methods and forms of raising children or relations between husband and wife. However, it cannot infringe upon or restrict the rights and freedoms of the spouses that belong to them under the legislation of the Republic of Belarus (for example, the right to work, life, free choice of occupation, etc.)¹²⁹.

In the remaining CIS states, the marital contract can regulate the most diverse aspects of property relations between spouses, but taking into account the limitations established by law. These limitations stem from the basic principles of family legislation and are primarily aimed at protecting the rights and legitimate interests of each spouse, as well as their children. The list of conditions provided for by the legislation of a specific state, the inclusion of which in the marital contract is inadmissible, is mandatory. For example, a marital contract cannot restrict the spouses' legal capacity or capacity to act, their right to appeal to court for the protection of their rights; regulate personal non-property relations between spouses, the rights and obligations of spouses in relation to children; provide for provisions restricting the right of a disabled¹, needy spouse to receive maintenance; or contain other conditions that place one of the spouses in an extremely unfavorable position or contradict the basic principles of

¹²⁹ [http:// www.zhengazeta.by/ svadba/category/ 45/article/198/](http://www.zhengazeta.by/svadba/category/45/article/198/)

family legislation. Conditions of the marital contract that violate the requirements of family legislation are void.

The marital contract under the legislation of the CIS member states can be concluded both by young people who are just planning to marry and by spouses who already have a history of family life. However, people living in a so-called *de facto* marriage are not officially considered spouses and cannot conclude a marital contract. More precisely, they can conclude it, but it will only become valid when they officially register the marriage, i.e., the moment the marital contract is concluded and the start of its effect may not coincide. It is not excluded that the parties may link the start of the marital contract's effect or part of its conditions to a suspensive condition. Such a suspensive condition may be the dissolution of the marriage, separate residence, and so on. Sometimes the peculiarity of the marital contract may lie precisely in the fact that its effect begins only in the event of a divorce.

As a rule, the parties do not determine the duration of the marital contract. The parties may specify the duration of a specific property right, for example, the period of residence in the wife's or husband's premises after the dissolution of the marriage or the duration of one of their rights to alimony.

The main and important feature of the marital contract under the legislation of both the Russian Federation and the CIS member states is that spouses can, at their discretion, agree on a special ownership regime for all property, for its individual types, or for the property of each spouse. This may concern both already acquired and future property. This provision on the possibility of concluding a marital contract not only in relation to existing property but also regarding the future property of the spouses is of great practical importance. Otherwise, the property acquired by the spouses after the conclusion of the contract would automatically be

governed not by the contractual but by the statutory property regime of the spouses. The procedure and grounds for applying the contractual regime to the spouses' existing and future property are the same. It can be established for all property that the spouses will acquire in the future, as well as for its individual types.

Thus, it can be concluded that this institution has its own peculiarities in different CIS member states, but the main goal of the marital contract is one: to provide spouses with sufficiently broad opportunities to define their property and, in specific states (Republic of Belarus), non-property relations in marriage.

Too few marital contracts are concluded in the CIS countries. The reasons are different: some people do not even want to think about a contract, some have nothing to divide, and some, if they do possess wealth, rely on other methods and options for resolving family problems and various misunderstandings. There are many reasons, but one must not forget that everyone is equal before the law; therefore, if you care about your fate and the fate of your possible future children, concluding a marriage contract is highly advisable.

The marital contract, in accordance with the legislation of most CIS member states, as in Russia, implies a specific composition of subjects, which can be persons entering into marriage and spouses, i.e., persons who have registered their marriage with state bodies that register civil status acts.

Persons in *de facto* marital relations are not recognized as subjects of such a contract. However, following the principle of freedom of civil law contract, *de facto* spouses may formalize an agreement on establishing a regime of separate (personal) or shared ownership of acquired property, as well as on regulating contractual relations between themselves. However, this will not be a marital contract in its strict sense.

In most CIS countries, the marital contract can be concluded both before the state registration of marriage (and not necessarily by persons who have submitted an application to marry, since the legislation of the Russian Federation does not link the fact of concluding a marital contract with the fact of submitting an application for marriage registration) and during the marriage.

In Kazakhstan, the parties to a marital contract can be both spouses and persons not yet married. In Ukraine, the subjects of a marital contract can only be persons who have registered their marriage.

The content of the marital contract in the Republic of Belarus differs from the requirements for it in most CIS countries. It should be noted that the procedure for concluding a marital contract in Belarus also has its own characteristics. According to Article 13 of the Code on Marriage and Family of the Republic of Belarus, a marital contract could only be concluded between spouses at any time after the state registration of marriage. According to a number of Belarusian legal scholars, spouses who have lived together for a long time have already developed certain relations, a peculiar way of family life where everything is defined and agreed upon, and there are corresponding agreements for the future, i.e., they have no property or non-property problems. In such a situation, they are unlikely to conclude a marital contract; it would be more attractive if the law allowed it to be concluded by persons entering into marriage. It seems that future spouses, not yet bound by marital ties, with no jointly acquired property, and with no joint children, will be able to more comprehensively and thoughtfully find acceptable agreements for both on both property and non-property issues. Therefore, Article 13 of the Code on Marriage and Family of the Republic of Belarus should be supplemented with an indication of the possibility of concluding a marital contract by persons entering into marriage at the stage of submitting an

application to the body registering civil status acts. Undoubtedly, the marital contract in the Republic of Belarus is a complex legal institution. It may contain conditions similar to relations of donation, exchange, gratuitous use, loan, lease, simple partnership, as well as those related to personal non-property relations.

Thus, previously, only spouses had the right to conclude a marital contract in the Republic of Belarus, but the Law of the Republic of Belarus of July 20, 2006, "On Amendments and Additions to the Code on Marriage and Family of the Republic of Belarus," introduced amendments providing that a marital contract can be concluded not only by spouses but also by persons entering into marriage. Article 13 of the Code on Marriage and Family of the Republic of Belarus establishes that minor persons entering into marriage conclude a marital contract with the consent of their parents, guardians, except in cases where they acquire full legal capacity before marriage.

According to the Law of the Republic of Kazakhstan "On Marriage and Family," when accepting an application, the Civil Registry Office must ensure that the persons wishing to marry are aware of the right to conclude a marital contract.

In Kazakhstan, the parties to a marital contract can be both spouses and persons not yet married. In the Kyrgyz Republic, a marital contract can also be concluded by spouses and persons entering into marriage. In Ukraine, the subjects of a marital contract can only be persons who have submitted an application for marriage registration, as well as spouses.

Particular attention should be paid to the changes that occurred several years ago in the family legislation of Turkmenistan regarding the marital contract. The requirement for foreigners wishing to conclude a marital contract with Turkmen citizens to pay "...the state *kalym* of the Republic of Turkmenistan—to contribute an insurance amount of at least

50 thousand US dollars to the settlement account of the State Insurance Organization of Turkmenistan" was excluded from the Code on Marriage and Family. This amount was collected to "provide guarantees for minor children in the event of divorce."

In the Family Code of the Republic of Uzbekistan, a separate article regulates property and contractual relations between spouses, which speaks of the possibility for spouses to enter into all property and contractual relations permitted by law with each other, as well as the right to determine their rights and obligations regarding the joint implementation of entrepreneurial activities in the marital contract.

The Family Code of the Kyrgyz Republic specifically stipulates the powers of a notary when certifying a marital contract. In accordance with Part 3 of Article 44 of the Family Code of the Kyrgyz Republic, if the terms of the marital contract contradict the legislation of the Kyrgyz Republic, the notary has the right to refuse to certify such a contract or agreement. The notary's refusal to perform a notarial act may be appealed in court.

Furthermore, in the Republic of Belarus, Russia, Kazakhstan, and Kyrgyzstan, a contract concluded before the state registration of marriage enters into force on the day of the state registration of marriage. Providing the legal opportunity for persons entering into marriage to conclude a marital contract is of great importance. It seems that future spouses, not yet bound by marital ties, with no jointly acquired property, and with no joint children, will be able to more comprehensively and thoughtfully find acceptable solutions for both on both property and non-property issues.

In accordance with Part 3 of Article 13 of the Code on Marriage and Family of the Republic of Belarus, minor persons entering into marriage conclude a marital contract with the consent of their parents, guardians, except in cases where they acquire full legal capacity before marriage.

Compared to Belarusian legislation, the Family Code of Ukraine specifies that in the event that the wife or husband becomes legally incapacitated, the guardian is given the opportunity to demand the termination of the marital contract.

The marital contract, whether concluded by persons entering into marriage or by spouses, provides them with the opportunity to think through and stipulate in the contract all possible nuances of married life in advance, in order to avoid unnecessary complications in the future, or, if they arise, to resolve them more worthily and fairly. In addition, the law grants spouses the right to make amendments and additions to the marital contract at any time before the dissolution of the marriage by mutual agreement. In any case, such an agreement in resolving conflicts is preferable to their resolution using the force of law. By its legal nature, the marital contract is close to a civil law transaction, but performing it by proxy or through a representative is considered impossible under Belarusian law. The aforementioned CIS states adhere to the same rule.

The issue of concluding a marital contract by persons with limited legal capacity and by guardians on behalf of persons recognized as legally incapacitated due to a mental disorder is unregulated in the legislation. The following question arises: can a guardian, who is most often the other spouse, conclude such a contract on behalf of the legally incapacitated person? On the one hand, such a contract protects the property interests of the legally capable person who is caring for the legally incapacitated person. On the other hand, the guardian acts both as a party to the marital contract and as the legal representative of the opposite party and, thus, concludes the contract as if with himself. In the case of a spouse with limited legal capacity, the other spouse may be the trustee, and only with their permission can the spouse with limited legal capacity conclude a marital contract with that same other spouse. In this case, there is a

probability of coercion of the spouse with limited legal capacity to conclude the contract at all or on terms most favorable to the spouse-trustee. These issues are a gap in the legal regulation of the marital contract and require more careful study with the aim of developing the most just and appropriate norms that will fill this gap.

In most CIS countries, as in Russia, the marital contract is concluded in written form and is subject to notarization. Failure to comply with the form entails the invalidity of the contract.

Additions and amendments to the marital contract are made in writing and are notarized (such certification can be done not at the place where the contract itself was certified). In such a case, the notary who certified the amendments, additions, or termination of the marital contract is obliged to inform the notary who certified the marital contract. The notary makes a corresponding note on all copies of the marital contract regarding the certification of agreements on the amendment, addition, or termination of the marital contract.

In world practice of legal regulation of marriage and family relations, there are two approaches to the content of a marital contract.

The first approach allows the inclusion in the marital contract of both conditions regulating the spouses' property relations (for example, on the division of property constituting the spouses' joint common property; on the right of one spouse to receive additional maintenance from the other spouse in the event of divorce through the fault of the latter) and conditions regulating the sphere of their personal non-property relations (rights to a surname, to choose a place of residence, rights and obligations in relation to children). This approach is supported by the legislation of countries with the Anglo-American legal system, some Islamic states, and among the CIS member states, corresponding norms can be observed in

the Code on Marriage and Family of the Republic of Belarus and the Family Code of Ukraine.

Thus, differences are found in the provisions establishing the requirements for the subject and content of the marital contract. According to the Code on Marriage and Family of the Republic of Belarus, the subject of the marital contract is significantly broader: the marital contract may determine agreements on joint property and the property of each spouse; the procedure for dividing the spouses' joint property in the event of divorce; the forms, methods, and means of raising children; the children's place of residence, the amount of alimony for them, the procedure for communicating with the non-resident parent, as well as other issues of the maintenance and upbringing of children in the event of divorce. The marital contract may also regulate other issues of spousal relations if this does not contradict the legislation on marriage and family (Article 13). According to the Family Code of Ukraine (Article 93), the subject of a marital contract can be the property relations between the spouses, as well as the property rights and obligations of the spouses as parents.

The Code on Marriage and Family (CMF) of the Republic of Belarus enshrines only one prohibition, according to which the marital contract must not violate the rights and legitimate interests of other persons, and the CMF of the Republic of Belarus does not contain a prohibition on including in the marital contract provisions regulating the personal rights and duties of the spouses¹³⁰. Moreover, Article 20 of the CMF of the Republic of Belarus contains a direct indication of the possibility to specify and enshrine the rights and duties of the spouses in an agreed scope in the marital contract, certified by notary bodies, as well as the

¹³⁰ Azemsha Ya. The Marriage Contract as a Means of Regulating the Legal Relations of Spouses // Justice of Belarus. 2003. No. 6. Pp. 70–71.

right to independently resolve issues concerning their personal interests, unless otherwise stipulated in the marital contract.

One should agree with the point of view of Shershen T.V., who considers the expansion of the sphere of contractual regulation of marital relations, by including personal non-property relations alongside property relations in the subject matter of the marital contract, to be quite logical and not contradictory to the fundamental principles of Russian family legislation, which is possible by introducing an addition to Article 40 of the Family Code of the Russian Federation (FC RF)¹³¹. Examples of a different legislative solution are found in the codified acts of family legislation of the former union republics - Ukraine and the Republic of Belarus.

Article 93 of the Family Code of Ukraine, dedicated to the content of the marital contract, provides for the possibility for the marital contract to regulate both property relations between spouses and the property rights and duties of the spouses as parents. However, as in Russia, there is a prohibition on regulating the personal relations of the spouses, as well as personal relations between them and their children (paragraph 3 of Article 93 of the Family Code of Ukraine).

Article 13 of the CMF of the Republic of Belarus enshrines a list of provisions that can be agreed upon by the spouses or persons entering into marriage and included in the marital contract. These include issues of joint property and the property of each spouse; the procedure for dividing the spouses' joint property in the event of divorce; material obligations towards each other in the event of divorce; the forms, methods, and means of raising children; the children's place of residence, the amount of

¹³¹ Shershen T.V. The Role of the Fundamental Principles of Russian Family Legislation in Forming the Conditions of a Marriage Contract and Determining Its Validity // Bulletin of Notarial Practice. 2009. No. 5. P. 17.

alimony for them, the procedure for communicating with the non-resident parent, as well as other issues of the maintenance and upbringing of children in the event of divorce. The marital contract may also regulate other issues of relations between the spouses if this does not contradict the legislation on marriage and family.

Thus, in Belarus, the subject of a marital contract can be agreements between spouses of a property and non-property nature, in particular, concerning joint property and the property of each spouse; the procedure for dividing joint property and material obligations towards each other in the event of divorce; the forms, methods, and means of raising children; the children's place of residence, the amount of alimony for them, the procedure for communicating with the non-resident parent, other issues of their maintenance and upbringing in the event of divorce, as well as other agreements, provided they do not contradict the current legislation on marriage and family.

There is another approach that limits the subject area of the marital contract exclusively to the property legal relations of the spouses. This approach is enshrined in the legislation of some European states, as well as the Baltic countries, the Russian Federation, Kazakhstan, and Kyrgyzstan.

In accordance with Belarusian legislation, the subject of a marital contract may also include other agreements, but only on the condition that they do not contradict the legislation on marriage and family. Hence the following question arises: do the provisions of the marital contract that determine, for example, the order of spousal domestic duties; conditions regarding the behavior of the spouses in their personal life, in particular, maintaining marital fidelity, have legal significance? Certainly, spouses can include such a provision in their contract. But can the state ensure the

fulfillment of such obligations or restore the violated right by known means of legal protection?

It is permissible to stipulate many types of personal rights and duties of the spouses in the marital contract if they do not contradict the legislation, but guaranteeing the fulfillment of such provisions by an unscrupulous spouse is impossible. Consequently, the marital contract effectively regulates property relations in the family. As for intra-family personal relations, spouses can be recommended to regulate them independently without giving them legal significance.

Practice shows that marital contracts in Belarus are concluded in most cases regarding property subject to state or other (special) registration (real estate, shares of participation (including stocks) in business partnerships and companies, cars, etc.). Much less often, spouses define the legal regime of other property in the marital contract, including items of household furnishings and everyday use.

Article 99 of the Family Code of Ukraine fully discloses the issue of determining the right to maintenance in the marital contract: "The parties may agree on the provision of maintenance to one of the spouses regardless of disability and need for material assistance on the terms determined by the marital contract" (paragraph 1 of Article 99 of the Family Code of Ukraine).

The CMF of the Republic of Belarus, having enshrined the duty of spouses to materially support each other as a general rule, provided them with the opportunity to determine, by marital contract, the cases in which the obligation of one spouse to provide material assistance to the other spouse arises (Article 29)¹³².

¹³² Plisko A. Comparative Analysis of the Provisions of the Marriage Contract in the Republic of Belarus and Some CIS Member States // Justice of Belarus. 2004. No. 8. P. 67.

Thus, according to the second approach, only property relations between spouses can be regulated in a marital contract, which is quite logical.

Paragraph 4 of Article 29 of the Family Code of the Republic of Moldova establishes that spouses have the right to stipulate in the marital contract their rights and duties related to mutual maintenance, the procedure for participating in the income received by each of them, in bearing common expenses, to determine the property that will be transferred to each in case of division, and also to include in the contract any other provisions concerning property, including property sanctions for the spouse guilty of dissolving the marriage.

The phrase concluding the considered paragraph cannot fail to provoke discussion. It is about the fact that a marital contract can determine "property sanctions for the spouse guilty of dissolving the marriage." What did the legislator mean by guilt in dissolving a marriage? It is difficult to understand. If it is meant that, for example, the dissolution of the marriage occurred as a result of the husband, abusing alcoholic beverages, bringing the family to a financial crisis, then this norm can somehow be understood. Although such a husband will still not have cash amounts to cover the property sanctions, and, apparently, a part of his property will have to be transferred to his ex-wife by a court decision or other operations will have to be performed to resolve the issue. On the other hand, taking into account the fact that a significant part of marriage dissolutions takes place under the official wording "did not get along," and another part is due to infidelity, it will be extremely difficult to conduct a substantive examination of the case. Furthermore, the very concept of the spouse guilty of dissolving the marriage is already on the border with philosophy. In what case can one ask: is he (she) to blame for our separation? And how can one generally reason about guilt in such a matter?

These issues should be attributed not to legal regulation but to the moral and ethical side of the issue.

It is true that it should be noted that marital fidelity is now a legally established duty of a spouse under the legislation of Moldova. And if the reason for the divorce is the infidelity of one of the spouses, the recovery of property sanctions for this offense will be possible if this clause is included in the marital contract.

The marital contract has not yet become widespread in Moldova. Perhaps precisely because a marital contract can only regulate the property relations of the spouses. In other words, in practice, the only real meaning of concluding a marital contract is to change the usual equal division of all property acquired during the marriage. Apparently, in our country, moral and ethical norms prevail over legal ones, which is understandable in principle, and people prefer to resolve these issues within the family.

Various scientific viewpoints on the limits of the autonomy of will in concluding a marital contract in the family legislation of the Republic of Tajikistan lead to the conclusion that it is unfair to grant a choice to citizens who share common citizenship but reside in different states. Part 2 of Article 172 of the Family Code of the Republic of Tajikistan is structured in such a way that parties who do not have a common place of residence or common citizenship are given the opportunity to choose the law of any country, since the boundaries of the autonomy of will are not limited by law. In this case, classical conflict-of-law rules may apply to the common citizenship of the spouses or a common joint place of residence, so it is more correct to establish the autonomy of the parties' will only in the absence of common citizenship and place of residence for the spouses (future spouses) by changing the disjunctive conjunction "or" to the conjunctive "and" in Part 2 of Article 172 of the Family Code of the Republic of Tajikistan.

Some authors draw attention to the fact that immovable property is inextricably linked to the land and does not possess mobility, and therefore propose excluding it from the composition of property that can be regulated by the will of the spouses. Moreover, due to the connection of immovable property with the land, its value is much higher than movable property, and transactions involving it affect the interests of the state on whose territory it is located. This problem is especially relevant for Tajikistan, where land has a special status. Therefore, attaching the status of a thing to the law of the country where it is located is of great importance here. Based on this and the above-mentioned proposal, scholars suggest amending Part 2 of Article 172 of the Family Code of the Republic of Tajikistan and stating it as follows:

"When concluding a marital contract or an agreement on the payment of alimony, spouses who do not have common citizenship and a common place of residence may choose the legislation applicable to movable property under this contract or agreement on the payment of alimony."

Along with the issues indicated, the problem of the subject matter of the marital contract is widely discussed in Tajikistan. Based on the fact that the marital contract is characterized by a close connection with the personal relations of the parties, the authors propose expanding the range of relations included in the content of the marital contract, allowing the inclusion of not only property issues, material obligations in the event of divorce, but also issues of upbringing, residence of children, the amount of alimony for them, as well as other issues of spousal relations that do not contradict family law¹³³.

The marital contract in Turkmenistan is regulated by the Code on Marriage and Family. The President of Turkmenistan Saparmurat Niyazov

¹³³ <http://www.base.spinform.ru/show.fwx?Regnom=3480>

signed a Decree "On Approval of the Model Form of the Marriage Contract." As the Ashgabat correspondent of Turkmenistan.ru indicates, this document is aimed at protecting the rights and interests of the Republic's citizens entering into marriage with foreign citizens and stateless persons¹³⁴.

The document notes that this contract is concluded "...in order to regulate mutual property rights and obligations, as well as obligations for the maintenance of children and a disabled spouse in need of material assistance."

The first section of the document, "Subject Matter of the Marriage Contract," defines the procedure and rights of spouses when using property. Thus, the regime of common joint ownership is established for property jointly acquired by the spouses in marriage. At the same time, a different procedure for its use in the interests of the family may be established for individual types of property specifically indicated in this contract or an addition to it. Property that belonged to each spouse before marriage, received during the marriage as a gift or by inheritance, is his/her property, unless the common joint ownership regime is extended to it. The contract establishes equal rights of spouses to the possession, use, and disposal of common joint property. According to the document and in accordance with the legislation of Turkmenistan, "...spouses undertake to mutually maintain a spouse in need of material assistance if he/she became disabled before the dissolution of the marriage or within one year after the dissolution of the marriage, or reached retirement age no later than five years from the moment of the dissolution of the marriage." In the event of controversial situations, "...the amount of funds subject to recovery for the maintenance of the needy spouse is determined by the *kazyet* (court),

¹³⁴ Online newspaper Turkmenistan.ru. URL: <https://www.turkmenistan.ru/>

taking into account the material and family status of both spouses, in a fixed sum of money paid monthly."

The second section of the contract is dedicated to the rights and duties of the spouses. It states, in particular, that "...each spouse is obliged to show due care for the common joint property and for the property belonging to the other spouse, and to take all necessary measures to prevent the destruction or damage of the property."

Furthermore, in accordance with the document, "...each spouse is obliged to observe the rights and legitimate interests of the other spouse, established by this contract and by law, both in marriage and after its dissolution."

"Upon dissolution of the marriage, the common property is subject to division in equal shares. In accordance with the legislation of Turkmenistan, deviations from the principle of equality of spouses' shares are possible in individual cases," the model contract states.

The third section of the contract defines the measure of responsibility of the spouses in relation to property, including towards creditors.

The last section of the document, "Entry into Force, Amendment, and Termination of the Marriage Contract," stipulates that "spouses have the right to introduce amendments and additions to this contract at any time." Unilateral refusal to perform the contract is not permitted, and all controversial issues that may arise during its effect, if the spouses do not reach an agreement, are resolved judicially.

In accordance with the note concluding the document, in a marital contract, spouses have the right to: establish a regime of joint, shared, or separate ownership for all the spouses' property, for its individual types, or for the property of each spouse; determine the share of each spouse in the property belonging to them; determine the property that will be transferred to each spouse in the event of divorce; establish the method of

participation in each other's income; determine the procedure for bearing family expenses by each of them, as well as any other provisions concerning the property relations of the spouses, but not contradicting the law and not infringing upon the interests of the other spouse and their minor children. Here we can see the enshrinement of legal regulation that is similar to that in force in the Russian Federation.

According to the legislation of the CIS states, a marital contract can be concluded both in relation to existing and future property of the spouses.

Property acquired by spouses during marriage is their joint property, unless a different regime for this property is established by an agreement between them.

The marital contract provides spouses with the opportunity to deviate from the regime of common joint ownership. Thus, in the content of the marital contract, spouses have the right to establish a regime of joint, shared, or separate ownership for all the spouses' property, for its individual types, or for the property of each spouse.

In practice, establishing a regime of complete separation of property acquired during marriage is associated with the need at the time of acquisition to record which spouse, when, and with what funds the item was purchased, which seems quite complex, as it requires keeping a special register into which spouses would have to enter information about the acquired property and, probably, certify the entry with their signatures.

Keeping such a register is necessitated by the need to confirm the ownership of specific property to a spouse in case of a dispute and possible appeal to the court. It seems that continuously maintaining such a register throughout the spouses' life together is quite tedious and technically difficult to implement.

It is another matter if the spouses establish a regime of separation only for registered property. This makes it possible to determine in the

marital contract that the spouse in whose name the property is registered is the owner. Registered property includes: real estate (apartment, residential building, land plot, garden house, garage, etc.), vehicles (car, yacht, etc.), shares and securities (except bearer securities).

Thus, establishing a regime of limited, rather than complete, separation seems to better meet the interests of the spouses, as it guarantees the protection of the property owner's interests and at the same time does not complicate life with the need to constantly monitor purchases, even household ones, made by oneself and the other spouse.

Regardless of which property regime is chosen by the spouses and whether it is established for all property or for its individual types, it should be remembered that the regime of common joint ownership of spouses will apply to joint property that is not mentioned in the marital contract. Spouses have the right to determine in the marital contract the regime of property that is expected to be acquired in the future, i.e., after the conclusion of the contract.

A marital contract cannot restrict the legal capacity or capacity to act of the spouses, their right to appeal to court for the protection of their rights; regulate the personal non-property relations between the spouses, the rights and duties of the spouses in relation to children; provide for provisions restricting the rights of a disabled needy spouse to receive maintenance; or contain other conditions that place one of the spouses in an extremely unfavorable position or contradict the fundamental principles of family legislation.

For example, the CMF of Belarus (Part 1 of Article 13) grants spouses the opportunity within the framework of a marital contract to resolve issues: concerning the children's place of residence; the amount of alimony for the children; the procedure for communicating with the child

if the parent lives separately; and other issues of children's upbringing in the event of divorce.

The terms of a marital contract that contradict these protective norms of Russian family legislation are not valid in the territory of the Russian Federation and should not be taken into account by notaries.

The prohibition contained in paragraph 5 of Article 93 of the Family Code of Ukraine is of interest, according to which "...a marital contract cannot transfer to the ownership of one of the spouses immovable property and other property, the right to which is subject to state registration." The meaning of introducing this prohibition is unclear. On the contrary, an analysis of the provisions of Article 64 of the Family Code of Ukraine allows for the conclusion that spouses have the right to conclude all contracts between themselves regarding both property that is their personal private property and property that is the object of the right of common joint ownership¹³⁵.

Notably, Article 57 of the Family Code of Ukraine also classifies as the spouses' personal property: property acquired during the marriage but with personal funds, bonuses, awards received for personal merit, valuables, even those acquired at the expense of the spouses' common funds, insurance sums received under mandatory or voluntary personal insurance, funds received as compensation for the loss (damage) of a personal item, as well as compensation for moral damage. Article 61 of the Family Code of Ukraine and Article 25 of the CMF of the Republic of Belarus stipulate that items for professional use acquired during the marriage are the common joint property of the spouses.

The Civil Code of Ukraine does not contain norms that allow changing the status of one spouse's separate property, but it enshrines

¹³⁵ Shershen T.V. Prenuptial Agreement as a Regulator of Family Relations in Russia and the Republic of Belarus // Family and Housing Law. 2007. No. 3. P. 3.

provisions according to which the regime of common joint ownership of spouses and family members can be changed by agreement, and the procedure for property possession and use can be determined¹³⁶.

Notably, the regime of common joint ownership also extends to property acquired as a result of joint work and with the common funds of family members, unless otherwise established by an agreement concluded in written form (paragraph 4 of Article 368 of the Civil Code of Ukraine). The Family Code of Ukraine does not recognize *de facto* relations between a man and a woman as marriage and therefore does not grant them the opportunity to conclude a marital contract, but at the same time contains norms that extend the regime of common joint ownership to the property of a woman and a man living as one family and not married to each other (Article 74 of the Family Code of Ukraine).

According to Article 36 of the Family Code of the Russian Federation (FC RF) and Article 26 of the Code on Marriage and Family of the Republic of Belarus (CMF RB), jewelry and luxury items acquired during the marriage with common funds are considered joint common property of the spouses.

A different option is provided in the Family Code of Ukraine (FC U) in Article 57, part 2, according to which items for individual use, including valuables, are the personal private property of the spouse, even when they were acquired at the expense of the spouses' common funds, and are not joint common property.

Article 32 of the Law of the Republic of Kazakhstan "On Marriage and Family," unlike the FC RF, also includes income from the spouses' common property and separate property of each spouse in the spouses' joint property.

¹³⁶ Shershen T.V. Prenuptial Agreement as a Regulator of Family Relations in Russia and the Republic of Belarus // Family and Housing Law. 2007. No. 3. P. 3.

The Family Code of the Republic of Moldova (FC RM) excludes from the composition of the spouses' joint common property bonuses, remunerations, and other payments issued as compensation: material aid, compensation for damage related to health impairment, etc. (Article 20).

The Family Code of Ukraine provides for a prohibition against the marital contract from "...placing one of the spouses in an extremely unfavorable material position" (Article 93, part 4). The content of this concept is not disclosed in the legislation, and the commentary to the FC U draws attention to its relativity: "Certain terms of a marital agreement may be extremely burdensome for one family, but they will not be so for another family"¹³⁷.

As N.F. Zvenigorodskaya rightly noted, "...it will take a lot of time before practice develops criteria for what should be understood as other terms that place one of the spouses in an extremely unfavorable position or contradict the fundamental principles of family legislation"¹³⁸.

The consideration of the interests of children and a spouse in the Family Code of Ukraine is carried out by establishing both a direct prohibition—the marital agreement cannot reduce the scope of a child's rights, nor can it place one of the spouses in an extremely unfavorable material position (Article 93, paragraph 3)—and a special ground for amending the marital agreement by a court decision upon the application of one of the spouses, if this is required by his/her interests, the interests of the children, as well as the disabled adult daughter or son, which are of significant importance (Article 100, paragraph 3). Furthermore, the interests of children may be taken into account by the spouses in the marital agreement when deciding on the use of property belonging to both

¹³⁷ Scientific and Practical Commentary on the Family Code of Ukraine / Edited by E.O. Kharitonov. Kharkiv: LLC "Odyssey", 2006. P. 189-190.

¹³⁸ Zvenigorodskaya N.F. Invalidity of the Prenuptial Agreement: Theory and Practice // World Judge. 2008. No. 12; 2009. No. 1.

of them or only one of them to meet the needs of their children (Article 97, paragraph 4).

Article 28 of the Family Code of the Republic of Moldova (FC RM) explicitly establishes that a marital agreement concluded during the marriage does not have retroactive force. Property acquired before the conclusion of the marital agreement is subject to the statutory regime established by this Code. The commented article also stipulates the right of spouses to include property sanctions in the marital agreement for the spouse who is at fault for the dissolution of the marriage.

The Family Code of the Russian Federation (FC RF), unlike the codified acts of Ukraine and the Republic of Belarus, establishes guarantees for creditors upon the conclusion, amendment, or termination of a marital agreement.

According to Article 44 of the Law of the Republic of Kazakhstan "On Marriage and Family," and Article 35 of the Family Code of the Republic of Uzbekistan No. 607-1 of April 30, 1998, a creditor (creditors) of the debtor spouse is entitled to demand a change in the terms or the termination of the marital agreement due to significantly changed circumstances.

According to Article 32 of the Family Code of the Republic of Moldova, creditors of the debtor spouse are entitled to demand a change in the terms or the termination of the marital agreement if it infringes upon their rights and interests protected by law.

According to Article 42 of the Family Code of the Republic of Azerbaijan, the creditor(s) has (have) the right to demand amendment of the terms of the marriage contract or its termination on the grounds provided by the Civil Code of the Republic of Azerbaijan.

In contrast to the Family Code of the Russian Federation, the Law on Marriage and Family of the Republic of Kazakhstan does not stipulate that

a spouse is obliged to notify their creditor about the conclusion, amendment, or termination of a marriage contract. If this obligation is not fulfilled, the spouse remains liable for their obligations regardless of the content of the marriage contract. Although the law does not explicitly prescribe the duty to disclose the content of the marriage contract, such duty follows from the essence of this norm.

The establishment of the spouse's obligation to notify their creditor about the conclusion, amendment, or termination of the marriage contract enables creditors to obtain information about changes in the debtor's financial situation. Consequently, if the debtor's financial position deteriorates, creditors can promptly take all necessary measures to protect their interests.

The absence of this provision in the Law on Marriage and Family of the Republic of Kazakhstan is not entirely clear. Moreover, it is unclear how creditors should find out about the existence of a marriage contract at all. Nevertheless, the legislator has provided certain mechanisms to protect creditors' interests.

Thus, the marriage contract has become an integral part of many people's lives around the globe, and its conclusion is authorized by the legislations of most countries.

Summarizing the above, it should be noted that most countries worldwide have by now recognized the expediency of entering into marriage contracts as the foundation of contractual relations in family law, which fosters relative stability of marriages. It is to be hoped that future progress will equip global family law practice with new socio-legal forms of ensuring family stability.

2.4. Analysis, criticism, and prospects

Modern citizens enter into marriage with ease, but they also dissolve it just as readily. However, while entering into marriage is a relatively painless procedure from a legal standpoint, dissolving a marriage entails a wide range of legal consequences: from the necessity to divide jointly acquired property to determining the fate of children born during the marriage. In this context, various attempts are being made to simplify this procedure. The conclusion of a marriage contract is becoming an urgent necessity, as it is primarily intended to address potential issues in the event of divorce.

Interpreting the marital agreement solely from the perspective of family law makes it lifeless and impractical. Conversely, interpreting it from the perspective of civil law does not allow for taking into account the specifics of the personal-trust relationships of the subject and the time of conclusion, which is associated with marriage.

The problem lies in the fact that for domestic legislation, the marital agreement is a novelty and a poorly developed institution, which leads not only to lively theoretical disputes on many issues but also to the need to rethink existing legal norms. Nevertheless, this institution is necessary and promising, and therefore, its legal regulation should be improved.

The marital agreement corresponds to all the characteristics of a civil law transaction and a civil law contract; however, to speak of its exclusively civil law nature and essence is a mistake. The uniqueness of this construct is that, while externally clothed in a civil law form, it has family law content, that is, the specifics that cannot be subject to civil law regulation.

A marital agreement can be concluded by both spouses and persons entering into marriage, which should be understood as persons who have

submitted the corresponding application to the Civil Registry Office (CRO).

Active spouses may conclude a marital agreement up until the moment they file for divorce; otherwise, the advisability of concluding such an agreement is lost. In light of what has been said, we proposed corresponding legislative changes.

Cohabitants (persons in a de facto marriage) cannot conclude a marital agreement; they must choose a different form for formalizing their legal relations.

Minors, even with the participation of their parents in the procedure or with their consent, are unable to conclude a marital agreement before entering into marriage and acquiring full legal capacity.

Despite the fact that the specialized regulatory act—the Family Code of the Republic of Uzbekistan—does not contain special norms regarding the liability of the parties to a marital agreement, this is not a reason for the parties to refuse to independently establish liability in the marital agreement.

Often, the parties to a marital agreement neglect their right to establish liability for non-performance of an obligation under the marital agreement. This leads to a situation where, should a conflict arise, the dispute will be resolved based on the general rules for the performance of obligations, which does not always correspond to the specifics of family-marriage relations and, moreover, does not provide for individual solutions that could have been reflected in a specific marital agreement. It is very important to include provisions on spousal liability in the marital agreement.

Individuals concluding a marital agreement need to carefully consider the grounds, conditions, forms, and amounts of liability for the non-performance or improper performance of certain obligations within the

framework of the marital agreement in the text of the contract. Of course, when determining liability, one must exercise sound judgment and remember that the provisions on liability must fit within the framework of general provisions on contracts and comply with the requirements of reasonableness and good faith.

The conclusion of a marriage contract without including provisions on liability in its text will not allow for the protection of the parties' rights, since in the event of non-compliance with the terms of the marriage contract, no legal consequences will be provided for the breaching party. It is important to remember that while the conditions for liability in ordinary civil contracts are prescribed by law and, at a minimum, protect the interests of the parties, civil and family legislation contain no special provisions in relation to marriage contracts. Moreover, the obligations under a marriage contract are often specific in nature, which makes it impossible to apply general rules on liability to such contracts.

The modification or termination of a marriage contract can take two forms: voluntary and judicial. Voluntary modification or termination is possible when both parties agree on the necessity of such action and register the modification or termination in the same form as the original contract. The same applies to termination. However, in the absence of consent from one spouse, the other may appeal to the court.

It seems unreasonable that the parties to a marriage contract cannot regulate personal non-property relations, since the resolution of such issues outside the contract is also left to the mutual agreement of the spouses. It is believed that determining issues such as child upbringing, residence after divorce, and other personal non-property matters would have a positive impact in practice.

In the family law of the Republic of Uzbekistan, there remain several unresolved legal gaps that require prompt legislative resolution, which will

undoubtedly increase the effectiveness of the application of marriage contract provisions in practice.

In light of the above, it is necessary to set forth Article 30 of the Family Code as follows: “A marriage contract may be concluded either from the moment of submitting an application for state registration of marriage or at any time during the marriage, but before the spouses submit an application for divorce. A marriage contract concluded from the moment of submitting an application for state registration of marriage shall take effect on the day of state registration of the marriage. If the marriage is not registered within three months after the conclusion of the marriage contract, the contract shall be deemed terminated. The marriage contract shall be made in writing and shall be subject to notarization.”

When the spouses conclude a new marriage contract, the previous one shall remain in force only in respect to matters not regulated by the new contract, unless the new contract provides that the previous one loses its validity in full or in part.

It is necessary to amend Part 5 of Article 31 of the Family Code by excluding the phrase “to regulate personal non-property relations between spouses, the rights and duties of spouses with respect to children.” In this regard, a new Part 6 should be added, stating:

“By a marriage contract, spouses shall have the right to regulate personal non-property relations concerning the procedure for settling disputes arising between them, as well as determining with whom the children shall reside in the event of divorce and the procedure for communicating with them. These provisions shall not deprive either spouse of the right to communicate with the children or otherwise violate or restrict their rights and freedoms.”

It is also deemed necessary to add the following provision to the Family Code:

“The absence of state registration of ownership rights to the property in question shall not affect the legal regime of the spouses’ joint ownership.”

The legislation of developed countries has long recognized the expediency of concluding a marriage contract. In different countries, this institution has its own peculiarities, but its main purpose is to provide spouses with broad opportunities to determine their property relations within the marriage.

The analysis conducted allows us to draw the following conclusions:

1. The current Family Code defines a marriage contract as an agreement between persons entering into marriage or between spouses, determining their property rights and obligations during the marriage and/or in the event of its dissolution. A marriage contract may be concluded before state registration of marriage or during the marriage. A marriage contract concluded before state registration takes effect from the date of the official registration of the marriage. The marriage contract must be made in writing and notarized.

2. Considering the brevity of the Family Code’s provisions, which often negatively affects judicial practice, it is proposed to incorporate into the family legislation of the Republic of Uzbekistan the practice of maintaining a special, publicly accessible register recording both the fact of conclusion of a marriage contract and its key provisions concerning the property regime. This approach is justified from the standpoint of law enforcement practice—particularly for the activities of courts and notarial offices. Such a rule would be especially useful for individuals engaged in entrepreneurial activity.

3. Chapter 5 of the Family Code of the Republic of Uzbekistan¹³⁹, which characterizes the property rights and duties of spouses, defines the

¹³⁹ Family Code of the Republic of Uzbekistan. National Legislation Database, February 7, 2024, No. 03/24/905/0106.

norms on the joint property of the spouses, the conditions for the ownership, use, and disposal of common property, the norms on the personal property of each spouse and items for individual use, as well as the rules concerning the division of common property and the determination of shares during such division. Considering the insufficiency of these legislative norms in judicial practice, due to the multifaceted and complex nature of such cases, it is proposed at the legislative level to distinguish between the concepts of “property of the spouses” and “assets of the spouses” in order to avoid confusion in their application.

4. It is necessary to resolve the issue of the spouses’ common debts by including them in the list of joint property of spouses provided in Article 22 of the Family Code¹⁴⁰, and to rename the article as “Joint Property of Spouses.”

5. Article 23 of the Family Code of the Republic of Uzbekistan¹⁴¹ provides that the property acquired by the spouses during marriage, as well as that acquired prior to marriage registration with the use of their common funds, shall be considered their joint property unless otherwise provided by law or the marriage contract.

The property acquired by the spouses during marriage (the joint property of the spouses) includes each spouse’s income from employment, entrepreneurial activities, and intellectual activities; pensions, allowances, and other monetary payments that do not have a special designated purpose (such as material assistance, compensation for loss of working capacity due to injury or other damage to health, and others). The spouses’

¹⁴⁰ Family Code of the Republic of Uzbekistan. National Legislation Database, February 7, 2024, No. 03/24/905/0106.

¹⁴¹ Family Code of the Republic of Uzbekistan. National Legislation Database, February 7, 2024, No. 03/24/905/0106.

joint property also includes movable and immovable assets, securities, shares, deposits, capital contributions to credit institutions or other commercial organizations, and any other property acquired by the spouses during marriage — regardless of whose name the property is registered in or which spouse contributed the funds.

Spouses have equal rights to the joint property even in cases where one spouse was engaged in household duties, childcare, or other valid reasons preventing them from earning an independent income. The rights of spouses to own, use, and dispose of property constituting the joint ownership of members of a farming or dehkan household are determined by the laws on farming and dehkan enterprises. The division of property of such enterprises is carried out in accordance with Articles 223 and 225 of the Civil Code of the Republic of Uzbekistan.

6. The issue of the composition of marital property in domestic family law remains incomplete. It appears that the legislator should adopt the practice of dividing marital property into assets and liabilities, including common debts in the latter, in order to avoid ambiguity in the use of the term “property of spouses” in doctrine and practice. It seems that the term “property of spouses,” as accepted in domestic family law, includes on one hand the assets — “property of the spouses,” which consist of proprietary rights and claims, and on the other hand, the liabilities — obligations relating to common debts.

7. It is necessary to include the following classification of the spouses’ property relations in the Family Code:

relations concerning their owned property (things, including money and securities, as well as property rights);

1. relations regulating the distribution of the spouses’ liability for obligations toward third parties;

2. alimony relations.

8. In domestic family legislation, there is no classification of the property relations between spouses¹⁴². Meanwhile, family law traditionally distinguishes two categories of such relations: relations concerning ownership of property and relations concerning the provision of maintenance. It appears that relations involving the spouses' liability for obligations toward third parties constitute a relatively independent category of property relations governed by family law. Therefore, it is advisable to identify the relations concerning the spouses' liability for obligations toward third parties as a separate group of relations.

At the same time, it should be taken into account that since these relations affect the interests of third parties, they cannot be subject to contractual regulation and, accordingly, cannot form part of its subject matter.

The legislation of certain countries (France, Austria) recognizes the alimony obligations of one spouse as liabilities of the marital property — that is, they are included in the marital mass. It is believed that this legal experience deserves to be adopted in domestic legislation, since the inclusion of alimony obligations in the spouses' joint property would to a greater extent protect the rights of creditors (persons entitled to receive alimony).

9. The current Civil and Family Codes of the Republic of Uzbekistan do not provide a clear distinction between the definitions and criteria of an “extremely unfavorable position.” Therefore, it is proposed to clearly define in the Family Code and the Civil Code of the Republic of Uzbekistan the concept and criteria of an “extremely unfavorable position.”

The Family Code of the Republic of Uzbekistan establishes the possibility of declaring a marriage contract invalid if it places one of the

¹⁴² Family Code of the Republic of Uzbekistan. National Legislation Database, February 7, 2024, No. 03/24/905/0106.

spouses in an “extremely unfavorable position.” Since the legislation does not disclose the meaning of this concept, courts, when considering such cases, are currently guided not by the material condition of the spouse prior to marriage, but by the potential share of property the spouse would have under the legal regime of property relations.

It is proposed that when using the concept of an “extremely unfavorable position” in legal practice, the evaluation criteria should include the personal income of each spouse as well as the amount of their personal property. At the same time, it is necessary to compare the financial condition of the spouse before the conclusion of the marriage with their condition at the time of contesting the marriage contract.

10. It is proposed that legislation should clearly define the right of legally incapacitated and partially incapacitated persons to conclude a marriage contract, provided that certain formalities are observed (for example, the consent of guardians or parents). Domestic legislation does not currently contain provisions regarding the possibility of concluding a marriage contract by such persons. Although the probability of such cases is extremely low, it cannot be excluded entirely.

Drawing on the preventive legal experience of certain countries, it is necessary to regulate at the legislative level the issues of concluding a marriage contract by such persons, in order to avoid disputes in judicial practice when applying the norms of the Family Code of the Republic of Uzbekistan on this matter.

The analysis of the conducted study allows the following conclusion. The current Family Code defines a marriage contract as an agreement between persons entering into marriage or an agreement between spouses that determines the property rights and obligations of spouses during marriage and/or in the event of its dissolution. A marriage contract may be concluded either before state registration of the marriage or during the

marriage. A marriage contract concluded prior to state registration enters into force on the day of the official registration of the marriage. The marriage contract must be made in writing and notarized.

Considering the brevity of the Family Code's provisions, which often negatively affects judicial practice, it is proposed to incorporate into the family legislation of the Republic of Uzbekistan the practice of maintaining a special, publicly accessible register that records both the fact of the conclusion of a marriage contract and its main provisions concerning the property regime. This approach is fully justified from the standpoint of law enforcement practice — particularly in relation to the activities of courts and notarial offices — and would be especially beneficial for individuals engaged in entrepreneurial activity.

Chapter 5 of the Family Code of the Republic of Uzbekistan, titled “Property Rights and Duties of Spouses,” defines the norms regarding the joint property of spouses, the conditions for possession, use, and disposal of common property, the norms concerning the personal property of each spouse and items of individual use, as well as the rules for the division of common property and the determination of shares in such division.

Considering the insufficiency of these legislative norms in judicial practice due to the complexity and diversity of such cases, it is proposed at the legislative level to distinguish between the concepts of “property of the spouses” and “assets of the spouses” to avoid confusion in their use. The issue of common debts between spouses can be resolved by including them in the list of joint property of spouses provided in the Family Code, and renaming the corresponding article “Joint Property of Spouses.”

Article 23 of the Family Code of the Republic of Uzbekistan states that the property acquired by spouses during marriage, as well as property acquired prior to marriage registration with their joint funds, shall be considered their joint property, unless otherwise provided by law or a

marriage contract.

The property acquired by spouses during marriage (the joint property of the spouses) includes the income of each spouse from labor, entrepreneurial, and intellectual activities, their pensions, allowances, and other monetary payments not having a special designated purpose (such as material assistance, compensation for loss of working capacity due to injury or other health damage, and others).

The spouses' joint property also includes movable and immovable property, securities, shares, deposits, contributions to credit institutions or other commercial organizations, and any other assets acquired by the spouses during marriage — regardless of in whose name the property was registered or by which spouse the funds were contributed.

Spouses enjoy equal rights to common property even in cases where one spouse was engaged in housekeeping, childcare, or other valid reasons for not having an independent income.

The issue of the composition of marital property in domestic family law remains incomplete. It seems that the legislator should adopt the practice of dividing marital property into assets and liabilities, including common debts in the latter, in order to avoid ambiguities in the use of the term “property of spouses” in doctrine and practice.

In domestic family legislation, there is currently no classification of the property relations between spouses. Meanwhile, family law traditionally distinguishes two categories of such relations: those concerning ownership of property and those concerning the provision of maintenance. It appears that relations involving the spouses' liability for obligations toward third parties constitute a relatively independent category of property relations governed by family law. Therefore, it is advisable to recognize relations concerning the spouses' liability to third parties as a separate group.

At the same time, it must be taken into account that since these relations affect the interests of third parties, they cannot be subject to contractual regulation and thus cannot form its subject matter.

The legislation of certain countries (France, Austria) recognizes the alimony obligations of one spouse as liabilities of marital property — that is, they are included in the marital estate. It is believed that this legal experience deserves to be adopted in domestic legislation, since the inclusion of alimony obligations in the spouses' joint property would better protect the rights of creditors (persons entitled to receive alimony).

The current Civil and Family Codes of the Republic of Uzbekistan do not clearly define the criteria for determining an “extremely unfavorable position.” Therefore, it is proposed to clearly define in the Family Code and Civil Code of the Republic of Uzbekistan both the concept and criteria of an “extremely unfavorable position.”

The Family Code of the Republic of Uzbekistan allows for a marriage contract to be declared invalid if it places one of the spouses in such a position. Since the legislation does not define the term, courts currently assess such cases not based on the spouse's material situation prior to marriage, but on their potential share of property under the legal regime of property relations. It is proposed that the assessment of an “extremely unfavorable position” in legal practice should be based on the personal income and personal property of each spouse, comparing the spouse's financial condition before the marriage with their financial condition at the time of contesting the marriage contract.

It is also proposed that legislation should explicitly define the right of legally incapacitated and partially incapacitated persons to conclude a marriage contract, provided that certain formalities (such as the consent of guardians or parents) are observed.

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