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## LEGAL REGIME OF JEWELS AS AN OBJECT OF MATRIMONIAL PROPERTY

**Abstract.** The *purpose of the research* is to study the nature of jewels as property and clarify the expediency of classifying jewels as the private property of the husband or wife, as well as proving the need to modify the list of assets belonging to the private property of one of the spouses.

**Research methods.** To accomplish the objectives of the work, general scientific and special methods of cognition have been used.

**Results.** The author has analyzed the concept of jewels, specified the properties that distinguish them from other personal items. The defining characteristic of jewels can be considered the price of such an item. The properties of jewels indicate the need for their statutory division into those that have a low cost and expensive ones. Expensive jewels differ in purchase motive and purpose. The purchase of jewels by the spouses may be followed by a desire to recover the spent money with time and make a profit. An analysis of the legislation of other states has shown that the value of jewels is taken into account in the case-law of England under the division of property and the laws of Spain.

**Conclusions.** It is not advisable to combine jewels and other personal items into one group, which is covered by the private property regime of one of the spouses. Given the development of socio-economic relations in terms of the property status of the spouses, property value, the purchasing power of the people, expensive jewels should be attributed to matrimonial property. The consolidation of the criterion of the value of jewels will throw light on the property relations of the spouses and secure justice and balance of interests of each spouse. Jewels, the value of which exceeds 20 minimum wages, must be subject to the legal regime of matrimonial property established by art. 60 of the Family Code of Ukraine. Relevant amendments should be made to the provisions of p. 2 of art. 57 of the Family Code of Ukraine by specifying in personal items “a jewel, the value of which does not exceed twenty minimum wages set for the able-bodied population as of January 1 of the particular year on the day of purchase”.

**Key words:** jewels, piece of jewelry, cost, personal items, private property of wife or husband, ownership of matrimonial property, joint funds of spouses.

### 1. Introduction

As a result of the registration of marital relations, a married couple obtains personal non-property and property rights and obligations, a joint legal regime of property – a matrimonial property regime. According to art. 60 of the Family Code of Ukraine (hereinafter – the FC of Ukraine), property acquired by spouses during the marriage as joint property is their matrimonial property (Verkhovna Rada of Ukraine, 2002). At the same time, each spouse may have property belonging to him/her on the right of personal ownership. The problems caused by the establishment of a legal regime of personal property are one of the most challenging which occur in law enforcement practice when resolving family matters. Articles 57, 58 of the FC

of Ukraine list assets that are the separate property of the wife/the husband and specify circumstances that lead to such a legal property regime (Verkhovna Rada of Ukraine, 2002). Among them, jewels hold a special place, which are mainly expensive items, that may cause litigation in the division of matrimonial property.

Social and socio-economic relations are constantly evolving, including the property status of spouses, property value, purchasing power of the population, etc. Legislation should respond to such changes. Therefore, a topical area of modern legal science is the analysis of the expediency of classifying jewels as the separate property of the husband or wife to ensure fair regulation of matrimonial property relations.

## 2. The concept of jewels under domestic law

From the moment of marriage registration, the presumption of community property acquired by spouses, except for cases established by law, comes into force (Lepekh, 2013, p. 85). Thus, according to p. 1 of art. 57 of the FC of Ukraine, the wife/husband possesses the following: property he/she acquired before the marriage; property he/she acquired in the marriage but on the basis of a deed of gift or succession; property he/she acquired in the marriage but for his/her personal finances. An individual group of the property belonging to the private ownership of only one of the spouses consists of personal items. According to p. 2 of art. 57 of the FC of Ukraine, the separate property of the wife and husband includes personal items, incl. jewels, even if they have been purchased for the joint money of a married couple (Verkhovna Rada of Ukraine, 2002).

It should be noted that p. 2 of art. 24 of the Marriage and Family Code of Ukraine states that the rule of the division of personal items does not apply to jewels and luxury articles, even if they were used by only one spouse (Verkhovna Rada of the Ukrainian Soviet Socialist Republic, 1969). However, the rule was changed with the adoption of the FC of Ukraine.

The current legislation classifies jewels as personal items. The case law attributes the following to the latter: clothing, accessories, hygiene products, cosmetics, and other items that satisfy the daily needs of each spouse. The FC of Ukraine does not specify these items; the term is evaluative, and the court, given the item's properties, shall decide whether a particular item belongs to personal ones. The defining characteristic is regularity and daily use, as well as satisfaction of the needs of only husband or wife.

Neither the FC of Ukraine nor other legislative acts contain a statutory definition of jewels. This concept is also evaluative: in each specific case, the court decides whether the item is expensive. Following the explanatory dictionary of the Ukrainian language, a jewel is an item of high cost and value; fine jewelry, jewelry (Bilodid, 1973).

Therefore, jewels can entail jewelry, various products containing precious metals and gems, watches, antique accessories, unique objects used by one of the spouses, etc.

From the economic perspective, the jewelry market is a part of the luxury market, which meets the status needs of consumers (Skubilina, Volovyk, 2017, p. 355). Luxury articles are not vital, one can do without them in everyday life, but society considers them desirable. The motives that usually guide people in

purchasing jewelry are different and individual. Among them are collecting rare or pieces of jewelry of great worth, emphasizing social status, and investing money. There are such kinds of jewelry: designer; artistically valuable; exclusive; with rare gemstones. Such purchase motives distinguish jewels from other objects that are designed to satisfy the daily needs of one of the spouses.

Precious metals and gems, or products made of them, as a kind of jewels can be the object of investment – an investment that can make a profit after a while. Moreover, such an object can be a piece of jewelry with certified investment gems. In such cases, they are not solely an individual accessory or decoration of a man or woman. The advantages of investing in precious metals and products are an aesthetic pleasure from ownership, long service life without loss of product performance, and the constant growth of their cost (Skubilina, Volovyk, 2017, p. 355). In particular, over the past 10 years, precious gemstones have gone up in price by more than 110% (Knight Frank, 2019). Today, pieces of jewelry are often provided with a product passport and other documents confirming their uniqueness or value as well as belonging to a person.

Given the above, the price of an item can be considered the defining characteristic of jewelry. According to this criterion, among pieces of jewelry, one should differentiate between low-cost and high-cost items. However, the current legislation embodies only one property of such items – regular use for personal needs, individual use by a man or a woman. In order to consolidate value characteristics of jewelry at the legislative level, one may use the criterion of comparison with the size of the minimum wage, which takes into account the dynamics of prices, costs of living, and its changes, etc.

The considered properties of jewels as personal items indicate the need for their statutory division into low-cost and expensive. In the author's opinion, the legal regime of matrimonial property should apply to expensive jewelry. Each of the spouses is a legally equal participant, incl. in terms of possession, use and disposal of property acquired by them for joint funds during the marriage.

According to arts. 69, 70 of the FC of Ukraine, the wife and husband have the right to partition matrimonial property irrespective of marriage dissolution; the wife's and the husband's shares are equal unless the agreement between them or marriage contract provides otherwise (Verkhovna Rada of Ukraine, 2002). The Ruling of the Supreme Court dated December 16, 2015 in case № 6-2641цс15 noted that the interpretation of property as matrimo-

nial is conditioned not only by the fact that it was acquired during the marriage but also by the couple's joint investment or contribution to property acquisition. Thus, the criteria that allow classifying the property as matrimonial are: 1) the time of acquisition of such property; 2) the funds for which the property was acquired (source of acquisition); 3) the purpose of property purchase, which allows granting it the legal status of matrimonial property. The norm of article 60 of the FC of Ukraine on the acquisition of the right to joint matrimonial property is considered to be correctly applied if the acquisition of property meets the above criteria (Supreme Court of Ukraine, 2015).

The author believes that such an approach to determining the legal regime is fair, as well as to the acquisition of an expensive precious item, even if it is used by one of the spouses. At the same time, the purpose of property acquisition, which gives it the legal status of matrimonial property, may involve investing money, maintaining the social standing of the family (not only of one spouse), etc.

Following the current approach of the legislator, neither the purpose of property acquisition nor the source of acquisition (the funds for which the property was purchased) is taken into account when determining the legal regime. Thus, p. 2 of art. 57 of the FC of Ukraine stipulate that jewelry is the separate property of the wife or husband, even if it was purchased for the joint money of spouses (Verkhovna Rada of Ukraine, 2002).

In view of the above, the author holds that it is inappropriate to link jewelry and other personal items in one group, which is covered by the regime of separate property of one of the spouses. The defining features of personal items are regularity and daily use, the satisfaction of the living needs of only man or woman. At the same time, expensive jewelry is characterized by special value, investment attractiveness, and other motives for purchase. Consequently, expensive jewelry should be subject to the matrimonial regime and community property, if it was acquired during the marriage.

### 3. Legal regime of jewels in foreign countries

In most European countries, the regime of jewels is not outlined separately in the rules of marital property. In particular, it is absent in the legislation of Lithuania, Latvia, Poland, and Finland. Thus, the list of personal property of one of the spouses is set out in art. 33 of the Family and Guardianship Code of Poland (Sejm of Poland, 1964). It includes: 1) property acquired before marriage; 2) property acquired by inheritance or as a gift unless the deceased or the grantor decided otherwise; 3) property that

satisfies the personal needs of one of the spouses; 4) non-transferable rights that can be used by only one person; and other types which do not mention jewels.

Finland's marriage law does not stipulate a special legal regime for jewels. However, the following personal items are attributed to the group of property that one of the spouses cannot dispose of without the consent of the other: any necessary tools used by one of the spouses; movable property intended for the personal use of the other spouse or children; movable property that is part of communal household assets used by both spouses (Section 35 of the Marriage Act (Ministry of Justice of Finland, 1929)).

German law refers to jewels as a personal item. Section 1476 of the German Civil Code stipulates that the property, which remains after fulfilling matrimonial property obligations, belongs to spouses in equal shares. At the same time, following paragraph 2 of section 1477, each spouse may get items intended solely for his/her personal use, including clothing, jewelry, and tools (Federal Ministry of Justice of German, 2002).

Article 101 of the Dutch Civil Code also contains a rule according to which each spouse may demand the return of his/her clothes, valuables, professional and business equipment, papers, and souvenirs belonging to his/her family when dividing the marital property. The division may be established by a divorce agreement or by a judge (States General of Netherlands, 2012).

Attention should also be drawn to the content of art. 1346 of the Civil Code of Spain, which attributes, *inter alia*, clothing and personal items that are not of appreciated value to the personal property of each spouse (paragraph 7) (Ministry of Grace and Justice of Spain, 1889).

In England, the wife is usually free to keep her jewelry presented by her husband during the partition of property. Exceptions are situations under which one can demonstrate that the grantor's firm intention was to reclaim jewels in case of marriage dissolution. British lawyers note that the easiest way to demonstrate the "solid intention" is a prenuptial or postnuptial agreement. At the same time, it is marked that the case is complicated if the value of jewels constitutes a significant share of assets owned by a couple. Matrimonial assets are usually divided so as to achieve a fair division between the parties. In some cases, jewels are subject to sale to strike a balance (Austin Kemp Solicitors Limited, 2016).

If a man and woman have failed to agree upon the portion of the property after divorce, the case is litigated. Both parties are obliged

to disclose their financial status fully during the trial. Disclosure is implemented through filling out financial statements in the E Form that, together with supporting documents, contains complete information on the property, personal assets, investments, savings, liabilities, business assets, pensions, and income. In addition, it must contain personal belongings worth more than £ 500, incl. jewelry and other precious items. These items are registered along with the indication of their current value. The current value is usually interpreted as the reasonable resale value of the item rather than an insurance appraisal. The court considers the value of all assets that will later be divided between the spouses to achieve a fair division. The higher the value of jewelry compared to the total value of other assets, the more likely it will be considered under division (Anthony Gold Solicitors LLP, 2019).

In the USA, the situation varies depending on the state. Thus, in the case of “Lane Edward Williams v. Lisa Lyon Williams” as of March 26, 2019, heard by the Tennessee Court of Appeals (Court of Appeals of Tennessee at Jackson, 2019), the wife asserted that her husband gave her jewelry during the marriage. Meanwhile, the husband stressed that the jewelry, valued at \$ 161,535.42, was common property and was purchased as an investment. The court marked that the Tennessee case law confirms this argument, as it is an asset acquired during the marriage. However, the court applied the provisions of §§ 36-4-121 (b)(2)(D) of the Tennessee Code that “[property] acquired by spouses at any time as a gift, by will or descent” is individual property. During the trial, the court took into account that the wife wore the jewelry in question and did not know of any intention of the husband to resell these items. As a result, the Court of Appeal recognized these products as personal property of the wife, which is not subject to fair division. (Martin Heller Potempa & Sheppard, 2019).

Therefore, the consolidation of a separate legal regime of jewels among the rules on the matrimonial property is not common to European practice. In Germany and the Netherlands, jew-

els are items intended solely for the personal use of one of the spouses and which he/she may be required to return in case of property division. In Spain, the criterion for personal items, which may be attributed to the personal property of only the husband or wife, is the lack of their extraordinary value. The case law of England draws attention to the value of jewels used by one of the spouses: the higher the value of jewelry compared to the total value of other assets, the more likely it will be considered by the court under division. However, each spouse is obliged to disclose information about personal belongings (including jewelry and other valuables), the amount of which exceeds £ 500 (approximately 18 thousand hryvnias).

#### 4. Conclusions

The high cost is what distinguishes jewels from other personal items, which belong to the private property of one of the spouses. The defining properties of expensive jewels are also purchase motives and purpose. The purchase of jewels by the spouses may be followed by a desire to recover the spent money with time and make a profit. The value of jewels as an aspect that must be taken into account when determining the legal status of matrimonial property is recognized in Spanish law and the case law of England.

Consequently, the author holds it necessary to introduce the following amendments into the provisions of part 2 of art. 57 of the FC of Ukraine: “Personal private property of the wife and husband is individual items, including jewels, the value of which does not exceed twenty minimum wages set for the able-bodied population as of January 1 of the particular year on the day of purchase”.

Accordingly, jewels, the value of which exceeds 20 minimum wages, should be subject to the legal regime of matrimonial property established by art. 60 of the FC of Ukraine.

The consolidation of the criterion of the value of jewels will bring certainty to the property relations of the spouses, and the consideration of valuables acquired during the marriage as matrimonial property will contribute to the fairness and balance of interests of each spouse.

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## ПРАВОВИЙ РЕЖИМ КОШТОВНОСТЕЙ ЯК ОБ'ЄКТА ВІДНОСИН СПІЛЬНОЇ СУМІСНОЇ ВЛАСНОСТІ ПОДРУЖЖЯ

**Анотація.** *Метою статті* є дослідження природи коштовностей як майна та з'ясування доцільності віднесення коштовностей до особистої приватної власності чоловіка чи дружини, а також доведення необхідності внесення змін до переліку майна, що належить до особистої приватної власності одного з подружжя.

**Методи дослідження.** Для досягнення цілей роботи використовуються загальнонаукові та спеціальні методи наукового пізнання.

**Результати.** Проаналізовано поняття коштовностей, виділено властивості, що відрізняють їх від інших речей індивідуального користування. Визначальною характеристикою коштовностей можна вважати саме ціну такого предмета. Властивості коштовностей свідчать про необхідність нормативного їх розмежування на коштовності низької вартості та коштовності високої вартості. Коштовності високої вартості відрізняються мотивом і метою придбання. Купівля подружжям коштовностей може супроводжуватися бажанням через деякий час повернути витрачені грошові кошти та отримати прибуток. Проведено аналіз законодавства інших держав, який показав, що вартість коштовностей враховується в судовій практиці Англії під час поділу майна та в законодавстві Іспанії.

**Висновки.** Встановлено, що недоцільно об'єднувати коштовності та інші речі індивідуального користування в одну групу, на яку поширюється режим особистої приватної власності одного з подружжя. З огляду на розвиток соціально-економічних відносин у частині майнового стану подружжя, вартість майна, купівельну спроможність населення необхідно віднести коштовності високої вартості до спільної сумісної власності подружжя. Закріплення критерію вартості коштовностей внесе визначеність у майнові правовідносини подружжя та сприятиме дотриманню справедливості й балансу інтересів кожного з подружжя. На коштовності, вартість яких перевищує 20 мінімальних заробітних плат, має поширюватися правовий режим спільної сумісної власності подружжя, встановлений у ст. 60 Сімейного кодексу України. Відповідні зміни варто внести до положення ч. 2 ст. 57 Сімейного кодексу України шляхом визначення серед речей індивідуального користування «коштовність, вартість якої на день придбання не перевищує двадцятикратного розміру мінімальної заробітної плати, встановленої для працездатних осіб на 1 січня відповідного року».

**Ключові слова:** коштовності, ювелірний виріб, вартість, речі індивідуального користування, особиста приватна власність дружини чи чоловіка, право спільної сумісної власності подружжя, спільні кошти подружжя.

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