**NATIONAL UNIVERSITY OF LIFE AND ENVIRONMENTAL SCIENCES OF UKRAINE**

**Faculty of Law**

**Department of Civil and Commercial Law**

# METHODOLOGICAL RECOMMENDATIONS

**for lectures and seminars**

**in the discipline "Family Law"**

**for students of the Bachelor's degree program of specialty 081 "Law"**

**KYIV – 2023**

Methodological recommendations for lectures and seminars in the discipline "Family Law" for students of the Bachelor's degree program of specialty 081 "Law"

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## Purpose and objectives of the discipline

The purpose of the discipline "Family Law" is to form a system of knowledge about the concept, subject and method of family law, its sources, functions and principles, basic institutions, features of legal regulation of family legal relations and general patterns and characteristics of the emergence, functioning and changes in family legislation in Ukraine.

The objectives of the discipline "Family Law" are:

- study of the system of current family law and problems of its development;
- acquiring skills in the application of family law in the practice of human rights protection, law enforcement, scientific and other activities;
- formation of students' scientific outlook and legal culture, which will help them choose the right behavior in the modern world;
- to use a variety of information sources to master complex issues on a particular topic;
- freely use available information technologies and databases for professional activities.

As a result of studying the discipline "Family Law" students should

**know:**

- the subject, method, functions and principles of family law;
- the history of the development of family law and the general system of sources of modern family law;
- the essence of family legal categories;
- the concept, content and types of family relations, grounds for their occurrence;
- the peculiarities of legal regulation of certain types of family relations;
- the ways to protect family rights and legitimate interests.

**be able to:**

- demonstrate the necessary knowledge and understanding of the essence and content of the main legal institutions and norms of fundamental branches of law;
- apply the acquired knowledge in various legal situations;

- to separate legally significant facts and formulate reasonable legal conclusions;

- analyze the content of the texts of family law provisions.

**have knowledge of:**

- legal terminology;

- skills of working with legal acts;

- skills of analyzing various legal phenomena (legal norms, legal facts, legal relations, etc.);

- skills in using information technology and databases;

- skills of communication, interaction and partnership, ability to work in a group and formulate their own contribution to the implementation of group tasks;

**have:**

- experience in analyzing scientific and specialized literature in the discipline of Family Law;

- a high level of legal awareness and culture, respect for the law, intolerance to its violation.

**be familiar with:**

- with the main directions of development of domestic and foreign science in the field of topical issues of law;

- with modern problems of lawmaking and trends in the development of legal technology;

- with the main problems in the formation of the legal system of society;

- experience in resolving legal problems and conflicts.

**Acquisition of competencies:**

**General competencies:**

GC2. Ability to apply knowledge in practical situations.

GC4. Ability to communicate in the state language both orally and in writing.

GC6. Skills in the use of information and communication technologies.

GC7. Ability to learn and master modern knowledge.

GC8. Ability to be critical and self-critical.

GC10. Ability to act on the basis of ethical considerations (motives).

GC11. Ability to exercise their rights and responsibilities as a member of society, to realize the values of civil (free democratic) society and the need for its sustainable development, the rule of law, human and civil rights and freedoms in Ukraine.

GC12. Ability to realize equal opportunities and gender issues.

GC13. Ability to preserve and enhance the moral, cultural, scientific values and achievements of society based on an understanding of the history and patterns of development of the subject area, its place in the general system of knowledge about nature and society and in the development of society, technology and technology, to use various types and forms of physical activity for active recreation and healthy lifestyle.

GC14. Valuing and respecting diversity and multiculturalism.

**Special competencies:**

SC1. Ability to apply knowledge of the basics of theory and philosophy of law, knowledge and understanding of the structure of the legal profession and its role in society.

SC3. Appreciation and respect for human dignity as the highest social value, understanding of its legal nature.

GC4. Ability to apply the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the case law of the European Court of Human Rights.

SC5. Ability to apply the rules and institutions of public international law and private international law.

SC7. Ability to apply the norms and institutions of law, at least in the following areas: constitutional law, administrative law and administrative procedure law, civil law and civil procedure law, labor law, criminal law and criminal procedure law.

SC11. Ability to identify relevant and acceptable facts for legal analysis.

GC12. Ability to analyze legal problems and justify legal positions.

GC14. Ability to advice on legal issues, in particular, possible ways to protect the rights and interests of clients, in accordance with the requirements of professional ethics, proper compliance with the rules on non-disclosure of personal data and confidential information.

**Learning outcomes:**

LO 3. Collect and analyze materials from various sources in an integrated manner.

LO 5. Give a brief legal opinion on certain factual circumstances with sufficient reasonableness.

LO 6. Evaluate the disadvantages and advantages of certain legal arguments by analyzing a known problem.

LO 7. Draw up and coordinate a plan for their own applied research and independently collect materials from specific sources.

ELO 10. Communicate fluently in the state and foreign languages, both orally and in writing, using legal terminology.

LO 11. Have basic rhetorical skills.

LO 12. To convey to the respondent material on certain legal issues in an accessible and understandable manner.

LO 14. Use statistical information obtained from primary and secondary sources for legal activities.

LO 15. Freely use available information technologies and databases for legal activities.

LO 16. To use computer programs necessary for legal activities.

LO 17. Work in a team, ensuring the fulfillment of team tasks.

LO 18. Apply in professional activities the basic modern legal doctrines, values and principles of the national legal system.

LO 19. Explain the nature and content of basic legal phenomena and processes.

LO 21. Prepare drafts of the necessary acts of application of law in accordance with the legal conclusion made in various legal situations.

LO 22. Provide advice on possible ways to protect the rights and interests of clients in various legal situations.

## Assessment system

The academic discipline "Family Law" is taught according to the credit-module system of organization of the educational process. This system is introduced in order to improve the quality control system of students' knowledge, promote the formation of

systematic and systematic knowledge, stable independent work during the semester, increase the objectivity of knowledge assessment and adaptation to the requirements of the European Credit Transfer System (ECTS).

Student's knowledge is assessed on a 100-point scale and translated into national grades according to Table 1 "Regulations on Exams and Tests at NULES of Ukraine" (approved by the Academic Council of NULES of Ukraine on 26.04.2023, Protocol No. 10)

| Current control | | Academic performance rating RAP | Rating for additional work RAW | Penalty rating RP | Final certification $R_C$ | Total number of points RT |
|---|---|---|---|---|---|---|
| Module 1 | Module2 | | | | | |
| 0-100 | 0-100 | 0-70 | 0-20 | 0-5 | 0-30 | 0-100 |

Notes. 1. In accordance with the "Regulations on Examinations and Tests in NULES of Ukraine", approved by Protocol No. 5 of the Academic Council of NULES of Ukraine dated 27.12.2019, the student's rating in the academic work of the RAP in relation to the study of a particular discipline is determined by the formula established by this Regulation.

The rating for additional work RAW is added to the RAP and cannot exceed 20 points. It is determined by the lecturer and given to students by the decision of the department for performing work that is not provided for in the curriculum but contributes to improving students' knowledge of the discipline.

The penalty rating RP does not exceed 5 points and is deducted from RAP. It is determined by the lecturer and introduced by the decision of the department for students who have not mastered the content module material on time, do not adhere to the work schedule, miss classes, etc.

To determine the student's (trainee's) rating in mastering the discipline Rdis (up to 100 points), the received rating on certification RC (up to 30 points) is added to the student's rating on academic work RAP (up to 70 points): Rdis = RAW + RC

**Scale of evaluation: national and ECTS**

| *National assessment* | | *Student rating, points* |
|---|---|---|
| *Credit* | *Examination* | |
| *Enrolled* | *Excellent* | *90 – 100* |
| | *Good* | *74 – 89* |
| | *Acceptable* | *60 – 73* |
| *Not enrolled* | *Failed* | *0 – 59* |

# Thematic plan for the discipline "Family Law"

| Titles of content modules and topics | Number of hours | | | |
|---|---|---|---|---|
| | *SD та SCD | | | |
| | total | including | | |
| | | л | п | с.р. |
| **1** | **2** | **3** | **4** | **5** |
| *Content module 1: General principles of legal regulation of marriage and family. Legal relations of spouses.* | | | | |
| Topic 1: Concept, subject and system of family law. Family relations. | **14** | 2 | 2 | 10 |
| Topic 2. The concept, conditions and procedure of marriage. | **14** | 2 | 2 | 10 |
| Topic 3. Termination of marriage and its legal consequences. | **14** | 2 | 2 | 10 |
| Topic 4. Personal non-property and property rights of spouses. | **18** | 4 | 4 | 10 |
| Topic 5. Rights and obligations of the mother and father of the . | **14** | 2 | 2 | 10 |
| Topic 6: Alimony obligations of spouses. | **14** | 2 | 2 | 10 |
| Topic 7. Marriage contract. The concept, content and form of rriage contract. | **14** | 2 | 2 | 10 |
| **Total for content module 1** | **102** | **16** | **16** | **70** |
| *Content module 2. Legal relations between parents, children, other family members and relatives.* | | | | |
| Topic 8. Determination of the child's origin. | **18** | 4 | 4 | 10 |
| Topic 9. Adoption. | **14** | 2 | 2 | 10 |
| Topic 10. Guardianship and custody of children. | **14** | 2 | 2 | 10 |
| Topic 11. Foster families and family-type homes. | **12** | 2 | 2 | 8 |
| Topic 12. Personal non-property rights and obligations of family members and relatives. | **10** | 2 | 2 | 6 |
| Topic 13. Application of Ukrainian family law to foreigners tateless persons. | **10** | **2** | **2** | **6** |
| **Total for content module 2** | **78** | **14** | **14** | **50** |
| ***Total hours*** | **180** | **30** | **30** | **120** |

| Titles of content modules and topics | Number of hours | | | |
|---|---|---|---|---|
| | *SD та SCD | | | |
| | total | including | | |
| | | л | п | с.р. |
| **1** | **2** | **3** | **4** | **5** |
| *Content module 1: General principles of legal regulation of marriage and family. Legal relations of spouses.* | | | | |
| Topic 1: Concept, subject and system of family law. Family relations. | **14** | 2 | - | 12 |
| Topic 2. The concept, conditions and procedure of marriage. | **14** | 2 | - | 12 |
| Topic 3. Divorce and its legal consequences. | **14** | - | 2 | 12 |
| Topic 4. Personal non-property and property rights of spouses. | **14** | 2 | - | 12 |
| Topic 5. Rights and obligations of the mother and father of the . | **10** | - | - | 10 |
| Topic 6: Alimony obligations of spouses. | **10** | - | - | 10 |
| Topic 7. Marriage contract. The concept, content and form of rriage contract. | **10** | - | 2 | 8 |
| **Total for content module 1** | **86** | **6** | **4** | **76** |
| *Content module 2. Legal relations between parents, children, other family members and relatives.* | | | | |
| Topic 8. Determination of the child's origin. | **18** | - | - | 18 |
| Topic 9. Adoption. | **16** | 2 | 2 | 12 |
| Topic 10. Guardianship and custody of children. | **12** | - | 2 | 10 |
| Topic 11. Foster families and family-type homes. | **15** | - | - | 15 |
| Topic 12. Personal non-property rights and obligations of family members and relatives. | **18** | 4 | - | 14 |
| Topic 13. Application of Ukrainian family law to foreigners stateless persons. | **15** | **-** | **-** | **15** |
| **Total for content module 2** | **94** | **6** | **4** | **84** |
| ***Total hours*** | **180** | **10** | **8** | **160** |

* for students of the Interdepartmental Training Laboratory on the basis of the Separated subdivision of NUBiP of Ukraine «Mukachevo Agricultural College» and for students of the Interdepartmental Training Laboratory on the basis of the Separated structural subdivision «Rivne Professional College of NUBiP of Ukraine».

**Lecture materials for the discipline "Family Law"**

# TOPIC 1. CONCEPT, SUBJECT AND SYSTEM OF FAMILY LAW. FAMILY LEGAL RELATIONS.

Family law is usually considered in 4 senses:

1) as an academic discipline - what is studied in lectures and seminars;

2) as a science - a system of knowledge about the objective properties of family law, its conceptual and categorical apparatus, patterns of development and other family law phenomena;

3) as a branch of legislation - a set of hierarchically existing legal acts regulating family legal relations;

4) as a branch of law - a set of family law provisions that regulate homogeneous relations that constitute the subject matter of family law.

**The subject matter of family law consists of:**

1) personal non-property and property relations between spouses, between parents and children, adoptive parents and adopted children, between the mother and father of a child regarding the child's upbringing, development and maintenance;

2) relations between grandparents, great-grandparents, great-grandparents and grandchildren, great-grandchildren, siblings, stepmother, stepfather and stepdaughter, stepson;

3) personal non-property and (or) property relations between other family members as defined in the Family Code of Ukraine (hereinafter - the FC of Ukraine);

4) relations arising in connection with the placement of children deprived of parental care.

The second group covers personal non-property and property relations arising between family members: spouses, parents and children. Family law regulates relations between spouses regarding their personal rights (the right to maternity, paternity, change of surname upon marriage registration, the right to jointly resolve all issues of family life, upbringing of children, etc.) and property relations between spouses that require legal regulation, such as relations regarding joint and separate property of

spouses, transactions with it, use, disposal, etc. The subject matter of family law also includes personal and property relations between parents and children, including legal relations regarding the obligation of parents to support their minors and underage children, and in some cases, adult children. The necessary legal regulation is also provided for the relations between parents and children in relation to their property and the management of the child's property by the parents.

The third group of relations that make up the subject matter of family law is personal and property relations between other family members and relatives: relations between grandparents, great-grandparents and their grandchildren and great-grandchildren regarding communication and protection of mutual rights. The subject matter of legal regulation also includes relations between other relatives - brothers, sisters, stepmother, stepfather and children - regarding the upbringing and protection of children, as well as alimony relations of the above family members and relatives.

Particular attention and legal regulation is paid to the relations arising in the process of placement of orphans and children deprived of parental care (adoption, guardianship and custody, patronage, foster care, family-type children's home).

In view of the above, it appears that the subject matter of family law is personal non-property and related property relations arising between spouses, parents and children, and other family members on the basis of marriage, consanguinity, adoption, as well as on other grounds not prohibited by law and not contrary to the moral foundations of society.

**The method of family law** is a set of specific means of influencing the participants of family relations, characterized primarily by the legal equality of the parties, as well as by providing the latter with the opportunity to regulate these relations on the basis of their free discretion, with the exceptions established by law.

In modern legal doctrine, there are two general methods of legal regulation: dispositive and imperative.

The imperative method of legal regulation (authoritative) is based on relations of subordination. It is characterized by the predominance of obligations, limitation of the initiative of legal relations subjects to change the provisions of legal regulations, and

among the legal facts that determine the emergence of legal relations, acts of unilateral expression of will prevail.

The dispositive method of legal regulation (also called the contractual method, the autonomous method, the method of coordination) is based on coordination of the goals and interests of participants in social relations, when they are free to make decisions about participation in these relations. At the same time, subjects of law have the opportunity to deviate from the forms of relations described in legal norms, to establish for themselves basic and additional rights and obligations, i.e., rights and obligations not directly provided for by legal provisions.

The content of the dispositive and imperative methods is primarily formed from those elements of legal matter that express the methods of legal regulation. These include, in particular, permission, prohibition and positive obligation.

There is a full range of legal regulation methods in family law. First of all, we should mention those that determine the scope of permissible behavior of participants in family relations. Permissions in family law can be expressed in different ways - directly or indirectly. Spouses have the right to enter into a maintenance agreement with one of them, which defines the terms, amount and timing of alimony (Article 78 of the Family Code of Ukraine); parents have a priority right over other persons to the personal upbringing of their child (Article 151(1) of the Family Code of Ukraine); parents have the right to self-defense of their child, adult daughter and son (Article 154(1) of the Family Code of Ukraine), etc. These are examples of direct authorizations that grant certain rights to participants in family relations without any reservations.

Compared to permissions, which are broad and general in nature, prohibitions in family law are usually formulated more specifically. Often they are expressed quite categorically. For example, persons who are relatives in the direct line of kinship, siblings, cousins, aunts, uncles and nephews may not marry each other (Article 26(1), (2), (3) of the Family Code); coercion of a woman and a man to marry is not allowed (Article 24(1) of the Family Code).

Family law is characterized by many rules containing positive obligations. First of all, they are addressed to adult family members and relatives - parents, adoptive parents,

guardians and trustees. Positive obligations seem to encourage participants in family relations to take positive actions and stimulate their lawful behavior. Thus, parents are obliged to support their child until he or she reaches the age of majority (Article 180 of the Family Code of Ukraine); a guardian, custodian is obliged to bring up a child, take care of his or her health, physical, mental, and spiritual development, and ensure that the child receives a complete general secondary education (Part 1 of Article 249 of the Family Code of Ukraine; persons in whose families the child was brought up are obliged to provide material assistance to the child if the child has no parents, grandparents, adult brothers and sisters, provided that these persons can provide material assistance (Article 269 of the Family Code of Ukraine), etc.

The method of family law, like any other method of legal regulation, primarily depends on what exactly - permissions or prohibitions and obligations - prevail in it, what is the ratio, what is the proportion of each of these methods of legal regulation.

The process of legal regulation of family relations begins with the rules of objective law, which enshrine permissions, prohibitions and positive obligations, but is not limited to them. Law as a normative regulator acts through the subjective rights and obligations of participants in family legal relations. The legal regulation of family relations is carried out not only by granting persons subjective family rights and obligations. To a large extent, it is ensured by the use of coercive means, as well as the very possibility of applying legal coercion (preventive effect of norms). These methods of legal influence on family relations are of an additional nature, since they are aimed at ensuring the rights granted to the subjects, fulfillment of their obligations and compliance with prohibitions, i.e. they have a law enforcement function.

The main factors that determine the essence of the family law method are:

1) legal equality of participants in family relations

2) independent property status of their participants;

3) the dispositive nature of family law provisions;

4) the specifics of consideration of conflicts in the family sphere.

**The principles of family law** should be understood as its basic foundations inherent in all or most of its institutions and enshrined in the rules of law.

The basic principles of modern family law are as follows:

1) state protection of the family, maternity, paternity (Article 51 of the Constitution of Ukraine, Part 1 of Article 5 of the Family Code of Ukraine)

2) equality of participants in family relations (Articles 21, 24, 51 of the Constitution of Ukraine, parts 5, 6 of Article 7 of the Family Code of Ukraine)

3) inadmissibility of state or any other interference in family life (Article 32 of the Constitution of Ukraine, Article 5(5), Article 7(4) of the Family Code of Ukraine)

4) freedom and voluntariness of marriage (Article 51 of the Constitution of Ukraine, Article 24 of the Family Code of Ukraine)

5) priority of family upbringing (part 3 of Article 5 of the Family Code of Ukraine)

6) ensuring judicial protection of the subjects of family relations (Article 55 of the Constitution of Ukraine, part 10 of Article 7, Article 18 of the Family Code of Ukraine);

7) priority of protection of the rights and interests of children and disabled family members (Articles 75, 154, 202, 258, 262 of the Family Code of Ukraine).

Thus, the principles of family law are the basis that includes important features in the process of regulating relations in the family and on which all legal norms in this area are based. With the help of these norms, the state creates the most favorable conditions for the development of the family, protects its rights and interests, and improves the quality of life.

**The family law system** is a structure composed of family law rules and institutions arranged in a certain sequence.

The family law system consists of two parts.

The general part contains rules that apply to all family legal relations, in particular, those that define the principles and sources of their legal regulation, the range of participants, the grounds for applying civil law to family relations, as well as analogies of law or analogies of law, the procedure for exercising family rights, obligations and the mechanism for their protection.

The special part is a set of institutions, each of which regulates a specific type of family relations, for example, the institutions of marriage, maternity (paternity), legal

regime of property of spouses, parents and children, alimony, forms of upbringing of children left without parental care, etc.

**Sources of family** law are legal acts that collectively constitute family law.

The main sources of family law are the Constitution of Ukraine, the Family Code of Ukraine and other legal acts of Ukraine.

The general principles of legal regulation of family relations are defined by the Constitution of Ukraine. Thus, the Constitution of Ukraine states: "Marriage is based on the free consent of a woman and a man. Each of the spouses has equal rights and obligations in marriage and family" (Article 51). The Constitution has supreme legal force, and all laws, including the Family Code and other legal acts, are adopted on its basis and must comply with it. Therefore, if any normative act contradicts the Constitution, it should not only be recognized as unconstitutional, but also cannot be applied at all.

The Constitution contains a number of provisions that define the content of family law:

- Part 3 of Article 24 ensures equal rights for women and men. In particular, this article states that equality of rights between women and men is ensured by creating conditions for women to combine work and motherhood, legal protection, material and moral support for motherhood and childhood, including the provision of paid leave and other benefits to pregnant women and mothers;

The Family Code of Ukraine is the main regulator of the entire variety of family legal relations. The FC of Ukraine was adopted on January 10, 2002, and entered into force only on January 1, 2004.

It formulates in general terms the following principles of family law:

1) democracy, equality, guaranteeing the rights and freedoms of the individual;

2) strengthening of the family and affirmation of its role in society;

3) building family relations on a parity basis, feelings of mutual love and respect, and support;

4) fostering in children a sense of duty to their parents and other family members and providing each child with family upbringing, opportunities for spiritual and physical development;

The Family Code of Ukraine consists of two parts: general and special. The general part contains rules that apply to all family law relations. The special part is a set of norms and principles, each of which regulates and protects a separate type of family relations.

The CC of Ukraine consists of seven sections and 22 chapters. Section I. General Provisions - contains two chapters: "Family. Regulation of Family Relations" and "Exercise of Family Rights and Fulfillment of Family Responsibilities. Protection of family rights and interests". Section II. Marriage. Rights and Obligations of Spouses contains nine chapters: "General Provisions", "State Registration of Marriage", "Invalidity of Marriage", "Personal Non-Property Rights and Obligations of Spouses", "Right of Personal Private Property of Wife and Husband", "Right of Joint Property of Spouses", "Rights and Obligations of Spouses for Maintenance", "Marriage Agreement", "Termination of Marriage". Section III. The rights and obligations of mother, father and child contains six chapters: "Determination of the Child's Origin, Personal Non-Property Rights and Obligations of Parents and Children, Rights of Parents and Children to Property, Obligation of the Mother and Father to Support the Child and its Fulfillment, Obligation of Parents to Support Adult Daughters and Sons and its Fulfillment, Obligation of Adult Daughters and Sons to Support Parents and its Fulfillment. Section IV. The placement of children deprived of parental care contains five chapters: "Adoption", "Guardianship and custody of children", "Patronage of children", "Foster family", "Family-type children's home". Section V. The rights and obligations of other family members and relatives are divided into two chapters: "Personal Non-Property Rights and Obligations of Other Family Members and Relatives" and "Obligation to Support Other Family Members and Relatives". Section VI. Peculiarities of adoption with the participation of foreigners and stateless persons. Section VII. Final provisions.

Family relations are regulated not only by the Family Code of Ukraine. The following documents are also important in their regulation: The Convention on State Family Policy, approved by the Resolution of the Verkhovna Rada of Ukraine of September 17, 1999; the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" of December 07, 2017; the Law of Ukraine "On State Assistance to Families with Children"; the Law of Ukraine "On Protection of Childhood" of April 26, 2001, etc. Certain provisions of these legal acts are embodied in the provisions of the FC.

The contract has taken its rightful place among the regulators of family relations. New types of contracts of a peculiar legal nature will allow family members to resolve important issues for each specific life situation. Among the main "family" agreements are the following: marriage agreement (Chapter 10 of the Family Code of Ukraine), spousal agreement on determining the procedure for using property (Article 66 of the Family Code of Ukraine), spousal agreement on division of real estate (Article 69 of the Family Code of Ukraine), spousal agreement on provision of maintenance (Article 78 of the Family Code of Ukraine), spousal agreement on termination of the right to maintenance in exchange for acquisition of ownership of real estate (Article 89 of the Family Code of Ukraine), an agreement between parents on the payment of child support (Article 189 of the Family Code of Ukraine), an agreement on the termination of the right to child support in connection with the transfer of ownership of real estate (Article 190 of the Family Code of Ukraine), an agreement between a wife and husband on which of them will live with the children after the divorce, and what participation in ensuring their life will be taken by the one who will live separately (Article 109 of the Family Code of Ukraine).

The Family Code of Ukraine also declares the possibility of resolving certain issues based on customs. Pursuant to Article 11 of the Family Code of Ukraine, when resolving a family dispute, the court, at the request of the interested party, may take into account the local customs of the national minority to which the parties or one of them belong, if they do not contradict the requirements of the Family Code of Ukraine, other laws and moral principles of society.

Pursuant to Article 13 of the Family Code, international treaties ratified by the Verkhovna Rada of Ukraine are part of the national family law of Ukraine. This article reproduces the provisions of Article 9 of the Constitution of Ukraine: international treaties in force, ratified by the Verkhovna Rada of Ukraine, are part of national legislation. Under appropriate conditions, an international treaty regulating family relations becomes part of the national legislation of Ukraine. The procedure for the entry into force of international treaties is set forth in the Law of Ukraine "On International Treaties of Ukraine" of June 29, 2004.

International treaties in force in Ukraine take precedence over national legislation. This means that in cases where an international treaty is concluded before a piece of national legislation is issued, the latter does not enter into force at all. If a national law was adopted before an international treaty was concluded, the rules of the international treaty apply.

Among the conventions relevant to the regulation of family relations are the Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 (ratified by the Law of Ukraine of 17.07.1997), the Convention on the Rights of the Child of 20.11.1989 (ratified by the Resolution of the Verkhovna Rada of the Ukrainian SSR of 27. 02.1991), the European Convention on the Rights of the Child of 25.01.1996 (ratified by the Law of Ukraine of 03.08.2006), the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Matters of 22.01.1993 (ratified by the Law of Ukraine of 10.11.1994) and others.

Bilateral agreements on legal assistance concluded by Ukraine with other states are also of great importance for the regulation of family relations.

**Family legal relations** are social relations regulated by family law. Family legal relations are the result of the application of marriage and family law to specific relations in the field of marriage and family.

Family legal relations are characterized by the following features:

1) specific subject composition;

2) long-term nature;

3) inalienability of rights and obligations;

4) possibility of subjects of family legal relations to act as participants in several family legal relations at once.

The subjects of family legal relations may be: first, only individuals; second, only those individuals who are married, related by blood or adoption.

The Family Code establishes the following list of subjects of family legal relations:

1) spouses

2) parents, children, adoptive parents, adopted children

3) grandparents, great-grandparents, grandchildren, great-grandchildren

4) siblings; stepmother, stepfather, stepdaughter, stepson.

Types of family legal relations:

a) legal relations between family members (internal family legal relations);

b) legal relations that are recognized as family relations, although they arise outside the family (external family relations).

Internal family legal relations are those that arise between members of the same family, for example, relations between spouses, parents and children living in the same family, connected by common life and mutual rights and obligations.

External relations can be considered legal relations between persons who used to be family members or were not members of the same family at all, but are bound by rights and obligations that are inherently family. These are alimony relations between former spouses, legal relations between a child and a parent with whom the child has never lived together, legal relations between grandchildren and grandparents who do not live together, etc.

Family legal relations are based on non-property personal relations. Family legal relations are long-lasting. This feature is determined by the purpose of the legal relationship. For example, marriage registration is aimed at creating a family, the existence of which is assumed, in principle, for the entire period of the spouses' lives; parental legal relations regarding the upbringing and maintenance of children. The long-lasting nature of family legal relations is largely determined by the fact that they are based on social relations of kinship or other close relations between persons (adoption, marriage) that are not limited by time.

Family law relationships often arise as perpetual, as marital rights and obligations continue for life (except in cases of divorce). At the same time, there are family relationships that are limited in duration, but they are characterized by a certain continuity. For example, parental rights and responsibilities for raising children continue until the child reaches the age of 18.

One of the peculiarities of family legal relations is that only citizens, not legal entities, can be subjects of these relations. Family law is characterized by the absence of purely absolute legal relations.

According to the nature of protection, legal relations can be divided into three groups.

The first group should include relative rights, but which are characterized by absolute protection from encroachment by all other persons. This is the right of persons to raise children, and in case of absence of parents, the right of other legal representatives. It is considered relative because it is addressed only to the child. As for other persons, this right is absolute, unless parents (other legal representatives) abuse these rights. At the same time, the person being brought up has a relative right to receive upbringing from clearly defined persons (parents or other legal representatives).

The second group includes absolute rights with some features of relative legal relations: the rights of spouses to their joint property, which are absolute when it comes to all other persons, but also have a relative character when they are considered as a joint right of owners, with which the mutual relations of the spouses exercising this right are inextricably linked.

The third group includes relative legal relations that do not have signs of absolute protection: non-property personal rights that arise from marriage and are limited only to the other spouse. This group includes alimony obligations.

Family legal relations arise, change and terminate as a result of various specific life circumstances. The birth of a child gives rise to a set of rights and obligations of parents and children. The conclusion of a mutual maintenance agreement by the spouses will be the basis for changing the alimony legal relations established by law and the emergence of new legal relations determined by the agreement. As a result of deprivation of

parental rights, certain legal relations between parents and children are terminated. Due to the fact that such circumstances entail important legal consequences - the emergence, change or termination of family legal relations - they are called legal facts.

Legal facts are specific life circumstances that cause the emergence, change or termination of family legal relations.

Legal facts in family law are divided into different types.

The first one is the traditional classification of legal facts based on the will, i.e. depending on the degree to which the occurrence of a legal fact depends on the will of the person.

In this regard, in family law, legal facts are divided into: a) legal actions; b) legal events.

Legal actions are those legal facts that are based on the will of the participants of family relations. Actions are divided into lawful and unlawful. Legitimate actions include those that comply with family law and do not violate the rights and interests of the participants in family relations. Lawful legal actions in family law are divided into: a) legal acts (transactions, administrative acts, court decisions) and b) legal deeds. Acts that contradict the norms of family law, violate the rights and interests of participants in family legal relations (non-payment of alimony, illegal removal of a child from parents, failure to fulfill a contract, etc.)

Legal events are specific life circumstances that do not depend on the will of the participants in family relations (absolute events) or partially depend on it (relative events). In family law, legal events include, for example, the birth of a child or the death of a person.

According to the legal consequences, legal facts in family law are divided into: a) law-forming; b) law-changing; c) law-terminating.

The first type includes legal facts that give rise to family legal relations.

The law-modifying legal facts include legal facts that change family legal relations that already existed.

Family legal relations are also terminated as a result of certain legal facts.

According to the duration, legal facts in family law are divided into: a) one-time; b) long-term.

By composition, legal facts in family law are divided into: a) simple; b) complex.

A simple legal fact consists of a single life circumstance, the existence of which is sufficient for the emergence, change or termination of family legal relations.

A complex legal fact implies the existence of a legal act or event that has a number of features.

## TOPIC 2. CONCEPT, CONDITIONS AND PROCEDURE OF MARRIAGE

**The concept of marriage, the age of marriage.** According to Article 16(1) of the Universal Declaration of Human Rights of 1948, men and women of full age have the right, without any restriction of any kind, whether on account of race, nationality or religion, to marry and to found a family. They enjoy the same rights to marry during marriage and during its dissolution.

In the national legislation of Ukraine, the definition of marriage is given in Part 1 of Article 21 of the Family Code of Ukraine, namely, marriage is a family union of a woman and a man registered with the civil registry office.

The following features of marriage can be distinguished from the above provisions of law:

- It is a union of a woman and a man;
- It is a family union designed to give rise to common rights and obligations of spouses towards each other;
- It is a union that is registered with a civil registry office.

There are certain conditions for marriage. The conditions for marriage are the circumstances that are necessary for a marriage to be legally valid. The family law theory distinguishes between positive and negative conditions for marriage. The presence of positive conditions makes it possible to enter into a marriage, while the absence of negative conditions makes it impossible.

The Family Code of Ukraine refers to the positive conditions as follows:

- reaching the age of marriage (Article 22 of the Family Code of Ukraine).

- voluntariness of marriage (Article 24 of the Family Code of Ukraine).

The negative conditions of the Family Code of Ukraine include:

- at least one of the parties being in another registered marriage;

- a woman and a man being related to each other by direct and, in some cases, indirect (lateral) line of kinship and relations that are equated to family;

- recognition of a person as incapacitated (clause 3 of Article 39 of the Family Code of Ukraine);

- serious illness or an illness that is dangerous for the other spouse and/or their descendants.

Thus, marriage is a voluntary family union of a woman and a man who have reached the age of marriage and who are registered with the state civil registry office.

With regard to the marriage age, the legislator has established gender equality in the marriage age, which gives the right to register a marriage, namely 18 years for both men and women. Until 2012, the marriageable age for women was set at 17 years of age.

At the same time, the law also provides for exceptions when persons under the age of 18 may marry. These are cases where a person aged 16 to 18 can apply to the court and, if it is proved that it is in their best interests (pregnancy or childbirth, the need to move to another country together to live, etc.), receive a decision that will be the basis for marriage registration. One or both parents (adoptive parents) of the minor, the guardian, the person with whom the marriage is to be registered, and other interested persons are involved in such a case.

Since the main criterion for satisfying an application for the right to marry is the court's determination that such a right is in the applicant's interests, the objection of legal representatives to the right to marry is not a ground for refusing to satisfy the application.

Thus, when registering a marriage, the marriageable age is checked at the time of marriage registration, not at the time of submitting the relevant application.

An equally important element for marriage registration is the voluntariness of marriage, since marriage is based on the free consent of a man and a woman, which is

enshrined in domestic and international law (Article 16 of the Universal Declaration of Human Rights of 1948, Article 51 of the Constitution of Ukraine and Article 24 of the Family Code of Ukraine).

Marriage must be a conscious act, so if for any reason a person does not realize what he or she is doing (is intoxicated, has temporary minor mental disorders that distort consciousness), after registration of such a marriage, it may be declared invalid in court.

Health awareness. A man and a woman wishing to enter into a marriage should be aware of each other's health status. Concealing the fact of illness can lead to a distortion of the will of the other party to the marriage union. Concealment of information about one's health status, which may result in (or has resulted in) a violation of the physical or mental health of the other spouse or their descendants, may be grounds for a court to declare the marriage null and void (Article 30 of the Family Code of Ukraine). To ensure compliance with this condition, the state creates conditions for medical examination of persons wishing to enter into marriage.

At the same time, Ukraine does not have a list of diseases that are an obstacle to marriage. That is, no disease is an obstacle to marriage. What matters is whether the person with the disease is aware of the other person he or she wants to marry. If this information was intentionally concealed or distorted, this may be grounds for invalidating the marriage.

Obstacles to marriage are defined as follows:

1. Being in another registered marriage (the previous marriage has not been terminated). This obstacle stems from the monogamous nature of marriage.

2. The presence of consanguinity. Pursuant to Article 26 of the Family Code of Ukraine, relatives of the direct line of descent, as well as full (common mother and father) and half (common only to one of the parents) siblings may not marry.

Cousins, aunts, uncles and nephews are also prohibited from marrying. If such a marriage has been concluded, it may be declared invalid by a court decision, provided that there are no children born in this marriage and the wife is pregnant.

Relationships arising from the adoption of a child are equated with relations of consanguinity. Adopted children have the same rights and obligations as their parents' natural children. Therefore, it is prohibited to enter into a marriage between the adoptive parent and the child adopted by him or her. Such a marriage may be entered into if the adoption has been previously canceled by a court. If the adoption has not been canceled and the marriage between the adoptive father and the child adopted by him has been registered, the marriage may be dissolved by the court, provided that there are no children born in this marriage, or the wife is pregnant.

A marriage cannot be registered between an adopted child and the adoptive parent's own child, as well as between adopted children (among themselves, in the absence of consanguinity). If they wish to register such a marriage, these persons must go to court and obtain a decision on the right to marry. At the same time, the law does not provide for legal consequences of registering a marriage between an adopted child and the adoptive parent's own child, as well as between adopted children without first applying to the court for the right to marry.

3. Legal incapacity, namely the existence of a decision to recognize one of the persons wishing to enter into a marriage as incapacitated. A court may declare a person incapacitated if, as a result of a chronic, persistent mental disorder, he or she is unable to realize the significance of his or her actions and/or to control them (Article 39 of the Civil Code of Ukraine). This obstacle is logical, since marriage must be entered into consciously, and persons recognized as incapacitated due to mental illness cannot realize the significance of their actions. If a person has recovered (there are such cases), they are aware of their actions and live a normal life, but they will be able to enter into a marriage without hindrance only if the court decision declaring them incapacitated is canceled. If a marriage was concluded with a person who was recognized as incapacitated by a court decision, this marriage is void.

**State registration of marriage.** The legalization of marriage is accomplished through its state registration, which, as already mentioned, has a constitutive (law-creating) significance, since only a marriage registered in the prescribed manner gives rise to legal consequences.

State registration is a mandatory element of marriage, which is established to ensure the stability of relations between a woman and a man, to protect the rights and interests of the spouses, their children, as well as in the interests of the State and society (part 1 of Article 27 of the Family Code of Ukraine). From the moment of marriage registration, the rights and obligations of a man and a woman as spouses arise. As a rule, the application in the prescribed form is submitted personally by a woman and a man (part 2 of Article 28 of the Family Code of Ukraine). Meanwhile, there is also a possibility, if there are good reasons for this, to submit a notarized application through representatives. When submitting an application, the day of marriage registration is determined. As a rule, the registration takes place after one month from the date of filing the application (part 1 of Article 32 of the Family Code of Ukraine).

However, if the registration does not take place on the specified date for any reason, such an application shall become invalid after three months from the date of its submission (part 4 of Article 28 of the Family Code of Ukraine). Rights and obligations of the registry office upon receipt of the application. The law imposes certain obligations on the registry office upon receipt of an application for marriage registration, namely, determining the day and time of marriage registration and familiarizing the newlyweds with the rights and obligations of their future spouses and parents and warning them of liability for concealing obstacles to marriage registration (Article 29 of the Family Code of Ukraine).

**Rights and obligations of the bride and groom when submitting an application**. Submitting an application also imposes certain obligations on the bride and groom. They must inform each other about their health status (Article 30 of the Family Code of Ukraine). Place of marriage registration. As a rule, a marriage is registered at the premises of the state registry office where the application for marriage registration was filed (Article 33(1) of the Family Code of Ukraine). However, the law allows the bride and groom to register their marriage at their request in another place, namely at their place of residence, at the place of inpatient medical care or in another place if they cannot come to the state registry office for valid reasons (part 2 of Article 33 of the Family Code of Ukraine). These are exceptional circumstances that must be

documented. Despite the fact that the Family Code of Ukraine provides for the possibility of filing an application for marriage registration through a representative, the institution of representation is not allowed for direct marriage registration, i.e. the presence of the bride and groom at the time of registration of their marriage is mandatory (Article 33 of the Family Code of Ukraine). The state registration of marriage is certified by a marriage certificate, the form of which is approved by the Cabinet of Ministers of Ukraine. Thus, state registration is an obligatory element of marriage, which is established to ensure the stability of relations between a woman and a man, to protect the rights and interests of the spouses, their children, as well as in the interests of the state and society (part 1 of Article 27 of the Family Code of Ukraine). From the moment of marriage registration, the rights and obligations of a man and a woman as spouses arise.

**Marriage invalidity** is a form of state refusal to recognize a marriage as a legally significant act, expressed in a court decision issued in civil proceedings in connection with a violation of the conditions of marriage established by law, which is inherently a measure of protection. The grounds for invalidation of a marriage include: violation of the conditions of marriage provided for in Articles 22, 24-26 of the Family Code of Ukraine; the existence of circumstances at the time of marriage that prevent its registration; registration of a fictitious marriage.

Moreover, depending on which requirements of the law were violated at the time of marriage, the latter are divided into:

- absolutely invalid;
- marriages that are recognized as invalid by a court decision;
- marriages that may be declared void by a court.

Absolutely invalid marriages are those that are concluded in contravention of the obstacles to their conclusion established by law, namely, a marriage

- registered with a person who is simultaneously in another registered marriage;
- registered between persons who are relatives in the direct line of kinship, as well as between siblings;
- registered with a person who has been recognized as incapacitated.

Absolutely void marriages are considered invalid from the moment of their registration and do not require a court decision. Marriages that are recognized as void by a court decision include marriages entered into without the free consent of the woman or man, as well as fictitious marriages. A marriage may not be declared invalid if, at the time of the court hearing, the circumstances that testified to the absence of a person's consent to marriage or his or her unwillingness to start a family have disappeared.

**A marriage that may be declared void by a court decision.** According to Article 41 of the Family Code of Ukraine, such marriages include marriages if they were registered: between an adoptive parent and a child adopted by him or her; between cousins; between an aunt, uncle and nephew or niece; with a person who concealed his or her serious illness or an illness dangerous to the other spouse and/or their descendants; with a person who has not reached the age of marriage and who is not granted the right to marry. Unlike Art. 40 of the Family Code of Ukraine, which contains a mandatory rule on the mandatory recognition of a marriage as null and void in court, Art. 41 of the Family Code of Ukraine establishes only the possibility, not the obligation, to do so. A marriage cannot be declared null and void in case of pregnancy of the wife or birth of a child in a marriage between: an adoptive parent and a child adopted by him/her, between cousins, between an aunt, uncle and nephew, niece, with a person who has not reached the age of marriage and has not been granted the right to marry, or if the person who has not reached the age of marriage has reached it or has been granted the right to marry.

Persons entitled to file a lawsuit for invalidation of a marriage: a woman or a man, other persons whose rights have been violated in connection with the registration of this marriage, parents, a guardian, a child's guardian, a guardian of an incapacitated person, a prosecutor, a guardianship and trusteeship authority, if the rights and interests of a child, a person recognized as incapacitated or a person whose legal capacity is limited require protection.

**Legal consequences of marriage invalidation.** The general legal consequence of a marriage being declared null and void is that the marriage is considered to have never

existed, and the persons who entered into it are considered to have never been married before.

Exceptions to the general rule on the legal consequences of marriage nullity are provided for in Article 46 of the Family Code of Ukraine and apply to a bona fide spouse. A bona fide husband or wife is a person who did not know and could not have known about the obstacles to marriage registration (incapacity or underage marriage, etc.). The good faith of a husband or wife is established in court.

Pursuant to Article 46 of the Family Code of Ukraine, a bona fide spouse (man or woman) has the right to: divide property acquired in a void marriage as joint property of the spouses; to live in the residential premises in which they moved in due to the void marriage; to alimony in accordance with the law (Articles 75, 84, 86 and 88 of the Family Code of Ukraine); and to the surname they chose when registering the marriage. Recognition of a marriage as null and void should be distinguished from recognition of a marriage as unconcluded. Whereas for the recognition of a marriage as invalid, the absence of the actual composition of the 6 positive conditions for its conclusion or the presence of at least one of the negative conditions is essential, for the recognition of a marriage as not concluded, the violation of the marriage registration procedure itself, namely, its registration in the absence of the bride (or groom), is essential (Article 48 of the Family Code of Ukraine). Thus, a marriage registered with a state registry office in the absence of at least one of the positive conditions for its conclusion, or, conversely, in the presence of at least one of the negative conditions for its conclusion, is recognized as invalid. Thus, the invalidity of a marriage is associated with a violation of the conditions of marriage.

## TOPIC 3. TERMINATION OF MARRIAGE AND ITS LEGAL CONSEQUENCES

**Grounds for termination of marriage. Termination of marriage as a result of its dissolution.** Termination of marriage is a legal fact, upon the occurrence of which

the legal relations arising between the spouses from the legal fact of state registration of marriage are terminated.

Chapter 11 of the Family Code of Ukraine sets forth the procedure for marriage termination.

Pursuant to Article 104 of the Family Code of Ukraine, the grounds for termination of marriage are the death of one of the spouses or declaration of death, as well as divorce.

If the marriage is terminated due to the death of one of the spouses or declaration of death, the termination of the marriage does not require special registration. In this case, the relevant rights and obligations arise or terminate as a result of the very fact of death or declaration of death. The registration of death in accordance with civil law and the receipt of a death certificate are sufficient proof of the termination of the marriage. If a person is declared dead, the legal basis for the legal consequences is the relevant court decision declaring the person dead, which has entered into force.

If one of the spouses dies before the entry into force of the court decision on divorce, the marriage is considered to have terminated as a result of his or her death.

If one of the spouses dies on the day the court decision on divorce enters into force, the marriage is considered to have ended as a result of its dissolution. In the first case, the termination of the marriage is confirmed by a certificate of death issued by the registry office, and in the second case, by the relevant court decision on divorce.

Voluntariness as one of the principles of the union of husband and wife also means the free will of the persons to terminate the marriage. However, unlike marriage, which requires the mandatory consent of both spouses, divorce is possible both at the joint request of the spouses and one of them, respectively.

Based on the peculiarities of the procedure for divorce provided for by law, there are: a) administrative procedure, when divorce is carried out by the state registry office (Articles 106-107 of the Family Code of Ukraine); b) judicial procedure, when marriage is dissolved by a court decision (Articles 109-112 of the Family Code of Ukraine). The term "administrative" is somewhat conditional; in fact, it means a simpler procedure for divorce compared to the judicial procedure. This procedure is carried out by the state

department of civil registration of district, district in cities, city (cities of regional significance) departments of justice, as well as in the executive bodies of village, settlement, city (except for cities of regional significance) councils.

**Divorce by a civil registry office is possible:** 1) at the joint application of spouses who have no children (if one of the spouses cannot personally submit an application for divorce to the civil registry office for a valid reason, such an application, notarized or equivalent, may be submitted on his/her behalf by the other spouse);

2) at the request of one of the spouses, if the other spouse: a) is recognized as missing; b) is recognized as incapacitated.

In such cases, the marriage is dissolved regardless of the existence of a property dispute between the spouses.

Article 106 of the Family Code of Ukraine stipulates that the state civil registration authority shall make a record of divorce after one month from the date of filing such an application, unless it has been withdrawn.

The Law of Ukraine "On State Registration of Civil Status Acts" (Article 15) stipulates that state registration of divorce of spouses who do not have children is carried out by the relevant state civil registration authority at the place of residence of the spouses or one of them at their request.

If the spouses are unable to appear at the civil registry office for state registration of divorce on the day set for them due to a valid reason, the term of such registration may be postponed to another day at the written request of the spouses. In this case, the period for postponing the state registration of divorce may not exceed one year from the date of filing the application.

**The current legislation of Ukraine provides for the possibility of recognizing a divorce as fictitious.**

As in the case of a **fictitious marriage**, a fictitious divorce may be carried out in order to obtain certain material benefits by both or one of the spouses (registration of residence, obtaining employment, property, some material benefits, privileges, misleading creditors, concealing property from confiscation, engaging in commercial

activities by civil servants, exemption from income declaration by spouses and even to enter into a fictitious marriage for material gain, etc.)

In practice, cases of fictitious divorce are often encountered. For example, if one of the spouses has two minor children (one child from a previous marriage and the other from the current one), in order to reduce the amount of alimony for the child from the previous marriage, he or she dissolves the current marriage (fictitiously), and allegedly paying alimony for two children, thereby reducing the amount of alimony for the first child.

Pursuant to Article 108 of the Family Code of Ukraine, at the request of the person concerned, a divorce carried out in accordance with the provisions of Article 106 of this Code, i.e. by a civil registry office, may be recognized by the court as fictitious if it is established that the woman and man continued to live as a family and did not intend to terminate the marriage relationship.

At the same time, as noted by the Supreme Court in its ruling of May 07, 2020 in case No. 461/6692/16-ц, in order to recognize a divorce as fictitious, it is necessary to have not only the fact of cohabitation, but also facts confirming the existence of an internal will to maintain further marriage relations and its manifestation in the form of active actions.

Such active actions are:

1) actions aimed at realizing the functions of the family and the purpose of the marriage relationship (for example, reproductive function);

2) further active management of the joint household, further joint work aimed at ensuring the financial stability of the union of a man and a woman and increasing their joint capital.

The Family Code of Ukraine does not specifically define the circle of "interested" persons who may apply for recognition of a divorce as fictitious, as it is impossible to foresee all options, and therefore it is necessary to apply general rules on the procedure for filing a lawsuit in court.

It can be assumed that such a person will be one of the spouses who was misled by the other spouse into filing a joint application for divorce as if to obtain a certain

benefit, and then secretly registered a remarriage, or another person whose rights are somehow violated by the fact of fictitious divorce (children, heirs, etc.).

In addition, an interested person may be a creditor who wants to collect a debt from both spouses or compensate for property damage; a spouse from the first marriage who is interested in having her children receive more alimony; etc.

Based on a court decision, the divorce record and the divorce certificate are canceled by the civil registry office.

Pursuant to Article 109 of the Family Code of Ukraine, spouses with children have the right to file a divorce petition with the court together with a written agreement on which of them will live with the children, what part the parent who will live separately will take in ensuring their living conditions, and the conditions for exercising the right to personal upbringing of the children.

The agreement between the spouses on the amount of child support must be notarized. In the event of non-fulfillment of this agreement, alimony may be collected on the basis of a notary's writ of execution.

In case of divorce upon joint application of spouses with children, it is possible to consider the case in a separate proceeding, which greatly facilitates the divorce procedure and relieves spouses from the need to repeatedly visit the court. The peculiarities of the court procedure in a separate proceeding are that the court does not find out the reasons for the divorce, does not take measures to reconcile the spouses, but the court must check whether the terms of the agreement are in the interests of the child, and make sure that the terms of the agreement do not violate the principles of equality of the child's parents.

The court shall render a decision on divorce if it is established that the application for divorce corresponds to the actual will of the wife and husband and that their personal and property rights, as well as the rights of their children, will not be violated after the divorce.

The court issues a decision on divorce after one month from the date of filing the application. Before the expiration of this period, the wife and husband have the right to withdraw the application for divorce.

The current legislation of Ukraine stipulates that a claim for divorce may be filed by one of the spouses (Article 110 of the Family Code of Ukraine). Such a claim is considered in accordance with the rules of action proceedings in cases where one of the spouses does not agree to the divorce and, accordingly, there is a dispute, as well as if the divorce is required by the interests of the spouse who is recognized as incapacitated.

However, this is not the only situation in which a divorce in a lawsuit takes place. They also include:

1. if one of the spouses evades divorce at the civil registry office in the absence of a dispute.

2. if the spouses have not reached an agreement on the upbringing or provision of children, and therefore it is impossible to dissolve the marriage by joint application of the spouses who have children (Article 109 of the Family Code of Ukraine).

Pursuant to part 2 of Article 110 of the Family Code of Ukraine, a claim for divorce may not be filed during the wife's pregnancy and within one year after the child's birth. It should be noted that this moratorium on divorce applies to both women and men, including cases where the child was stillborn or died before reaching the age of one. This statement follows directly from part 2 of Article 110 of the Family Code of Ukraine and is also clearly stated in paragraph 9 of Resolution of the Plenum of the Supreme Court of Ukraine No. 11 dated 21.12.2007 "On the practice of application of legislation by courts in cases of consideration of the right to marriage, divorce, invalidation and division of marital property". Having established the above circumstances, the judge refuses to open proceedings on the application for divorce, and if they have been opened, terminates the proceedings. Such rulings are not an obstacle to a repeated appeal to the court on the same grounds due to a change in the circumstances mentioned in the above provision.

A lawsuit for divorce may be filed during the wife's pregnancy if the paternity of the conceived child is recognized by another person, as well as before the child reaches the age of one, provided that paternity is recognized by another person or the court decision excludes information about the husband as the child's father from the child's birth record (Article 110(3) and (4) of the Family Code).

Article 114 of the Family Code of Ukraine stipulates that in case of divorce by a civil registry office, the marriage is terminated on the day of registration of the divorce. In the case of divorce by a court, the marriage is terminated on the day the court decision on divorce comes into force.

The divorce performed by the state civil registration authorities shall be certified by a divorce certificate, the sample of which shall be approved by the Cabinet of Ministers of Ukraine.

A document certifying the fact of divorce by a court is a court decision on divorce that has entered into force. (Article 115 of the Family Code of Ukraine).

**Establishment of the spouses' separate residence regime.** Family law of Ukraine, along with regulating the right of each spouse to terminate the marriage relationship, establishes an alternative legal institution - the regime of separate residence of spouses (separation regime).

The definition itself raises questions: why should spouses live separately and is such an institution necessary at all?

Pursuant to Part 1 of Article 119 of the Family Code of Ukraine, at the request of the spouses or at the request of one of them, the court may decide to establish a separate residence regime for the spouses in case of impossibility or unwillingness of the wife and (or) husband to live together.

Based on the content of this legal provision, it can be argued that the establishment of the spouses' separate residence regime may be carried out by a court in a separate proceeding if each spouse consents to the establishment of the relevant regime, as well as in a lawsuit - if at least one of the spouses does not have such consent.

The regime of separate residence cannot be established for the past or for the future. It is established from the moment the court makes a decision.

The undoubted advantage is that during the separation, the spouses can calmly think about their feelings and not make decisions in the heat of the moment. And, in the end, make a reasonable and balanced decision.

In addition, during the wife's pregnancy or before the child turns one, neither the court nor the civil registry office will grant permission for divorce. However, the use of separation in such cases is not prohibited.

It should be noted that there is little court practice on this issue. However, in most cases, spouses with small children or people who do not mind having a stamp in their passports but want to take precautions to avoid future obligations related to family life and property.

Pursuant to Article 120(1) of the Family Code of Ukraine, the establishment of a separate residence regime does not terminate the rights and obligations of spouses established by the Family Code of Ukraine and which the wife and husband had before the establishment of this regime, as well as the rights and obligations established by the marriage contract. However, the latter may be amended in connection with the establishment of the spouses' separate residence regime at the initiative of one of the spouses by a court decision or by mutual consent of the wife and husband by notarizing the amendments to the marriage agreement.

At the same time, in case of establishing the regime of separate residence of spouses, the family law of Ukraine provides for special legal consequences, namely:

1) property acquired in the future by the wife and husband will not be considered as acquired during the marriage;

2) a child born by a wife after ten months is not considered to be descended from her husband (part 2 of Article 120 of the Family Code of Ukraine).

The legislator distinguishes between the legal regime of property acquired by a wife or husband after the court has established a separation regime (Article 119 of the Family Code) and property acquired under the circumstances specified in Part 6 of Article 57 of the Family Code.

The property acquired by a wife or husband during the marriage, but during the period of separate residence due to the actual termination of the marriage relationship, is subject to the presumption of the right of joint marital property.

Therefore, in the event of a dispute over this property, the party that considers this property to be personal private property must rebut the presumption.

A similar conclusion was reached by the Supreme Court in its decisions of February 11, 2022 in case No. 504/1126/19 (proceedings No. 61-18866св21) and of August 2, 2022 in case No. 760/23279/20 (proceedings No. 61-19299св21).

Thus, establishing a separate residence regime for spouses is one of the most effective ways to preserve a marriage. After all, if the spouses, on the one hand, do not want to terminate the marriage relationship, and on the other hand, seek to change it, while expanding their rights, the regime of separate residence is the legal form that will help to ensure this.

## TOPIC 4. PERSONAL NON-PROPERTY AND PROPERTY RIGHTS OF SPOUSES

Personal non-property rights of spouses are relations regulated by family law regarding personal non-property benefits and interests of persons who were married in accordance with the procedure established by law. Most of the personal non-property rights and obligations of each spouse are simultaneously their rights and obligations towards each other.

According to the Family Code of Ukraine, the personal non-property rights of spouses include the right to motherhood and the right to fatherhood, which can be defined as relations regulated by family law regarding personal non-property benefits and interests of married persons.

The right to paternity is a natural, inalienable right of a person (man or woman) to become a father (mother) of a child and to have rights and obligations in relation to the child.

The Family Code of Ukraine does not define the concepts of "motherhood" and "fatherhood". However, in legal literature, motherhood is defined as a woman's ability to perform the reproductive function - to give birth to children, to support and raise them - ensured by law. The content of a woman's personal non-property right to motherhood is revealed as the wife's right to decide whether or not to have a child. It is noted that a woman's right to decide on motherhood is conditioned by the fact that it is related to her own health and the right to reproductive freedom. The right to

motherhood is realized by creating conditions in the family for a pregnant woman to maintain her health and give birth to a healthy child, creating conditions for a mother to combine motherhood with the exercise of her labor, creative, educational and other rights and obligations (Article 49(4-5) of the Family Code of Ukraine).

For the purpose of establishing maternity, a woman's marital status is irrelevant. Family law is based on the general principle that the mother of a child is the woman who gave birth to the child. Both the mother of a child born in marriage and the mother of a child born out of wedlock have the right to apply to the state civil registry office for registration of the child's birth. In case the child was born out of wedlock, the child's origin from the mother is determined on the basis of a document of the health care institution on the birth of the child.

Article 139 of the Family Code of Ukraine gives a woman who is registered as the mother of a child the right to dispute her maternity. A woman who considers herself the child's mother has the right to file a lawsuit against the woman who is registered as the child's mother for recognition of her maternity. Disputing maternity is not allowed in the cases provided for in parts 2-3 of Article 123 of the Family Code of Ukraine, since in case of transfer of a human embryo conceived by a spouse (man and woman) as a result of the use of assisted reproductive technologies to another woman, the spouses are the parents of the child, and the spouses are recognized as the parents of the child born to the wife after transfer of a human embryo conceived by her husband and another woman as a result of the use of assisted reproductive technologies.

Unlike maternity, the definition of paternity depends on the marital status of the child's mother.

As for paternity, the law defines it as the fact that the child is descended from a man (presumption of paternity: the mother's husband is the child's father). This fact must be certified by a birth record in the civil registry office. If this right is not recognized or disputed, the man (biological father) has the right to apply to the court to establish paternity or, conversely, to challenge his paternity.

Article 133 of the Family Code of Ukraine stipulates that if a child is born to a married couple, the wife is registered as the mother and the husband as the father of the

child. This presumption applies not only during marriage. A child born before the expiration of ten months after the termination of the marriage or its invalidation is considered to be the child of the spouses. Spouses, as well as a woman and a man whose marriage has been terminated, in the event of the birth of a child before the expiration of ten months after the termination of their marriage, have the right to submit a joint application to the civil registry office for non-recognition of the husband (former husband) as the child's father. This requirement can be satisfied only if the other person and the child's mother file an application for recognition of paternity. If the child was born before ten months from the date of termination of the marriage due to the death of the husband, the child's descent from the father may be determined by a joint application of the mother and the man who considers himself the father (Article 122 of the Family Code of Ukraine).

Paternity may be contested by a person registered as the child's father only after the child's birth and before the child reaches the age of majority. However, during this period, during the child's lifetime, the person who was registered as the child's father has the right to dispute his paternity by filing a claim to exclude the entry about him as the father from the child's birth record. After the court has made a decision to exclude information about a person as the child's father from the child's birth record, when it is proved that there is no blood relationship between the person registered as the father and the child.

The presumption of marital paternity provides certain "legal benefits" to both the mother and the father of the child: the wife is not obliged to prove her husband's paternity, and the husband has the right to demand registration as the child's father. It can also be concluded that the presumption of marital paternity is a legal instrument for protecting the interests of the mother and the child and also serves the interests of the man, giving him the right to demand registration as the father.

However, the right to maternity and paternity consists not only in the right to be registered as the child's parents, but also in the right to participate in the child's upbringing and maintenance. It should be noted that family law and obligations are relative in nature; the right to maternity/paternity of one spouse does not mean the

obligation of the other spouse to conceive a child. The Family Code of Ukraine provides that the unwillingness of one of the spouses to have a child or the inability to conceive or give birth to a child may be grounds for divorce.

**The right of personal private property of the wife and husband**. State registration of marriage does not terminate the ownership of property that belonged to the wife and husband before that moment. This means that marriage does not transform the wife's personal property and the husband's personal property into the spouses' joint property.

According to the provisions of Chapters 7 and 8 of the Family Code of Ukraine, property in the family exists in two legal regimes: common joint ownership of the spouses and personal private ownership of each spouse, depending on which regime regulates the disposal of such property.

According to the Family Code of Ukraine, the personal private property of a husband or wife is:

1) property acquired before marriage

2) property acquired during the marriage, but on the basis of a gift agreement or by inheritance

3) property acquired during the marriage, but for funds that belonged to one of the spouses personally;

4) housing acquired by one of the spouses during the marriage as a result of privatization in accordance with the Law of Ukraine "On Privatization of the State Housing Fund";

5) a land plot acquired as a result of privatization that was in her/his use, or obtained as a result of privatization of land plots of state and municipal agricultural enterprises, institutions and organizations, or obtained from state and municipal property within the limits of free privatization rules determined by the Land Code of Ukraine.

In addition, personal private property of spouses also includes things for individual use, i.e. things that each spouse personally uses on a daily or regular basis. It is important to emphasize here that the current legislation does not contain a clearly

defined list of such items. However, as a rule, they include clothing, perfumes, cosmetics, accessories, jewelry, personal care products, etc. Such items include, among other things, jewelry, even if it was purchased with joint funds. However, in practice, there are difficulties in determining what exactly is meant by the term "jewelry", as it is an estimation. In the event that the division of marital property is carried out in court, the court must decide on a case-by-case basis whether a particular item is valuable.

The personal property of a husband or wife also includes bonuses and awards that he or she received for personal merit. However, there are cases when the court may recognize the other spouse's right to a share of such a bonus or award if it is established that he or she contributed to its receipt by his or her actions (housekeeping, raising children, etc.). Funds received by a spouse as compensation for the loss (damage) of an item that belonged to her/him, as well as compensation for non-pecuniary damage, are also personal private property of one of the spouses. This also applies to insurance amounts received by her/him under compulsory personal insurance, as well as under voluntary personal insurance, provided that the insurance premiums were paid at the expense of funds that were the personal private property of each of them. In addition, if an item belonging to a spouse generates income, he or she is also the owner of that income. Property acquired by him or her during the period of separate residence in connection with the actual termination of the marriage relationship may also be recognized as personal private property in court. And if, in addition to joint funds, funds belonging to one of the spouses were invested in the acquisition of property, the share in this property, in accordance with the amount of the contribution, is his/her personal private property.

Therefore, the mere fact of acquiring the disputed property during the marriage is not a ground for classifying it as marital property.

Thus, Article 59 of the Family Code of Ukraine establishes certain rules regarding the exercise of personal private property rights by a wife or husband. In particular, the spouse who owns the property determines the regime of possession and use of it, taking into account the interests of the family, especially children, and when disposing of their

property, the wife and husband are obliged to take into account the interests of the child and other family members who are entitled to use it under the law.

**The right to joint marital property.** Article 60 of the Family Code of Ukraine stipulates that property acquired by the spouses during the marriage belongs to them on the right of joint marital property, even if one of the spouses for a valid reason (study, housekeeping, childcare, illness, etc.) did not have independent earnings (income).

Each item acquired during the marriage is considered to be the object of the right of joint marital property, except for items for individual use. The marital property of the spouses also includes their salaries, pensions, scholarships, and other income. If one of the spouses has entered into an agreement in the interests of the family, money or other property received under this agreement is also community property. The community property also includes items for professional activities (musical instruments, office equipment, medical equipment, etc.) purchased during the marriage for one of the spouses.

Thus, the legislator establishes a presumption of community of property acquired by the spouses during the marriage.

The basis for the emergence of the spouses' joint property is the acquisition of property during the marriage. However, Art. 74 of the Family Code states that if a woman and a man live in the same family but are not married to each other, the property acquired by them during their cohabitation belongs to them on the right of joint joint ownership, unless otherwise provided by a written agreement between them.

Thus, joint marital property is a way of exercising the property right that arises between spouses in relation to joint property on the basis of law or contract and is manifested through the multiplicity of subjects to the same property object without determining the shares of the husband and wife. Any things (property) may be the objects of the right of joint marital property of spouses, except for those excluded from civil turnover. Pursuant to the Family Code of Ukraine, the marital property is any property acquired by the spouses during the marriage, except for those excluded from civil turnover and, of course, except for those that are personal private property of the wife or husband in accordance with Chapter 7 of the Family Code of Ukraine. It is

worth mentioning that a common object may consist of one or more things that may be divisible or indivisible, but as an object of property rights they form a single whole. This means that the right of each of the co-owners extends to the entire object as a whole, and not to a particular part of it.

Thus, the legislator presumes that property is jointly owned if it was acquired during the marriage. The opposite, i.e., that the property belongs to the spouses' separate property, requires proof. In this case, the burden of proof that the property is not belongs joint marital property to the one who denies it (Resolution of the Supreme Court of Ukraine of May 24, 2017 in case No. 6-843цс17 and the Grand Chamber of the Supreme Court of November 21, 2018 in case No. 372/504/17-ц).

Pursuant to Articles 69 and 70 of the Family Code of Ukraine, property owned by spouses on the right of joint marital property is divided equally between them when it is divided, unless otherwise provided by a marriage contract or agreement. The fact that real estate acquired during the marriage is registered in the name of one of the spouses does not mean that it belongs only to the person in whose name it is registered. Registration of real estate in the name of one of the spouses does not change its legal status as "marital property". Therefore, the alienation of a share of this property without the consent of the other spouse violates the latter's right as a co-owner to freely use and dispose of real estate.

When dividing joint marital property, the court presumes that the shares in the property are equal (Article 70 of the Family Code of Ukraine). In addition, the Ukrainian legislation governing family relations allows the court to deviate from the principle of equality of shares in joint marital property if one of the spouses did not pay due attention to the material support of the family: concealed, illegally disposed of joint marital property; spent it in a way that harmed the interests of the family; and most importantly, taking into account the interests of minor children or the interests of the other spouse. Court practice shows that there is a possibility of a possible derogation from the legal presumption of equality of shares, which is usually applied in cases where a decision is made to transfer a larger share in the property to a spouse who is disabled or to the spouse who will have children to support and raise.

According to the Family Code of Ukraine, in the case of division of marital property after divorce, the court may divide the property in kind. If the wife and husband have not settled the procedure and conditions for the division of property, the court may divide the property between the spouses taking into account its price or award a part of the property in kind to one of the spouses, while obliging the other to compensate for its value in cash. The latter method of property division is used by courts, as a rule, in cases where spouses divide real estate: an apartment, a house, etc.

Items that one of the spouses uses for professional activities are awarded to the one who used them. The value of these items is taken into account when awarding other property to the other spouse.

The legal fact of divorce does not in any way terminate the right of joint marital property of property acquired during the marriage. As a result, it should be remembered that when performing any transactions with this property (sale, donation, lease, etc.), the consent of the other spouse to such actions is mandatory, since, by virtue of the Civil Code of Ukraine, the presumption of the other spouse's consent to the disposal of property is no longer valid.

The value of the property to be divided may be determined by agreement, and in the event of a dispute over the price, based on its actual value. If a marriage agreement changes the statutory regime of joint marital property, the terms of such an agreement must be taken into account when considering a dispute over the division of property after divorce.

When resolving disputes between spouses over property, it is necessary to identify the property that was in such ownership at the time of the marriage termination, to find out the source of the funds and the time of their acquisition. The property subject to division includes not only the property owned by the spouses at the time of the case, but also that owned by third parties.

Pursuant to Part 2 Article 72 of the Family Code of Ukraine, a three-year limitation period applies to a claim for property division filed after divorce. The limitation period is calculated from the date when one of the co-owners learned or could have learned of the violation of his or her property right.

It is worth noting that when determining the beginning of the limitation period, it is necessary to proceed not from the time when the parties dissolved the marriage, but from the time when the person learned or should have learned of the violation of his or her property right, since the fact of marriage termination does not in itself indicate a violation of the property right of one of the spouses.

Significant legal conclusions on determining the moment of the limitation period are set forth in the resolution of the Grand Chamber of the Supreme Court of Ukraine dated November 20, 2018 in case No. 907/50/16 (proceedings No. 12-122гс18):

- the possibility of knowing about the violation of one's rights follows from the general principles of protection of civil rights and interests (Articles 15, 16, 20 of the Civil Code of Ukraine), according to which a person, having the right to defense, exercises it at his/her own discretion in the manner prescribed by law, which creates this possibility of knowing about the infringement of rights (paragraph 48);

- the analysis of Article 261 of the Civil Code of Ukraine gives grounds to conclude that the beginning of the limitation period coincides with the moment when the interested party has the right to sue (para. 59);

- the plaintiff must also prove the fact that he could not have known about the violation of his civil right, which also follows from the general rule established by Articles 32-38 of the Commercial Procedural Code of Ukraine (in the version effective at the time of the challenged court decisions) that the party to the dispute must prove the circumstances to which it refers as the basis for its claims and objections. The defendant, on the contrary, must prove that information about the violation of the relevant right could have been obtained earlier (para. 60).

## TOPIC 5. RIGHTS AND OBLIGATIONS OF THE MOTHER AND FATHER OF THE CHILD

**Establishing the child's origin.** From the legal point of view, the birth of an individual is a legal fact, which is the basis for various legal relations. Thus, in

accordance with Part 2 of Article 25 of the Civil Code of Ukraine, at the time of birth of an individual, his or her civil legal capacity arises.

With the birth of a child, a kinship relationship arises between the child and his or her mother and father. Kinship is a relationship between persons descended from each other or from a common ancestor. As a legal fact, kinship has a continuing character (state). Kinship is the basis for most family law relations.

Different legal significance is attached to kinship by direct and collateral line, and kinship of varying degrees. Undoubtedly, the greatest scope of rights and obligations is created by first-degree kinship in the direct line, i.e. between children and parents. Relationships between parents and children may be of a spiritual, moral, personal or property nature.

The rights and obligations arising from parents and children are mutual. The basis for the emergence of mutual rights and obligations of parents and children is blood kinship, the descent of children from these parents. However, biological descent alone leads to the establishment of only moral obligations of parents and children. Spiritual and moral relations between parents and children can exist regardless of whether the child is born in or out of wedlock, whether the parents are registered as such in the Birth Registration Book or not.

The fact of a child's birth gives rise to a biological and moral bond between the child and his or her father and mother. The fact of origin acquires legal significance only from the moment of its state registration with the registry office. It is then that children are recognized as their parents' children not only biologically but also legally. From that moment on, a legal relationship between parents and children is established.

Parents and children have mutual personal non-property and property rights and obligations. Pursuant to Article 121 of the Family Code of Ukraine, the rights and obligations of the mother, father and child are based on the child's descent from them, as certified by the registry office.

Thus, the legal basis of the relationship between parents and children is the blood descent of children from certain persons (mother and father), which is certified by the

registry office in accordance with the procedure established by the Family Code of Ukraine.

The mere existence of the factual composition, which is formed by the combination of two legal facts: the event - the birth of a child and the action - the registration of birth by the registry office, is the basis for the emergence of legal relations between children and their parents.

The birth of an individual and the establishment of his or her origin are among the acts of civil status subject to state registration (Article 49 of the Civil Code of Ukraine). State registration in these cases is an external expression of the existence of a certain circumstance. It indicates the emergence of a right and at the same time gives rise to that right, i.e. has a law-establishing character.

Thus, in the field of family law, the origin of a child from certain parents becomes a legal fact only if it is certified by the competent state authority - the registry office. Registration of a child's birth is carried out with the simultaneous determination of his or her origin and assignment of a surname, name and patronymic.

Pursuant to Article 144 of the Family Code of Ukraine, the birth of a child must be registered no later than one month after the child's birth. The birth of a child is registered at the child's place of birth or at the place of residence of the child's parents or one of them upon their oral or written application. In the event of illness, death of parents or other reasons for impossibility to register the birth, registration is carried out at the request of relatives, other persons, an authorized representative of the health care facility where the child was born or where he or she is currently staying.

To register a child's birth, certain documents must be submitted to the registry office, namely: a certificate from a medical institution about the child's birth and identity documents of the parents (one of them). In addition, depending on the procedure for determining the child's descent from a particular father, a marriage certificate, or a father's application (joint application of the parents) for recognition of paternity, or a court decision on recognition of paternity are also required.

Based on the registration of the child's birth, a birth certificate is issued, which certifies the child's origin from the parents (one of the parents) specified in it.

The institution of adoption exists to establish parental relations between a child and a person who is not the child's biological father but wishes to recognize himself as the child's father.

**Recognition and establishment of paternity by court decision.** Determination of paternity by court decision (Article 128 of the Family Code of Ukraine) is carried out if there is a dispute over the person who is the child's father. Paternity is established in court in situations where a man does not recognize himself as the child's father and, conversely, when a man considers himself the child's father, and this fact is disputed.

Establishment of paternity is also considered as a means of protecting the rights of the child, i.e. a measure aimed at restoring (recognizing) the violated (disputed) rights of the child. This essence of this legal fact is due to the fact that the determination of paternity of a child is the basis for the emergence of parental obligations, in particular the obligation to support the child.

According to the Family Code of Ukraine, any information certifying the child's descent from a certain person, collected in accordance with the Civil Procedure Code of Ukraine, may serve as a basis for acknowledgment of paternity. Recognition of paternity in court is carried out in the form of lawsuits. Pursuant to Part 3 of Article 128 of the Family Code, a claim for acknowledgment of paternity may be filed by the mother, guardian, custodian of the child or a person who maintains and educates the child. A child who has reached the age of majority has the right to file a claim for acknowledgment of paternity on his or her own. A claim for recognition of paternity may also be filed by a man who considers himself the child's father, if his paternity is not recognized (disputed) by the child's mother or other persons.

Recognition of paternity in court is also possible only if the entry about the child's father in the Birth Registration Book was made in accordance with the mother's instructions.

The fact of paternity (maternity) and the fact of recognition of paternity may also be established in court. These cases are considered under the rules of separate proceedings.

Establishing the fact of paternity in court differs from recognizing paternity by a court decision in the following ways

- no dispute over the child's paternity
- death of the child's actual father;
- time of birth of the child.

In the event of the death of a man who was not married to the child's mother, the fact of his paternity may be established by a court decision (Article 130 of the Family Code of Ukraine). An application for establishing the fact of paternity is accepted by the court if the entry about the child's father in the Birth Registration Book is made in accordance with the instructions of the child's mother.

An application for establishing the fact of paternity may be filed by the same persons who have the right to file a claim for recognition of paternity, except, of course, the person who considers himself the child's father.

A court decision may also establish the fact of maternity (Article 132 of the Family Code of Ukraine). The conditions for consideration of an application for establishing the fact of maternity are:

- the death of the woman;
- during her lifetime, the woman considered herself the child's mother;
- there is no dispute about the woman's maternity;
- an entry about the child's mother is made in the Birth Registration Book at the request of relatives, other persons or an authorized representative of the health care facility where the child was born.

An application for establishing the fact of maternity may be filed by the child's father, guardian, custodian or a person who maintains and educates the child. Upon reaching the age of majority, the child may also file such an application with the court.

**Disputing paternity (maternity).** The presumption of paternity may be challenged and refuted by a court. The presumption of paternity is rebutted by a court decision if there is evidence that the child and the person registered as his or her father are not related by blood, i.e., the fact of descent.

Disputing paternity (maternity) is a person's failure to recognize his or her registration as the child's father (mother). A person who is registered as the child's father in accordance with the provisions of the Family Code of Ukraine has the right to challenge his or her paternity by filing a claim to exclude the record of his or her paternity from the child's birth certificate (part 1 of Article 136 of the Family Code of Ukraine).

A person who has been legally registered as the child's father must prove that he or she is not related by blood to the child to whom he or she is registered as the father.

However, denial of consanguinity is not always a ground for contesting paternity. In some cases, the person who is registered as the child's father must also prove that at the time of the child's birth registration, he or she did not know that he or she was not the child's father.

The Family Code of Ukraine establishes certain limits for contesting paternity. Article 136 of the Family Code of Ukraine sets time limits for contesting paternity. Thus, paternity may be contested only from the moment of birth and until the child reaches the age of majority. Paternity may be contested during this time only if the child is alive. The death of a child whose father is registered as a person deprives him or her of the right to contest his or her paternity.

The Family Code of Ukraine provides that the statute of limitations does not apply to a man's claim to exclude an entry about him as the father from the child's birth certificate (Part 6 of Article 136 of the Family Code of Ukraine).

A person registered as the child's father, if at the time of registration as the child's father he knew that he was not the child's father, as well as a person who consented to the use of assisted reproductive technologies in accordance with Part 1 of Article 123 of the Family Code of Ukraine, has no right to contest paternity.

If a man voluntarily acknowledges his paternity knowing that he is not the biological father, his rights are not considered violated.

Paternity may also be contested by the following persons

- heirs of the person registered as the child's father (Article 137 of the Family Code);

- the mother of the child regarding the paternity of her husband (Article 138 of the Family Code of Ukraine).

In the first case, paternity may be contested in the event of the death of the person registered as the child's father before the child's birth. The heirs have the right to dispute the paternity of this person after his death in the presence of one of the following circumstances

- submission of an application to a notary by this person during his/her lifetime declaring non-recognition of his/her paternity;

- the person filed a claim to have his or her name removed from the child's birth certificate;

- the person did not know that he or she was registered as the child's father for good reason.

In the first two cases, any of the deceased person's heirs (by will or by law) have the right to challenge the paternity of the deceased person. If a person did not know during his or her lifetime that he or she was registered as the child's father, only the person's spouse, parents and children, i.e. those persons who are defined by Article 1261 of the Civil Code of Ukraine as heirs of the first priority by law, may challenge his or her paternity.

There may be a situation where a person filed a lawsuit to contest paternity during his or her lifetime, but died during the hearing of the case. In such a case, one should be guided by Part 2 of Article 137 of the Family Code of Ukraine, according to which, if the person registered as the child's father dies after filing a claim to exclude his name as the father from the child's birth certificate, his heirs may support the claim in court. In this case, the claim was filed in accordance with Article 136 of the Family Code of Ukraine, and the case should be continued on the basis of Article 137 of the Code.

Pursuant to Article 7(8) of the Family Code of Ukraine, family relations should be regulated with the best interests of the child in mind.

According to the Family Code, a woman who gave birth to a child in marriage has the right to challenge the paternity of her husband. In order to protect the interests of the child and realize his or her right to paternity, the law, providing for possible

consequences of satisfying such a claim in the form of exclusion of the record of the father, requires another person to file a statement of his or her paternity. That is, the main task of the legislator in these legal relations is to ensure that the child has a father.

Thus, the mother's request to exclude the record of her husband as the child's father from the child's birth record can only be satisfied if another person submits a statement of paternity.

Such an application is filed with the court by a person who considers himself to be the child's father, and the court is obliged to verify the motives for filing such an application and establish the paternity of such a person on the basis of appropriate and admissible evidence.

The statute of limitations for a mother's request to amend the child's birth record is one year, which starts from the date of registration of the child's birth. Such a requirement of the law is legitimate and aimed at ensuring the stability of parental relations.

Article 129 of the Family Code of Ukraine, entitled "Dispute over paternity between the husband of the child's mother and a person who considers himself the child's father", grants the right to file a claim for recognition of paternity to the person who considers himself the child's father. However, since the paternity of the mother's husband is not only presumed, but also his name as the father is entered in the birth registration book, it is necessary to refute the child's marital origin first.

With regard to disputes over maternity, the legislator has regulated two situations of contesting maternity. Firstly, a woman who is registered as the mother of a child may apply to the court to challenge her maternity, i.e., to not recognize herself as the child's mother. Secondly, the maternity of a woman who is registered as the mother of a child may be challenged by a woman who considers herself the mother of the child. In this case, the lawsuit contains two claims at the same time:

- Non-recognition of the maternity of the woman who is registered as the child's mother;

- to recognize her maternity.

If it is proved that there is no blood relationship between the person registered as the mother and the child, the court shall decide to exclude information about the person as the child's mother from the child's birth certificate. This data may be established on the basis of explanations of the parties, third parties, their representatives interrogated as witnesses, testimony of witnesses, written evidence, material evidence, including sound and video recordings, and expert conclusions.

A woman who has been implanted with an embryo conceived by a married couple (surrogate mother), as well as a woman who is an egg donor for an embryo implanted in another woman's body, has no right to dispute maternity (Article 123(2) and (3) of the Family Code). The statute of limitations does not apply to the claims of a woman who is registered as the mother of a child and disputes her maternity. As for a woman's claims for recognition as the child's mother, a special limitation period of one year applies. The statute of limitations begins to run from the day when the woman knew or could have known that she was the child's mother.

The fact that a person who does not recognize himself or herself as the father (mother) does not recognize the child's mother is not an obstacle to contesting paternity (maternity) and recovering child support from him or her (Article 140 of the Family Code). Such a person may file a claim with the court to exclude information about him or her as the child's father (mother), since the fact of such a record is the basis for the recovery of alimony. If the claim is satisfied, the grounds for child support will be canceled.

**Surrogacy.** The use of assisted reproductive technologies, and especially the so-called surrogacy method, has gained considerable popularity in Ukraine over the past few years. Legal support of surrogacy is one of the most difficult and unregulated issues in the field of family law in Ukraine. Its relevance is due to the lack of sufficient regulatory framework for the surrogacy procedure in Ukraine and the need to address the problems that arise in practice during the implementation of the surrogacy program.

The current legislation of Ukraine does not define the concept of surrogacy; it exists only in social relations related to modern reproductive technologies. In medical terms, surrogacy involves the transfer of an embryo obtained by fertilizing the egg of a

biological mother-wife with the sperm of a biological father-husband into the uterine cavity of another woman and carrying a child who is biologically "alien" to the woman. Translated into medical terminology, this procedure is called in vitro fertilization and can only be performed in specialized medical facilities by highly qualified specialists.

In legal terms, surrogacy is defined as "the fertilization of a woman by implantation of an embryo using the genetic material of the spouses for the purpose of carrying and giving birth to a child, which will be subsequently recognized as originating from the spouses, usually on a commercial basis on the basis of a relevant agreement between the spouses and the surrogate mother".

Thus, the essence of surrogacy is that a fertilized egg is transplanted into the body of a genetically unrelated woman who carries and gives birth to a child not for herself, but for a childless couple.

Thus, Article 123 of the Family Code of Ukraine sets out the procedure for establishing the origin of a child born as a result of three types of reproductive technologies: artificial insemination, surrogacy and embryo implantation.

This type of medical care is regulated by Article 48 of the Fundamentals of Ukrainian Healthcare Legislation, according to which every woman of legal capacity has the right to use artificial insemination and embryo implantation. Such operations are carried out in institutions licensed for this type of activity, subject to the written consent of the spouses. Information about the use of artificial insemination and embryo implantation, as well as the identity of the donor, is a medical secret. A surrogate mother may be an adult woman of legal capacity, provided that she has a healthy child of her own, has her voluntary written consent, and has no medical contraindications.

Thus, if a human embryo conceived by a married couple (man and woman) as a result of the use of assisted reproductive technologies is transferred to another woman, the spouses are the child's parents.

The Family Code of Ukraine in matters of artificial insemination with the use of modern reproductive technologies does not protect the interests of the biological mother, but prioritizes the terms of the agreement concluded between the surrogate

mother and the couple. The moment of conclusion of the agreement is essential in these legal relations.

Pursuant to Part 2 of Article 139 of the Family Code of Ukraine, maternity is not contested in case of transfer of a human embryo conceived by the spouses as a result of the use of assisted reproductive technologies into the body of another woman. The above provisions of the current legislation of Ukraine are aimed at ensuring the protection of the rights of the child and the rights of the spouses who are the biological parents of the child. In particular, a child conceived as a result of the use of assisted reproductive technologies is guaranteed the right to a family, the presence of a mother and father who are his or her biological parents. Such parents and the child have rights, obligations and guarantees in accordance with the Family Code of Ukraine.

Thus, the biological parents of a child born by a surrogate mother using in vitro fertilization are the legal parents of such a child.

The provisions of Section III of the Family Code of Ukraine establish the rights and obligations of the mother, father and child. In particular, Article 139 of the Family Code of Ukraine provides for the possibility of challenging maternity by a woman who is registered as the child's mother or by a woman who considers herself the child's mother but is not registered as such. However, a surrogate mother may not challenge the maternity of a biological mother.

The registration of a child born through surrogacy is carried out in accordance with the procedure established by the current legislation of Ukraine (a document confirming the fact of the child's birth by another woman, an application for her consent to the registration of the couple as the child's parents, the authenticity of the signature on which must be notarized), provided that there is a certificate of genetic relationship between the parents (mother or father) and the fetus (genetic DNA tests, in addition to establishing paternity and maternity, allow to establish or refute the existence of other relationships between the parents).

An important aspect of surrogacy is that it is applied only to married couples (childless); single men/women (and/or homosexual couples) are not eligible to participate in the surrogacy program.

Particular attention should be paid to the agreement between the surrogate mother and the biological parents on bearing a child, which should be the main means of legal regulation of the relations between the participants of the surrogacy program. Such an agreement is the main document defining the relationship between the biological parents and the surrogate mother and should be drawn up in accordance with the provisions of the current legislation of Ukraine, taking into account the individual requirements, wishes and capabilities of the couple and the surrogate mother.

Surrogacy agreement - the law does not require notarization of the agreement, so such an agreement may be concluded in a simple written form. After the birth of a child, prior to the state registration of the child's birth, it is necessary to obtain a notarized consent of the woman who gave birth to the child to have the child's biological parents registered as the child's parents.

**The parents' obligation to pick up the child from the maternity hospital.** A necessary prerequisite for the parents to exercise all other personal non-property rights in relation to the child is the parents' obligation to take the child from the maternity hospital. This obligation of the child's father or mother corresponds to the child's right to a family, which in this case is the right to live in a family. In addition, the child's mother and father are obliged not only to pick up the child from the maternity hospital after his or her birth, but also to pick up the child from any health care facility where the child is provided with medical care.

The obligation to pick up the child from the maternity hospital is imposed on:

1) the mother and father of the child who are married;

2) the mother who is not married;

3) a father who is not married to the child's mother, whose paternity is determined in the child's birth certificate or recognized by a court decision;

4) the child's grandparents and other relatives with the permission of the child's guardianship and custody authority, but these persons are not obliged to, but have the right to take the child from these institutions.

The law contains an open list of persons who have the right to take a child from a maternity hospital or other health care facility. Such persons, in addition to those

mentioned above, may also be the child's adult siblings, stepmother, stepfather, aunts, uncles on both the mother's and father's side, etc.

If the child has significant physical and/or mental disabilities, as well as other circumstances of significant importance, he or she may be left by the parents in the maternity hospital (part 3 of Article 143 of the Family Code of Ukraine). Such children, at the request of their parents or persons in loco parentis, may be kept in baby homes, orphanages and other specialized children's institutions at public expense.

If parents fail to pick up a child from a maternity hospital or other healthcare facility without a valid reason and do not exercise parental care for 6 months, such behavior is one of the grounds for deprivation of their parental rights (Article 164(1) of the Family Code of Ukraine). If the child is in a baby home, orphanage or other specialized children's institution, this does not relieve the parents of their duties and does not deprive them of the possibility of exercising their personal non-property and property rights in relation to the child.

**Determination of the child's name.** Any individual acquires rights and obligations and exercises them under his or her own name. Acquisition of rights and obligations under the name of another person is not allowed. Article 7 of the Convention on the Rights of the Child recognizes the right of a child to a name. The current legislation of Ukraine also recognizes the right to a name for every individual, regardless of age (Article 294(1) of the Civil Code of Ukraine). Being a subjective right of a person, the right to a name indicates the person's family affiliation and the availability of opportunities established by law in this regard.

The name of a natural person who is a citizen of Ukraine consists of a surname, a proper name and a patronymic, unless otherwise provided by law or custom of the national minority to which he or she belongs (Article 28 of the Civil Code of Ukraine). The surname, first name and patronymic are given to the child at the time of registration. Parents are free to choose their own name for their child. When registering a birth at the request of one of them, it is assumed that the other agrees with the chosen name (Article 54(3) of the Family Code of Ukraine).

The child's name is determined by the joint consent of the parents. In the event of a dispute between them regarding the child's name, they have the right to apply to the guardianship and custody authority or to the court. The patronymic is given to the child by the name of the father. If the father has a double name, the child's patronymic is given by one of them at the parents' choice. At the request of the parents, the patronymic may also be formed in accordance with national traditions or not provided at all.

In the case of registration of the birth of a child to citizens whose national tradition does not include the patronymic, only the child's surname and first name may be recorded in the act of registration and the birth certificate. The patronymic of a child born to an unmarried woman, provided that paternity is not recognized, is determined by the name of the person whom the child's mother has named as the child's father. The child's surname is determined by the surname of the parents. If the parents have the same surname, it is given to the children. If the parents have different surnames, then with their written consent, the child is given the surname of the father or mother or a double surname formed by combining their surnames. Parents also have the right to change the child's own name, surname and patronymic. The termination of a marriage between parents does not cause a change in the children's surname.

**Parents' obligations and rights to raise their children** are the main ones among the entire range of parental rights and obligations enshrined in family law. All other rights and obligations of parents in relation to their children are intended to ensure that parents properly fulfill their primary duty to raise their children.

For the first time, Article 151 of the Family Code of Ukraine enshrines the principle of the priority right of parents to raise their children over all other persons. By exercising the right to personal upbringing of their children, parents fulfill their responsibilities for raising children and ensure the realization of the right to receive proper family upbringing. Therefore, the essence of the parental right to personal upbringing of their children lies primarily in its active exercise through the fulfillment of parental responsibilities.

The priority of parental upbringing is ensured by the fact that parents have a number of other personal non-property rights designed to ensure the effective exercise of their rights and fulfillment of their obligations to raise their child. Thus, parents have the right to:

- unimpeded communication with their child (Articles 153, 157, 168 of the Family Code of Ukraine);

- determine the child's place of residence (Articles 160, 163 of the Family Code of Ukraine);

- demand the removal of a minor child from any person who is not keeping him or her on the basis of law or a court decision (Article 163 of the Family Code of Ukraine). The right of parents to bring up a child as a subjective right arises after the child is born and registered with the civil registry office.

The content of the subjective right of parents to bring up a child includes:

1) the right of parents to their own behavior towards the child;

2) the right of parents to prohibit certain behavior of other persons;

3) the right of parents to protect the right to upbringing in case of its violation.

Article 150 of the Family Code of Ukraine contains a list of actions that parents are obliged to take in relation to their children in order to ensure their right to proper upbringing and development. These include:

- taking care of the child's health;

- taking care of the child's physical and spiritual development;

- ensuring that the child receives a complete secondary education; - preparing the child for independent living;

- respect for the child. In addition, the article also contains a list of actions that parents are obliged to refrain from while raising a child.

They are obliged to refrain from:

- any kind of exploitation of the child;

- disrespect for the child;

- physical punishment;

- such types of punishment that degrade the human dignity of the child.

Resolving the issue of the fate of children in connection with the divorce of their parents is one of the most difficult problems faced by the judiciary in cases of this category. The situation is greatly facilitated when the parents themselves reach the necessary agreement that is in the best interests of the children. However, if such an agreement is not reached, disputes arise between the parents regarding the child's place of residence or the participation of the parent who lives separately from the child in the child's upbringing, which are resolved by the guardianship and custody authorities or the court. In cases where the parents have not been able to reach an agreement on the procedure for the participation of the parent who lives separately from the child in the child's upbringing and communication with the child, this procedure is determined by the guardianship and custody authority with the participation of the parents. The parent who lives with the child or the parent who lives separately from the child, in order to determine the procedure for the participation of the parent who lives separately from the child in the child's upbringing and communication with the child, has the right to submit an application to the guardianship and custody authority.

In turn, the child welfare agency, after a thorough examination of all the circumstances of the child's life (the attitude of the parents to the child, their capabilities and abilities as caregivers, the child's age, health, attachment to the parents, etc.), proposes to the parents to establish a particular procedure for the participation of the parent who lives separately from the child in the upbringing and communication with the child, based on full equality of parental rights. If the dispute cannot be resolved because the parents have not reached an agreement, the guardianship and custody authority makes a decision, establishing the procedure for the participation of the parent living separately in the upbringing of the child, the nature, place, time, duration of communication, and sometimes setting the conditions under which it should be carried out. The decision of the guardianship and custody authority is made taking into account the interests of the child. The parent who is living separately has no right to demand communication at an unspecified time, to disrupt the child's normal life, to make any decisions regarding the child without consulting the other parent, etc. Any decisions regarding the child should be made jointly, and in case of disagreement, the dispute

should be resolved with the help of the guardianship and custody authorities. The decision of the guardianship and custody authority is binding.

**Deprivation of parental rights.** It is an offense for parents to evade their parental responsibilities. The Family Code of Ukraine provides for the following sanctions for improper fulfillment of parental responsibilities towards a child

- for evasion of their parental responsibilities - deprivation of parental rights (Article 164 of the Family Code of Ukraine) or removal of the child from the parents without deprivation of their parental rights (Article 170 of the Family Code of Ukraine);

- for improper fulfillment by parents of their duties to manage the child's property - imposing on them the obligation to compensate for the material damage caused to the child and return the income received from the management of the child's property (Article 177 of the Family Code of Ukraine);

- for late payment of alimony - recovery of a penalty (fine) (Article 196 of the Family Code of Ukraine).

An extreme measure of influence on persons who do not fulfill their parental responsibilities is the deprivation of parental rights (i.e., the rights to raise a child, protect his or her interests, take the child away from other persons who illegally keep him or her, etc.) granted to parents before the child reaches the age of majority, based on the fact of kinship with the child. The issue of its application is decided only after a full, comprehensive, objective clarification of the circumstances of the case, including the attitude of the parents to the children.

Such a measure can be applied only in court. Other authorities are not authorized to consider this issue. Persons may be deprived of parental rights only in relation to a child under the age of 18. As grounds for deprivation of parental rights of parents (one of them), the law provides for various forms of their culpable unlawful behavior, an exhaustive list of which is set forth in Part 1 of Article 164 of the Family Code of Ukraine. The law includes the following:

1) failing to pick up a child from a maternity hospital or other healthcare facility without a valid reason and failing to exercise parental care for six months

2) evade fulfillment of their obligations to raise the child and/or ensure that the child receives a complete general secondary education;

3) abuse the child;

4) are chronic alcoholics or drug addicts;

5) resort to any kind of exploitation of the child, force him or her to beg or vagrancy;

6) have been convicted of an intentional criminal offense against a child.

Deprivation of parental rights of a minor father or mother is possible only in cases specified in paragraphs 1, 3 of Part 1 of Article 164 of the Family Code of Ukraine, namely if they have not taken the child from a maternity hospital or other health care facility without valid reasons and have not shown parental care for 6 months or if they are cruel to the child. A mother or father may be deprived of parental rights in relation to all or some of their children. However, deprivation of parental rights is possible only in relation to a specific child(ren); parental rights cannot be deprived in relation to children who do not yet exist (i.e., for the future). Only parents themselves can be deprived of their parental rights, not other persons replacing them (guardians, trustees, foster parents, adoptive parents, foster parents), but the law allows for the deprivation of parental rights of adoptive parents (Article 242 of the Family Code of Ukraine).

One of the parents, a guardian or trustee, a person in whose family the child lives (actual caregivers - persons who have taken in an orphan or a child deprived of parental care in accordance with Art. 261 of the Family Code of Ukraine), foster caregivers (Article 252 of the Family Code of Ukraine), foster parents (Article 2561 of the Family Code of Ukraine), foster parents (Article 2565 of the Family Code of Ukraine), a healthcare facility, educational or other children's institution where the child is staying, a guardianship and custody authority, a prosecutor and the child himself or herself who has reached the age of 14.

The participation of the guardianship and custody authority is mandatory in court proceedings concerning the deprivation of parental rights. The guardianship and custody agency submits a written opinion to the court on the resolution of the dispute based on information obtained as a result of an examination of the living conditions of the child,

parents, other persons wishing to live with the child and participate in his or her upbringing, as well as other documents related to the case. The court may disagree with the conclusion of the guardianship and custody agency if it is insufficiently substantiated or contrary to the interests of the child.

When resolving a dispute over the deprivation of parental rights, the child must be heard and may express his or her opinion.

Article 166 of the Family Code of Ukraine defines the legal consequences of deprivation of parental rights, in particular, a person deprived of parental rights

1) loses personal non-property rights in relation to the child and is relieved of the obligation to raise the child

2) ceases to be the child's legal representative;

3) loses the right to benefits and state aid provided to families with children;

4) may not be an adoptive parent, guardian or trustee;

5) cannot receive in the future the property rights related to parenthood that she could have had in case of her disability (the right to child support, the right to a pension and compensation for damage in case of loss of the breadwinner, the right to inheritance);

6) loses other rights based on kinship with the child.

A person deprived of parental rights is not relieved of the obligation to support the child. When satisfying a claim for deprivation of parental rights, the court simultaneously decides on the recovery of child support. If the child's mother, father or other legal representatives refuse to receive child support from a person deprived of parental rights, the court shall decide to transfer the child support to the child's personal account at a branch of the State Savings Bank of Ukraine and shall oblige the mother, father or other legal representatives of the child to open the said personal account within one month from the date the court decision enters into force.

## TOPIC 6. ALIMONY OBLIGATIONS OF SPOUSES.

A wife and husband must financially support each other (Article 75(1) of the Family Code of Ukraine). It is traditionally up to the spouses to decide on the specific ways of such support. At the same time, the law provides for certain legal mechanisms that ensure the right of each spouse to maintenance. The Family Code of Ukraine contains three groups of legal norms that define the conditions and procedure for exercising the spouses' right to maintenance:

- norms that define the general conditions for granting maintenance to one of the spouses (Articles 75-83 of the Family Code);

- rules establishing the wife's right to maintenance during pregnancy and the rights of a man and a woman in case of a child living with them (Articles 84-88 of the Family Code of Ukraine);

- rules that determine the right to maintenance of the spouse with whom a disabled child lives (Article 88 of the Family Code).

According to part 2 of Article 75 of the Family Code of Ukraine, one of the spouses acquires the right to maintenance upon certain grounds. These include, in particular: a) disability of one of the spouses; b) need for material assistance (need); c) ability of the other spouse to provide material assistance.

The legislation establishes cases in which one of the spouses will not be provided with maintenance, namely when

- one of the spouses is not entitled to maintenance (part 5 of Article 75 of the Family Code of Ukraine);

- the right of one of the spouses to maintenance is terminated (Article 82 of the Family Code of Ukraine);

- one of the spouses is deprived of the right to maintenance by a court decision (Article 83 of the Family Code).

Part 5 of Article 75 of the Family Code of Ukraine establishes cases when one of the spouses has no right to maintenance at all. The right of one of the spouses to maintenance may be terminated (Article 82 of the Family Code of Ukraine).

The termination of the right of one of the spouses to alimony occurs automatically, i.e. by virtue of a direct prescription of the law in the event of:

1) restoration of the spouse's ability to work who needs financial assistance;

2) registration of a remarriage with him/her.

The right of one of the spouses to alimony may be terminated by a court decision if:

1) the recipient of alimony has ceased to need financial assistance;

2) the payer of alimony is unable to provide it.

The Family Code of Ukraine provides for special rules regarding the maintenance of one of the spouses if a child lives with him or her. In this case, the need for financial support is related to the fact that one of the spouses takes care of the child, and therefore his or her ability to participate in the labor market is to some extent limited. Taking into account the tender peculiarities of each spouse, the Family Code of Ukraine contains two rules that establish:

a) the wife's right to maintenance during pregnancy and if the child lives with her (Articles 84, 85 of the Family Code of Ukraine);

b) the husband's right to maintenance if the child lives with him (Articles 86, 87 of the Family Code of Ukraine).

A wife has the right to maintenance if the following conditions are met:

1) she is pregnant or has a child living with her who is under the age of 3, or if the child has physical or mental disabilities, under the age of six;

2) the man who is the child's father can provide financial assistance. Not only the wife, but also the husband is entitled to maintenance if he has custody of a minor child (Article 86 of the Family Code of Ukraine).

A man has the right to maintenance if the following grounds exist:

1) a child under the age of 3, or if the child has physical or mental disabilities, under the age of six, lives with the man;

2) the wife, the mother of the child, may provide her husband with financial assistance.

Special conditions for granting maintenance to one of the spouses are related to the fact that a disabled child lives with him or her. According to Article 88 of the Family Code of Ukraine, the conditions for granting maintenance to one of the spouses are

a) living with one of the spouses of a disabled child who cannot do without constant outside care and custody;

b) the ability of the other spouse to provide financial assistance.

An important feature of the right to maintenance in this case is that it is not limited in time. Pursuant to Article 88(1) of the Family Code of Ukraine, the right to maintenance lasts for the entire period of residence of the father or mother with the disabled child. The amount of alimony is determined by a court decision as a share of the earnings (income) of the other spouse and/or in a fixed amount of money. In deciding this issue, the court proceeds from the need to ensure the best interests of the child. For the first time, the Family Code of Ukraine extends the rules on mutual spousal support to persons in actual marital relations (Article 91 of the Family Code of Ukraine). The only exceptions are those conditions for the acquisition or termination of the right to maintenance that are related to the fact of marriage registration. Part 1 of Article 91 of the Family Code of Ukraine establishes that a woman or a man who have lived as a family for a long time acquires the right to maintenance. The law does not specify a specific period of such residence. In the event of a dispute, this issue must be resolved by the court.

Article 80 of the Family Code of Ukraine provides that, unlike spouses, de facto spouses lose the right to maintenance after the termination of cohabitation. If the disability of one of the parties arose after the termination of cohabitation, he or she cannot apply to the court for alimony. Thus, family law provides for the obligation of spouses to financially support each other during marriage. This obligation does not depend on age, health, or financial well-being. The property rights and obligations to provide mutual support arise from the moment of marriage registration and exist throughout the entire period of marriage. Thus, family law provides for the obligation of spouses to financially support each other during marriage. This obligation does not depend on age, health, or financial well-being. The property rights and obligations to

provide mutual support arise from the moment of marriage registration and exist throughout the marriage.

**Agreement on the provision of maintenance to one of the spouses.**

If the parties to a family relationship have reached an agreement and they are able to provide material support to a person in need, these parties may enter into an alimony agreement. An alimony agreement with voluntary provision of material support is based on the fact that the person obliged to pay alimony recognizes his or her obligation (or establishes) to provide the necessary funds or other property for the maintenance of any family member by entering into an agreement in the prescribed form.

The alimony payer, accordingly, does not fulfill his or her obligation to provide support on a voluntary basis, but agrees to fulfill it on mutually beneficial terms.

The introduction of the institution of concluding an agreement between all parties to alimony obligations is intended to help avoid excessive filing of lawsuits with the court seeking to recover alimony. By granting the right to the parties to family relations to independently resolve the issue of maintenance of a particular family member through the institution of concluding an agreement, the state thereby limits the interference of the judiciary in resolving indisputable cases related to the payment of alimony.

Thus, on a voluntary basis, alimony obligations arise on the basis of law only between spouses, other family members and relatives in need, and in case of violation of the legal obligation to provide maintenance to family members, they are enforced by compulsory collection, as well as on the basis of an agreement between these entities.

The current Family Code of Ukraine proceeds from the premise that a husband and wife have the right to enter into an alimony agreement in the first place, and the provisions of the law governing the enforcement of alimony are applicable only in the absence of an agreement between the parties. In practice, there are different names for this agreement, such as a spousal support agreement or an agreement on the payment of alimony to one of the spouses, etc.

The obligation of one of the spouses to provide maintenance under the agreement arises on the basis of clearly defined legal facts: the existence of a registered marriage;

the incapacity of one of the spouses to work; the need for financial assistance; the ability of the other spouse to provide maintenance; and the existence of the spousal maintenance agreement itself. The latter indicates that the rights and obligations of the parties constitute the content of the obligation and arise from the agreement itself.

It is quite logical to define a spousal maintenance agreement as a family law agreement under which one party undertakes to provide maintenance to the other party in the amount, manner and terms set forth in such agreement. The law distinguishes two types of spousal agreements related to their mutual maintenance: a spousal maintenance agreement (Article 78 of the Family Code of Ukraine) and an agreement on the termination of the right to maintenance in exchange for the acquisition of ownership of real estate or receipt of a lump sum payment (Article 89 of the Family Code of Ukraine).

Subjective composition (parties) of the agreement on the provision of maintenance to one of the spouses. The right to enter into a spousal maintenance agreement is expressly provided only for spouses. However, there are no grounds to prohibit a former spouse from entering into a maintenance agreement if, according to the law, there are no grounds for maintenance.

**Signs of a spousal maintenance agreement.** The subject of a spousal maintenance agreement is a property relationship regarding the provision of material support by one spouse to the other. The subject matter determines its content, which consists of terms and conditions on the amount, procedure, grounds and methods of payment of alimony by the payer to the recipient.

A spousal maintenance agreement is generally recognized as gratuitous (there is no reciprocity - the recipient of maintenance has no equivalent obligation to pay maintenance), unilateral (one party is obliged to pay maintenance, and the other has the right to demand payment of maintenance) and consensual (the agreement is considered concluded from the moment of reaching an agreement in the form prescribed by law).

Under a spousal maintenance agreement, the parties may independently determine the terms, form, amount, terms and procedure for the maintenance. Pursuant to Article 78 of the Family Code of Ukraine, such an agreement shall be concluded in writing and

is subject to notarization. It is binding on the parties, and its enforcement is ensured by special legal means, namely: in case of failure of the alimony payer to fulfill his/her obligation, alimony may be collected on the basis of an executive inscription of a notary. Contents (terms) of the agreement on the provision of maintenance to one of the spouses.

Pursuant to Article 75(2) of the Family Code of Ukraine, the conditions for spousal maintenance are the incapacity of one of the spouses to work and the need for material support, as well as the ability of the other spouse to provide such material support. Thus, this agreement can be concluded under the following conditions provided for by law: in case of incapacity of the spouse (part 2 of Article 75 of the Family Code of Ukraine), including after the termination of the marriage (Article 76 of the Family Code of Ukraine), during the wife's pregnancy and until the newborn child reaches the age of 3 (Article 84 of the Family Code of Ukraine), being a dependent of the child's father before the child reaches the age of 3 (Article 86 of the Family Code of Ukraine), being a dependent of the spouse of a disabled child (Article 88 of the Family Code of Ukraine), and in other cases not provided for in the current family law. As follows from part 1 of Article 78 of the Family Code of Ukraine, the parties may deviate from the provisions of family law and determine their rights and obligations at their own discretion, for example, not to link the right to alimony with the incapacity of one of the spouses and the need for financial assistance.

It is important that the statutory conditions for the emergence or exercise of the right to maintenance are not impaired by the agreement.

Thus, the conditions for the payment of maintenance include the circumstances with which the parties associate the right to alimony. Such circumstances may relate to both the dependent (reaching a certain age, temporary unemployment, etc.) and the payer's ability to pay the established amount of maintenance (permanent employment or income from a certain type of occupation: entrepreneurship, farming, etc.). At the same time, maintenance agreements may not contain provisions aimed at restricting the right of a disabled spouse in need of financial assistance to receive alimony. The relevant

terms of the agreement should be recognized as invalid as contrary to the provisions of the applicable family law.

**Form and amount of maintenance.** Pursuant to Article 72(2) of the Family Code of Ukraine, when a court decision is made, alimony is usually awarded in monetary form. Whereas, on a voluntary basis, the spouses may provide for three options for providing maintenance in the agreement: 1) in cash; 2) in kind; 3) in cash and in kind simultaneously.

Terms and procedure for the payment of maintenance. As a rule, in accordance with the requirements of applicable family law, alimony is paid on a monthly basis. However, in the agreement, the parties may determine alternative options for paying alimony: weekly, quarterly, annually, etc.

Liability under a spousal maintenance agreement. The parties may determine in the spousal maintenance agreement the legal consequences of its violation, in particular, to provide for: changing the terms of the alimony obligation; unilateral withdrawal from the agreement under certain conditions (for example, in case of misuse of alimony by the recipient or failure to pay the amount of alimony within a certain period, etc.); payment of a penalty; transfer of certain property in kind (property penalty), compensation for losses, non-pecuniary damage, termination of the alimony agreement, etc. In addition, certain legal consequences are provided for by law. If alimony is determined in monetary form, the provisions of Article 625 of the Civil Code of Ukraine will apply, according to which a debtor who has overdue a monetary obligation, at the request of the creditor, is obliged to pay the amount of the debt, taking into account the established inflation index for the entire period of delay, as well as three percent per annum of the overdue amount, unless a different amount of interest is established by agreement or law.

The grounds for termination of spousal support obligations are provided for in Articles 82, 83, 85, 87, 89 of the Family Code of Ukraine. If the alimony obligation arose on the basis of an agreement between the payer and the recipient of alimony, it is also terminated on the general grounds provided for by the Civil Code of Ukraine for the termination of an obligation, in particular, with the expiration of the agreement, the

death of one of the parties to the agreement (Article 608 of the Civil Code of Ukraine), and the forgiveness of debt (Article 605 of the Civil Code of Ukraine). Spousal support obligations cannot be terminated on such grounds as set-off of counterclaims, novation, and the combination of a debtor and a creditor in one person. Thus, part 3 of Art. 604 of the Civil Code of Ukraine expressly states that novation is not allowed in respect of alimony obligations. A similar provision is contained in Art. 602 of the Civil Code of Ukraine, which provides that set-off of counterclaims is not allowed, including, inter alia, for the recovery of alimony.

## TOPIC 7. MARRIAGE CONTRACT. CONCEPT, CONTENT AND FORM OF A MARRIAGE CONTRACT

**A marriage contract** is a written agreement between a husband and wife or newlyweds that regulates their property relations, rights and obligations.

The principle of equality of rights between men and women is established by Article 63 of the Family Code of Ukraine, according to which a wife and husband have equal rights to own, use and dispose of property belonging to them on the basis of joint joint ownership, unless otherwise agreed between them. The last line of this provision refers specifically to a marriage contract - an agreement between the spouses. In the case of division of property that is subject to the right of joint joint ownership of the spouses, the shares of the wife and husband are equal, unless otherwise provided by agreement between them or a marriage contract (Article 70 of the Family Code of Ukraine).

Ukrainian legislation deals with the marriage contract in Chapter 10 of the Family Code of Ukraine, which clearly defines the parties to the marriage contract, the procedure for its conclusion, terms and conditions of termination.

The law clearly states that only spouses who are legally married or future spouses who have applied for marriage registration at the time of signing the marriage agreement and are issued a certificate of marriage registration may enter into a marriage agreement.

At the same time, the possibility of entering into a prenuptial agreement does not depend on the duration of the marriage; it is possible to enter into a prenuptial agreement at any stage of marital life, even immediately before the dissolution of the marriage.

It is necessary to pay attention to the requirement for the spouses or fiancés to personally conclude a marriage contract. The Supreme Court in its ruling of September 25, 2019 in case No. 757/10715/17 concluded that family personal non-property and property relations between spouses are closely related to the person, and therefore a marriage contract cannot be concluded by proxy, since the representative is prohibited from entering into a transaction that can only be made by the person he or she represents.

**Form of the marriage contract.** A marriage contract is concluded in writing and must be notarized. The relevant requirement for the form of a marriage contract is set forth in Article 94 of the Family Code of Ukraine. A prenuptial agreement comes into force on the day of its notarization if it is concluded by spouses who are already in a registered marriage.

If you enter into a prenuptial agreement before entering into an official marriage (when you have already submitted an application to the Civil Registry Office), the agreement comes into force not from the moment of its notarization, but on the day of marriage registration. It is important to note that a written and notarized consent of the minor's parents (or guardians) is required to enter into a prenuptial agreement before the marriage is registered.

**Peculiarities of the subject matter of the marriage contract**. In accordance with the requirements of the family law of Ukraine, a marriage agreement regulates

- property relations between the spouses, defining their property rights and obligations;

- property rights and obligations of the spouses as parents.

Ukrainian law defines a fairly wide range of property relations that may be regulated by a prenuptial agreement. Thus, a prenuptial agreement may determine the legal regime of the spouses' property, provide for the use of housing (during and after

marriage), regulate the spouses' right to maintenance, establish the procedure for dividing the spouses' property in the event of divorce, etc.

The marriage agreement does not regulate the non-property relations of the spouses, their personal rights and obligations. Similarly, the spouses cannot regulate their non-property rights and obligations in relation to their children by means of a marriage agreement.

**Reservations regarding the content of the marriage contract.** Ukrainian legislation establishes several reservations to the content of a marriage contract. They are conditionally divided into general and special reservations.

Since a prenuptial agreement is a type of civil contract, it is subject to the provisions of the Civil Code of Ukraine, in particular, Article 3, which establishes the general principles of civil law, Article 13, which defines the limits of civil rights, and Article 203, which sets forth the general requirements for the validity of a transaction. Thus, the terms of a marriage contract must not violate the moral foundations of society, public order, the basic principles of civil law and the principles of civil law.

Part four of Article 93 of the Family Code of Ukraine establishes special reservations regarding the content of a marriage contract. In accordance with the provisions of this rule, a marriage agreement may not reduce the scope of the child's rights established by the Family Code of Ukraine, as well as put one of the spouses in an extremely unfavorable financial situation.

Another special reservation regarding the content of a marriage agreement is the prohibition established in part 5 of Article 93 of the Family Code of Ukraine on the transfer of real estate and other property, the right to which is subject to state registration, to one of the spouses.

In addition to these legal requirements for the content of a marriage agreement, it cannot restrict the principles of voluntariness of the marriage union, equality of spouses, care for the welfare and development of children, etc. Although this is not explicitly stated in the law, it is directly evident in the current case law. As the Supreme Court noted in its ruling of November 25, 2020 in case No. 201/4255/16-ц, spouses are not entitled to determine such conditions in contracts between them, the implementation of

which will lead to a significant imbalance between the rights and obligations of each spouse.

Thus, the principle of freedom of contract in the regulation of property relations between spouses is subject to certain restrictions that should be taken into account when concluding a marriage contract.

Ukrainian legislation does not contain a definition of the concept of "extremely disadvantageous financial situation", so the interpretation of this legal category should be based on current case law.

The Supreme Court of Ukraine in its decision dated January 28, 2015 in case No. 6-230цс14 noted that the category of "extremely disadvantageous financial situation" is evaluative and is subject to proof in accordance with the procedure provided for by the procedural law. This conclusion is still applied by the courts today.

If the terms of a marriage agreement put one of the parties to it at an extremely disadvantageous financial position, this is grounds for invalidating the marriage agreement in court. Since the category of "extremely disadvantageous financial situation" is an evaluative one, it is possible to confirm or deny that the terms of the marriage agreement put one of the parties in such a position only by comparing the value of the property that, under the terms of the disputed agreement, becomes the property of each party in the event of divorce.

The current case law confirms that the terms of the marriage agreement, according to which all property acquired during the marriage (or the vast majority of property) is the personal private property of one of the spouses, are such that they put the other spouse in an extremely disadvantageous financial position - the Supreme Court came to the corresponding conclusion in its decision of February 26, 2020 in case No. 755/19197/18.

In this case, the terms of the disputed marriage contract stipulate that all real and personal property (an apartment, a residential house, two land plots, kitchen equipment, furniture, other things, vehicles, property rights acquired by the spouses after the marriage contract, etc. The courts of all three instances concluded that such conditions

put the plaintiff at an extreme disadvantage compared to the defendant and the provisions of the law.

The Family Code of Ukraine provides for the possibility to change the terms of the marriage contract, to refuse or terminate the marriage contract.

Thus, unilateral change of terms or withdrawal from the agreement is not allowed; the marriage agreement may be amended by agreement of the parties (such agreement shall be notarized). The spouses have the right to withdraw from the marriage agreement (at the choice of the spouses, the rights and obligations established by the marriage agreement are terminated from the moment of its conclusion or on the day of submission of the application for withdrawal to the notary). At the request of one of the spouses, a marriage agreement may be amended by a court decision if it is in the interests of the spouse, the interests of the children, and the interests of the disabled adult daughter or son that are of significant importance. At the request of one of the spouses, a marriage contract may be terminated by a court decision on grounds of significant importance, in particular, if it is impossible to fulfill it.

## TOPIC 8. DETERMINATION OF THE CHILD'S ORIGIN

Determination of the child's descent from the mother (certification of maternity) does not depend on the fact whether the woman who gave birth to the child was married or not. Moreover, maternity may be certified even if the child's father is not identified. If there is no record of the child's father in the child's birth certificate or the record of the father was made in accordance with the established procedure at the mother's request, the woman who gave birth to the child is considered a single mother.

As a general rule, a medical birth certificate is a document confirming that a child is born to a certain mother. A medical birth certificate is issued when a mother is discharged from the hospital by all healthcare facilities where she gave birth. In cases of home births, a medical birth certificate is issued by the health care facility whose health care worker (doctor, nurse practitioner, midwife) delivered the baby. In exceptional cases, if a child is born at home or elsewhere without medical assistance, the child's birth is registered by the civil registry office. In such cases, the fact of the child's birth is

confirmed by the signatures of two witnesses, as well as a medical certificate confirming that the child was under the supervision of a medical institution.

The procedure for determining the child's origin depends primarily on whether the child's parents are married or not. There are almost no questions about determining the origin of a child when he or she is born to a woman who is married in a marriage registered in accordance with the procedure established by law.

Part 1 of Article 122 of the Family Code of Ukraine establishes a general presumption that a child's origin is from a mother and father who are married to each other. Thus, a child conceived and (or) born in marriage is considered to be descended from the spouses. At the same time, the mother of the child does not have to provide evidence of the child's origin from her husband, and the latter does not have to prove his paternity. The mere existence of a marriage between the child's mother and her husband is proof of the child's descent from this man. A father and mother who are married are recorded as the child's parents in the Book of Births at the request of either of them. If the mother of a child who is in a registered marriage declares during the birth registration that her husband is not the father of the child and therefore requests that he not be indicated as the father in the child's birth record, her request can be granted only if there is a joint statement by the mother and her husband that he is not recognized as the child's father. The fact that a woman is married is usually established at the time of the child's birth. However, if at the time of the child's birth a woman is not married (for example, her husband died before the child's birth or the marriage was declared invalid), the fact that the child was conceived in marriage is legally relevant for establishing paternity. In this case, the period from the date of termination of the marriage or its invalidation to the date of birth of the child should not exceed ten months. An exception to this rule is established by Article 124 of the Family Code of Ukraine, according to which, if a child is born before the expiration of ten months from the date of termination of the marriage or invalidation of the marriage, but after the registration of the remarriage of his or her mother with another person, it is considered that the child's father is the mother's remarried husband. The paternity of the previous husband may be determined in the following way:

- on a voluntary basis with the submission of a joint application to the civil registry office by the previous spouse and the remarried spouse;

- compulsorily, if there is a court decision to determine the paternity of the previous spouse.

Unfortunately, today the problem of infertile marriages is very acute. This trend is caused by the ecological state of the environment, the consequences of the Chernobyl accident, a decline in living standards, etc. In 1987, new treatment programs of assisted reproductive technologies began to be used in the treatment of infertility in Ukraine. This type of medical care is provided for in Article 48 of the Fundamentals of Ukrainian Healthcare Legislation. In accordance with this provision, artificial insemination and embryo implantation are carried out in accordance with the conditions and procedure established by the Ministry of Health of Ukraine.

The determination of the child's origin from the father and mother in the case of artificial insemination and embryo implantation is regulated by Article 123 of the Family Code of Ukraine. Based on the fact that in the joint statement of commitment, the spouses assume equal rights and obligations of parents to raise and maintain the unborn child, in the event that they are subject to medical programs of assisted reproductive technologies, they are both registered as the child's parents. At the same time, one of them may realize that he or she is not the biological father (mother) of the child.

Thus, in the case of artificial insemination of a wife, carried out with the written consent of her husband, he is recorded as the father of the child born to his wife. If an embryo conceived by a married man and another woman is implanted into his wife's body, the child is considered to be born to the spouses.

In the case of implantation of an embryo conceived by a married couple into the body of another woman, the parents of the child are the spouses. If a child is born to a woman who has had an embryo conceived by a married couple implanted, the birth is registered at the request of the spouses who consented to the implantation. At the same time, a notarized written consent of the spouse to the registration of the child as the child's parents must be submitted along with the document confirming the fact of the

child's birth by this woman. In the column "For notes", a corresponding entry is made: the child's mother, according to the medical birth certificate, is a citizen (surname, name, patronymic).

According to Article 52 of the Constitution of Ukraine, children are equal in their rights regardless of their origin and whether they are born in or out of wedlock. Family law in Ukraine does not distinguish between children whose parents are married to each other and children born to an unmarried mother. There is only a different procedure for determining the child's origin.

The determination of the origin of a child whose parents are not married to each other may be made

- by joint application of the child's mother and father (Article 126 of the Family Code of Ukraine);

- in court (Article 128 of the Family Code of Ukraine).

Thus, the legislator establishes two procedures for determining the origin of a child whose parents are not married to each other:

- voluntary

- judicial.

The joint application of a woman and a man who are not married to each other for registration as mother and father of a child (Article 126 of the Family Code of Ukraine) indicates that their decision is voluntary. Therefore, the registration of the child's origin is carried out at the registry office without any preliminary procedures, including court proceedings. Such an application may be submitted by the said persons to the registry office both before and after the birth of the child. Their personal presence is not required when submitting the application. The father (mother) may file an application for recognition of paternity through a representative or send it by mail. The only prerequisite in these cases is the notarization of the application or the representative's powers.

The right to recognize oneself as the father (mother) of a child is not limited by the age criterion. However, if an application for recognition as the child's father is filed by a

minor, the registry office shall notify the minor's parents, guardian, or custodian of the registration as the child's father.

Acknowledgment of paternity is an expression of will by a person who considers himself or herself the child's father. However, the mere expression of a person's will to recognize himself as the father of a particular child is not enough to trigger legal consequences. The will of the child's mother is also required, which consists in expressing her consent to the man being registered as the father of her child. That is why it is required to submit a joint application to the registry office by the child's mother and the man who considers himself the child's father.

On the other hand, recognition of paternity is a statement of the fact of biological paternity of the person who has applied to the registry office. The legal literature is virtually unanimous in its opinion that acknowledgment of paternity requires a combination of natural and biological (blood) kinship and volitional factors. This is due to the fact that the purpose of paternity recognition is to confirm (establish) the already existing biological (blood) relationship between a man who recognizes himself as a father and a child.

## TOPIC 9. ADOPTION.

In Ukraine, there are the following forms of family placement of orphans and children deprived of parental care: guardianship/custody; foster care; family-type children's home; adoption.

In order to grant a child the status of an orphan or a child deprived of parental care, the children's service at the child's place of origin must collect the necessary documents (the child's birth certificate and documents certifying the circumstances under which the child was left without parental care) within two months.

The decision on granting the status of an orphan or a child deprived of parental care is made by the district, district in Kyiv and Sevastopol state administration, executive body of the city or district council at the place of origin of such a child upon the proposal of the service for children.

The status of an orphan and a child deprived of parental care is the status of a child determined in accordance with the law, which entitles him or her to full state support and benefits provided by law and which is confirmed by a set of documents certifying the circumstances due to which the child does not have parental care.

The status of an orphan is granted to children whose parents have died or are deceased, as evidenced by the death certificate of each parent.

The status of a child deprived of parental care is granted to children whose parents

- deprived of parental rights, recognized as missing or incapacitated (based on a court decision);

- declared dead (on the basis of a parental death certificate issued by the state civil registration authorities on the basis of a court decision);

- are serving a sentence in a penitentiary, which is confirmed by a court verdict;

- are in custody for the duration of the investigation, which is confirmed by a court decision;

- are wanted by the internal affairs authorities in connection with child support evasion, which is confirmed by a court order or a certificate from the internal affairs authorities on the search for parents and the absence of information about their whereabouts;

- have a long-term illness that prevents them from fulfilling their parental responsibilities, as evidenced by the conclusion of a medical and social expert commission.

**Adoption.** According to Ukrainian law, adoption is the adoption of a person into the family as a daughter or son by an adoptive parent on the basis of a court decision. An exception is the adoption of a child who is a citizen of Ukraine but resides outside of Ukraine, as in this case the adoption is carried out at a consular office or diplomatic mission of Ukraine.

Only those children who have been officially granted the status of an orphan or a child deprived of parental care are eligible for adoption.

A child can be adopted between the ages of 2 months and 18 years. Except in exceptional cases, when a court decision allows an adult who is an orphan or deprived of parental care before reaching the age of 18 to be adopted.

Ukrainian law defines the range of persons who can be adoptive parents. These are:

- a legally capable person over the age of 21, except when the adopter is a relative of the child;

- the person must be at least 15 years older than the child. In case of adoption of an adult, the age difference cannot be less than 18 years;

- spouses;

- persons living in the same family;

- if the child has only a mother or only a father who lose legal ties with the child due to adoption, the child's adoptive parent may be one man or one woman.

The preemptive right to adoption is granted to:

- Citizens of Ukraine in whose family the child is being brought up;

- Citizens of Ukraine who are relatives of the child;

- the husband of the mother or the wife of the father of the child;

- a person who wants to adopt several children who are brothers or sisters at once.

Cannot be an adoptive parent:

- limited in legal capacity or recognized as incapacitated;

- deprived of parental rights, unless these rights have been restored;

- were adoptive parents (guardians, trustees, foster parents, foster parents) of another child, but the adoption was canceled or invalidated through their fault;

- are registered or undergoing treatment in a psychoneurological or narcological dispensary;

- abuse alcohol or drugs;

- do not have a permanent place of residence and permanent earnings (income);

- suffer from diseases included in the list approved by the order of the Ministry of Health of Ukraine;

- are unmarried foreigners, unless the foreigner is a relative of the child;

- have an outstanding or unexpunged criminal record for committing other crimes in accordance with the procedure established by law.

To become a candidate for adoptive parents, persons wishing to adopt a Ukrainian child submit a written application for registration as candidates for adoption to the service (department) for children's affairs. If one of the spouses is unable to personally appear at the Service for Children's Affairs to file an application, his or her notarized application may be submitted by the other spouse.

The following documents must be attached to the application

- a copy of the passport or other identity document

- a copy of the marriage certificate;

- a salary certificate for the last 6 months or a copy of the income tax return for the previous calendar year certified by the tax authorities;

- a health certificate for each applicant;

- notarized written consent of the other spouse to the adoption of the child (in case of adoption of the child by one of the spouses);

- a certificate of criminal record for each applicant issued by the internal affairs authorities at the place of residence;

- a copy of the document confirming the right of ownership or use of the candidate's residential premises;

- a certificate of completion of a training course on the adoption of orphans and children deprived of parental care, with recommendations on the number, age and health status of children who may be adopted by the applicant, in the form approved by the Ministry of Social Policy of Ukraine. If the citizens of Ukraine wishing to adopt a child are the child's relatives, guardians, trustees, foster parents or foster parents, such a certificate is not required.

In case of adoption of a child by one of the spouses, a health certificate and a certificate of criminal record are submitted by each spouse.

After submission of the documents, the Service for Children's Affairs within 10 days:

- checks the documents for compliance with the requirements of the law;

- Conducts a conversation with the applicants, explaining to them the rights and obligations of candidates for adoption, adoptive parents, legal consequences of adoption, and the procedure for monitoring the living conditions of adopted children

- visits applicants at their place of residence and draws up a report on the examination of living conditions;

- considers the applicants' ability to become adoptive parents and prepares a relevant conclusion;

- in case of a positive decision, registers the applicants as candidates for adoption and issues a conclusion on the possibility of becoming adoptive parents.

After meeting and establishing contact with the child, candidates for adoption apply to the Children's Service with a statement of their desire to adopt the child. The Service prepares a conclusion on the feasibility of adoption and its compliance with the child's interests.

After receiving the conclusion, applicants apply to the local court at the child's place of residence (stay) with a statement of claim for adoption, with the following documents attached: copies of passports; copies of marriage certificates; copies of birth certificates; characterization of the applicant from the place of work; income statement; characterization of the child from the educational institution; conclusion of the Service for Children's Affairs on the possibility of being an adoptive parent; certificate of no criminal record; health certificate; certificate of registration at the place of residence; payment card; and a copy of the child's birth certificate.

After a positive court decision and its entry into force, the child is considered adopted, and the adopter is obliged to personally pick up the child from his or her place of residence upon presentation of a copy of the court decision on adoption in the presence of a representative of the children's service.

The procedure for the adoption of Ukrainian children by foreign nationals is carried out on the general grounds described above, but has certain differences and nuances.

A child who is a citizen of Ukraine may be adopted by a foreigner if he or she has been registered with the relevant executive authority for at least one year and has reached the age of five.

Adoption may be carried out before the expiration of the above one-year period, as well as before the child reaches the age of five, if

- the adopter is a relative of the child;

- the child suffers from a disease included in a special list of diseases approved by the central executive body responsible for the formation of state policy in the field of health care;

- all siblings are adopted into one family, if one of them has reached the age of five and has been registered with the relevant executive authority for at least one year;

- foreigners have expressed a desire to adopt a child who is a sibling of a child previously adopted by them.

Foreigners who are

- relatives of the child;

- Citizens of countries with which Ukraine has concluded an agreement on the provision of legal assistance (such countries include, in particular, Poland, Lithuania, Latvia, Romania, Moldova, Georgia).

The adoption of a child by a foreigner requires the consent of the relevant executive authority implementing state policy in the field of adoption and protection of children's rights. This executive authority sends a request to the Ministry of Internal Affairs of Ukraine to check the foreigners adopting a child for the presence or absence of compromising information in law enforcement agencies of other states and the General Secretariat of Interpol, and only after a positive conclusion is given, the foreigner is granted the right to adopt.

An adopted child retains Ukrainian citizenship until he or she reaches the age of eighteen.

**Recognition of adoption as invalid.** An adoption is recognized as invalid by a court decision if it was carried out without the consent of the child and parents, if such consent was necessary.

An adoption is recognized as invalid by a court decision if the adoptive parent did not want the rights and obligations arising from the adoption (fictitious adoption).

An adoption may be declared invalid by a court decision if it was carried out on the basis of forged documents. If one of the spouses adopts a child of the other spouse, the adoption may be declared invalid by a court decision if it is established that at the time of the adoption the other spouse did not intend to continue the marriage.

An adoption declared invalid is annulled from the moment it is made. If an adoption is declared invalid, the rights and obligations that arose earlier and are established by law for the adoptive parent, his or her relatives and the adopted child shall cease.

If the adoption is recognized as invalid, the rights and obligations between the child, his or her parents and other relatives by descent are restored. In case of invalidation of an adoption, a child under the age of fourteen shall be handed over to his or her parents or other relatives at the request of the parents or other relatives. If the adoption is recognized as invalid in respect of a child who has reached the age of fourteen, the child's place of further residence is determined with his or her consent.

If it is impossible to transfer the child to parents or other relatives, the child is placed under the care of a guardianship and custody agency. If the adoption is recognized as invalid, the child's surname, name and patronymic that he or she had before the adoption are restored. At the request of the child, he or she has the right to continue to be called by the surname, name and patronymic that he or she received in connection with the adoption.

**Cancellation of adoption.** An adoption may be canceled by a court decision if:

1) it is contrary to the interests of the child, does not provide him or her with family upbringing

2) the child suffers from dementia, mental or other serious incurable illness, which the adopter did not know and could not have known at the time of adoption

3) the adoptive parent and the child have developed, regardless of the will of the adoptive parent, a relationship that makes it impossible for them to live together and for the adoptive parent to fulfill his or her parental responsibilities.

The adoption may not be canceled after the child reaches the age of majority. An adoption may be canceled after the child reaches the age of majority if the unlawful behavior of the adoptee or the adoptive parent threatens the life or health of the adoptive parent, the adopted child or other family members. Adoption of an adult may be canceled by a court by mutual consent of the adopter and the adopted person or at the request of one of them if family relations between them have not developed. The adoption is canceled from the date the court decision enters into force.

In case of cancellation of adoption:

1) the rights and obligations arising in connection with the adoption between the child and the adoptive parent and his/her relatives are terminated for the future;

2) the rights and obligations between the child and his or her parents and other relatives by descent are restored;

3) the child is handed over to the parents or other relatives at the request of the parents or other relatives, and if this is not possible, the child is handed over to the guardianship and custody authority;

4) if the child is not handed over to the parents, the child retains the right to live in the residential premises in which he or she lived after adoption;

5) the child has the right to retain the surname, name and patronymic he or she received in connection with the adoption. At the child's request, he or she is assigned the surname, name, and patronymic that he or she had before adoption;

6) if the child is not handed over to the parents, the court may order the recovery of child support from the person who was the child's adoptive parent, provided that the latter can provide financial assistance.

The right to file a lawsuit to annul or invalidate an adoption is granted to parents, the adoptive parent, guardian, custodian, guardianship authority, prosecutor, and the adopted child who has reached the age of fourteen.

After the court decision to declare the adoption invalid or to cancel the adoption enters into force, the court must send a copy of the decision to the civil registry office at the place of birth registration of the child within one month. Based on the court decision

to cancel or invalidate the adoption, the civil registry office shall make appropriate changes to the child's birth record.

## TOPIC 10. GUARDIANSHIP AND CUSTODY OF CHILDREN.

Appointment of guardianship and custody, guardianship and trustee is one of the means of protecting the rights and interests of children who are orphans or otherwise deprived of parental care.

The choice of this particular form of child welfare arrangement depends on various circumstances. Such a choice is influenced by the presence of the child's relatives (grandparents, brother, sister), the absence of a person willing to adopt the child, or the refusal of a child whose parents have died to adopt him or her.

Guardianship as a legal institution was established a long time ago. According to the Russkaya Pravda, "if there are small children at home who cannot take care of themselves, and the mother gets married, then they should be given to someone who is closer to them, with their income and their home, until they reach their years. And the goods should be given before the people, and whatever is born with the goods or arrives is for him, and the goods themselves should be returned to them, and the purchase should be given to him, because he fed them and took care of them, and if there is a litter of cattle or livestock, he should give back everything that he took away, and whatever he created, he should pay it all to the children."

From this we can conclude that according to the Rus' Pravda, guardianship was appointed in the interests of the child; after the death of the husband, the mother became the guardian, and only when she remarried did another person become the guardian. The guardians were mostly relatives of the child's father.

The chapter (On Guardianship) of the Collection of Little Russian Rights of 1807 states that minor male children under 18 and female children under 13 after the death of their parents should be under guardianship so that the parents' movable and immovable property would not be destroyed. The guardians should not be foreigners, but local natives, people of good character, piety, and not spendthrifts.

Today, issues related to the establishment and implementation of guardianship and custody of children left without parental care are regulated by Chapter 19 of the Family Code of Ukraine "Guardianship and Custody of Children".

In family law, custody and guardianship are considered to be the transfer of orphans and children deprived of parental care to other persons for the purpose of raising and protecting their property and personal rights.

Orphans are children whose parents have died or are dead; children deprived of parental care; children left without parental care due to deprivation of parental rights, removal from parents without deprivation of parental rights, recognition of parents as missing or incapacitated, or declaration of death, serving a sentence in a penitentiary and being in custody during the investigation, being searched for by the National Police due to child support evasion and lack of information about their whereabouts, and parents' long-term illness that prevents them from fulfilling their parental responsibilities; abandoned children and children whose parents are unknown; children who have been abandoned by their parents and homeless children.

Instead, guardianship and custody may be established during the lifetime of the parents of minor children in the following cases:

- when the parents are deprived of parental rights by a court or a decision is made to take the child away because staying with the parents is dangerous for the child's life;

- the parents are recognized in the established procedure as incapacitated or partially incapacitated (mentally ill, mentally retarded, etc.);

- have not lived together with the child for more than six months and do not participate in the child's upbringing and maintenance without good reason;

- do not show parental attention and care to the child or have abandoned the child, and this is confirmed by relevant acts of the internal affairs authorities;

- have abandoned the child in accordance with the procedure established by law;

- are under investigation; have moved to a permanent place of residence or a permanent place of work abroad or are on a long business trip.

In the meantime, the establishment of guardianship and custody over an orphan and a child deprived of parental care is not mandatory. In cases provided for by law,

other persons, primarily close relatives, are not only responsible for the maintenance and upbringing of orphans and children deprived of parental care, but also for the upbringing of orphans and children deprived of parental care on the basis of the Family Code and the Civil Code.

Guardianship and custody differ in their content. Guardianship is established over a child under the age of fourteen (a minor) who has partial civil capacity, i.e. has the right to independently perform only minor household transactions, exercise personal non-property rights to the results of intellectual and creative activity protected by law, and is not liable for the damage caused by him/her.

Based on this, the guardian replaces the ward in the exercise of all other rights and obligations, being the ward's legal representative. Instead, he or she is not entitled to waive the ward's property rights without the permission of the guardianship and trusteeship authority; issue written commitments on behalf of the ward; or enter into agreements subject to notarization and/or state registration.

Guardianship is established over a child between the ages of fourteen and eighteen (a minor) who has incomplete civil capacity, i.e. has the right to independently dispose of his or her earnings, scholarship or other income, and to independently exercise rights to the results of intellectual and creative activity protected by law, to be a participant (founder) of legal entities, unless prohibited by law or the constituent documents of the legal entity, to independently conclude a bank deposit (account) agreement and dispose of the deposit made in his/her name (funds on the account). Such a child is personally liable for breach of an agreement entered into by him or her independently in accordance with the law and is liable for the damage caused by him or her on a general basis. On this basis, the guardian gives consent to the performance of other transactions by the minor child, except as provided by law.

For example, according to Article 70 of the Civil Code of Ukraine, a guardian may not consent to the conclusion of contracts between a ward and his or her spouse or close relatives, except for the transfer of property to the ward under a gift agreement or for free use under a loan agreement, and may also consent to the conclusion of certain contracts only with the permission of the guardianship and trusteeship authority (Part 2

of Article 71 of the Civil Code of Ukraine). The guardian protects the child from abuse by other persons. The guardianship and custody authority controls the activities of the guardians (custodians) regarding the conditions of maintenance, upbringing, and education of the child, exercising such control in various ways, in particular, by checking the child's living conditions, upbringing and education, checking the reports of the guardians (custodians) on their activities for a certain period, interviewing the guardians' neighbors, teachers, etc.

The law provides for only two cases when a court may establish guardianship and custody of a child.

The court establishes guardianship over a minor if it is established in the course of the proceedings that the minor is deprived of parental care and appoints a guardian upon the proposal of the guardianship and custody authority. The court establishes guardianship over a minor if it is established in the course of the proceedings that the minor is deprived of parental care and appoints a guardian upon the recommendation of the guardianship and custody agency.

Guardianship or custody is established at the place of residence of the child in need of guardianship or custody, or at the place of residence of the guardian or custodian. Only an individual with full civil capacity can be a guardian or custodian. A guardian or custodian is appointed only with the written consent of the ward and usually from among relatives or close friends of the ward. The child's wishes are taken into account when the child reaches the appropriate age.

A preemptive right is granted to several persons who wish to become guardians or custodians of the same child:

- Relatives of the child, regardless of their place of residence;

- persons in whose family the child lives at the time when the grounds for establishing guardianship or custody arose.

Guardians (trustees) may not be persons who:

- are under 18 years of age;

- are recognized in accordance with the established procedure as incapacitated or of limited capacity;

- are registered or treated in psychoneurological and drug treatment facilities;

- were previously guardians or custodians and their guardianship or custody was terminated due to their fault;

- deprived of parental rights;

- whose interests contradict the interests of persons subject to guardianship or custody;

- convicted of a serious crime.

The decision to establish guardianship or custody is made by the guardianship and custody authority within one month after the submission of the application and the documents required by law.

In the case of guardianship or custody of a child in an institution for orphans and children deprived of parental care, the children's service, together with the administration of the institution, ensures that the child is placed with a guardian or custodian and expelled from the institution within 15 days after the decision to establish guardianship or custody is made. An individual may be appointed one or more guardians or custodians. The appointed guardian or custodian is issued a certificate of the established form.

The rights and obligations of a guardian or trustee are defined in Article 249 of the Family Code of Ukraine. According to it, a guardian is obliged to raise a child, take care of his or her health, physical, mental, and spiritual development, and ensure that the child receives a complete general secondary education.

A guardian or custodian has the right to independently determine the ways of raising a child, taking into account the child's opinion and the recommendations of the guardianship and custody authority. The guardian or custodian has the right to demand the return of the child from any person who keeps him or her not on the basis of the law or a court decision. A guardian or custodian has no right to interfere with the child's communication with his or her parents and other relatives, unless such communication is contrary to the child's interests. The civil rights and obligations of a guardian or custodian are established by the Civil Code of Ukraine. The grounds for the right to pay

for the services of a guardian and a custodian, its amount and the procedure for payment are established by the Cabinet of Ministers of Ukraine.

Guardianship is usually terminated when there is no longer a need for its continuation. The grounds for termination of guardianship are:

- a minor reaches the age of fourteen, unless he or she is duly recognized as incapacitated due to mental illness;
- return of the minor to the parents for upbringing;
- death of the ward;
- death of the guardian.

If one of these grounds exists, the guardianship is terminated automatically. Guardianship automatically terminates in the event of the ward's death or when the child reaches the age of fourteen. It should be borne in mind that even after the child's death, the guardian must take care of the preservation of the child's property until the heirs accept it or the relevant authority takes measures to protect it.

The guardianship of minor children is terminated:

- upon reaching the age of eighteen;
- upon registration of marriage by a minor;
- as a result of the death of the person under guardianship;
- upon the death of the guardian.

In all these cases, the guardianship is terminated automatically. The above grounds for termination of guardianship are based on the principles of a person's civil legal capacity. As a general rule, a person's full legal capacity arises upon reaching the age of majority (eighteen years). An exception to this rule is the conditions of legal capacity related to marriage registration.

Circumstances that may result in the dismissal of guardians and custodians at their request from their duties are provided for in the Civil Code of Ukraine, as well as when a relationship has developed between the guardian, custodian and child that prevents them from exercising guardianship or custody (Article 251 of the Family Code of Ukraine).

## TOPIC 11. FOSTER FAMILIES AND FAMILY-TYPE HOMES

In Ukraine, there are the following forms of family-based placement of orphans and children deprived of parental care: guardianship/custody; foster care; family-type children's home; adoption.

In accordance with clause 1 of the Procedure for the Establishment and Operation of a Foster Care Family, Placement, and Stay of a Child in a Foster Care Family, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 893 of 20.08.2021, this Procedure defines the mechanism for introducing and organizing the functioning of a foster care family, providing foster care services for a child in difficult life circumstances, taking measures to protect the child and ensuring the right to care and upbringing in a safe and supportive family environment.

Pursuant to Article 252 of the Family Code of Ukraine, foster care is the temporary care, upbringing and rehabilitation of a child in the family of a foster caregiver for the period of overcoming difficult life circumstances by the child, his or her parents or other legal representatives.

The purpose of child foster care is to ensure the protection of the rights of a child who, due to difficult life circumstances, is temporarily unable to live with his or her parents/legal representatives, to provide him or her and his or her family with services aimed at reintegrating the child into the family or to provide the child with an appropriate status for making further decisions taking into account the best interests of the child to ensure his or her right to be brought up in a family or in conditions as close to family as possible.

A candidate for foster care may be a person who has expressed a desire to perform the duties of a foster caregiver on a professional basis and who has

- an adult family member (husband or wife, son or daughter, other family member) or an adult person living in the same living space as the candidate for foster care, who is ready to be a voluntary assistant to the candidate for foster care and to undergo training together with him/her and assist the foster caregiver in caring for the child placed in the foster caregiver's family (hereinafter referred to as a voluntary assistant)

- adequate living conditions at the place of their actual residence, including the availability of a separate room (except for passage rooms, attic or basement rooms) and household amenities.

Candidates for foster care cannot be persons who:

- are raising their own children under the age of four, a child with a disability who has a disability;

- are a guardian, custodian, foster parent or foster parent;

- have limited legal capacity;

- are recognized as incapacitated;

- deprived of parental rights, if these rights have not been restored;

- are registered as families/individuals in difficult life circumstances;

- in relation to whom a decision of the guardianship and custody authority or court has been made to remove the child;

- are under investigation;

- were adoptive parents (guardians, custodians, foster parents, foster carers), foster carers of a child, but the adoption was canceled or invalidated (guardianship, custody or activities of a foster family or family-type children's home were terminated), or the child foster care agreement was terminated through their fault;

are registered or undergoing treatment in a psychoneurological or narcological dispensary;

- abuse alcohol or drugs;

- suffer from diseases listed by the Ministry of Health;

- have been convicted of criminal offenses against life and health, freedom, honor and dignity, sexual freedom and sexual inviolability of a person, against public safety, public order and morality, in the field of trafficking in narcotic drugs, psychotropic substances their analogues or precursors, as well as for crimes under Articles 148, 150, 150-1, 164, 166, 167, 169, 181, 187, 324, 442 of the Criminal Code of Ukraine, or have an unexpunged or unexpunged conviction for other criminal offenses in accordance with the procedure established by law;

- are registered with the National Police as offenders in accordance with the Procedure for registration, preventive work and removal from the preventive registration of offenders by an authorized unit of the National Police, approved by Order of the Ministry of Internal Affairs of February 25, 2019, No. 124;

need constant third-party care for health reasons.

Based on the results of the initial selection and on the basis of the recommendation received, the service prepares a decision of the guardianship and custody authority and a draft agreement on the conditions for the introduction and organization of the functioning of the child foster care service to be provided by the family of the foster carer (hereinafter referred to as the agreement on the conditions for the introduction of foster care), the model form of which is approved by the Resolution of the Cabinet of Ministers of Ukraine of August 20, 2021 No. 893 "Some issues of child protection and provision of child foster care services".

After concluding an agreement on the conditions for the introduction of foster care, the service enters information about the foster carer and voluntary helper into the Unified Data Bank on Orphans, Children Deprived of Parental Care, and Families of Potential Adopters, Guardians, Foster Parents, and Foster Parents within three business days.

District state administrations in Kyiv and Sevastopol, executive bodies of village, settlement, city, district councils in cities (if established) within five working days after the conclusion of the agreement on the conditions for the introduction of patronage accrue from the relevant local budget reimbursable financial assistance (hereinafter - reserve funds), which is paid to the foster carer for the timely provision of care, education and rehabilitation of the child (hereinafter - the needs of the child) placed in the family of the foster carer, until the moment of receipt of state social assistance.

The amount of reserve funds must correspond to the established amount of social assistance based on the simultaneous placement of two children in a foster care family and is 2.5 times the subsistence minimum for each child of the corresponding age (up to six years and from six to 18 years).

Children who are in difficult life circumstances that negatively affect or may affect their life, health and development, including those in foster care, may be placed with a foster care family:

children left without parental care, including those who are in a health care facility, temporarily placed in a family, a center for social and psychological rehabilitation of children or in an institutional care and education facility in accordance with paragraph 31 of the Procedure for the implementation by guardianship and custody authorities of activities related to the protection of children's rights, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 866 of September 24, 2008 "Issues of activities of guardianship and custody authorities related to the protection of children's rights";

- children who were in other forms of family-based care;

- underage/minor pregnant women or underage/minor women in childbirth with an infant who have been left without parental care or are in difficult life circumstances.

A child's written consent to placement with a foster care provider is required if the child has reached the age and developmental stage where he or she can express it.

If it is necessary to place a child with a disability in a foster care family, such a child shall be transferred to the said family if there are appropriate living conditions for the child with a disability, the foster caregiver is ready to provide care, education and rehabilitation, and the organization/institution/agency that will provide the necessary medical, educational, rehabilitation services to the child and advise the foster caregiver is identified.

Only children who were brought up in the same family or are siblings, including siblings of children already previously placed with a foster caregiver, can be placed in the foster care family at the same time.

The total number of children placed in the family of a foster caregiver is determined by the availability of conditions for living, care, education and rehabilitation of each such child, as specified in the agreement on the conditions of foster care.

The period of stay of a child in a foster care family may not exceed three months and is established by the child welfare and guardianship agency based on the results of consideration of the issue at a meeting of the commission for the protection of children's

rights and taking into account the results of a safety assessment or assessment of the needs of the family/person.

If there are circumstances that justify the need and expediency of the child's stay in the family of a foster caregiver beyond the specified period, the child welfare and guardianship agency may decide to extend it for no more than six months in accordance with the conclusion of the interdisciplinary team.

The specifics of fulfilling the responsibilities for the care, upbringing and rehabilitation of a particular child placed with a foster caregiver's family are determined by the foster care agreement.

The patronage agreement is terminated:

- based on the decision of the guardianship and custody authority to return the child to the family in case the child, his/her parents, other legal representatives overcome difficult life circumstances or upon the expiration of the period of stay of the child in the family of the foster care provider specified in the foster care agreement, where the third party to the foster care agreement is the child's parents/legal representatives or one of them;

- in the case of adoption, guardianship or custody, placement in a family of citizens (foster family or family-type children's home) or in a small group home;

- in case of reaching the age of majority or in connection with the acquisition of full civil capacity in cases provided for by law;

- in case of conditions or facts unfavorable for the child's stay in the foster care family or circumstances specified in paragraph 5 of this Procedure;

- in case of death of the child, foster caregiver or voluntary helper.

The decision to terminate the foster care agreement and remove the child from the family of the foster caregiver is made by the guardianship and custody authority following consideration of the issue by the commission for the protection of children's rights on the basis of a package of documents submitted by the service that justifies the expediency of making such a decision.

The patronage agreement is terminated on the basis of an order of the village, settlement, or city head upon the submission of the service in the following cases

- Inability to provide child patronage services in a state of emergency or martial law;

- if the family of the foster caregiver encounters circumstances or facts unfavorable for the child's stay in the family of the foster caregiver.

The decision to terminate the foster care agreement and discharge the child from the family of the foster caregiver is made by the village, settlement, or city mayor on the basis of documents submitted by the service that justify the expediency of making such a decision. The grounds for making such a decision are the conclusion of the service on the achievement of the goals set out in the individual plan of social protection of the child.

A foster family is one of the forms of placement of orphans and children deprived of parental care. The conditions for the establishment and peculiarities of the functioning of foster families are stipulated by the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Regulation on Foster Families" of 26.04.2002 No. 565.

The main provisions on foster care are contained in Chapter 20-1 of Section IV of the Family Code of Ukraine. According to Art. 256-1 of the Family Code of Ukraine, a foster family is a family that has voluntarily taken one to four orphans and children deprived of parental care for upbringing and cohabitation. Foster parents are spouses or unmarried persons who have taken orphans and children deprived of parental care for cohabitation and upbringing.

Foster parents are the legal representatives of foster children and act as guardians or trustees without special powers. Foster children are orphans and children deprived of parental care who are placed for upbringing and cohabitation with a foster family. The placement of an orphan and a child deprived of parental care in a foster family requires the child's consent if the child has reached the age and level of development that allows him or her to express it. The child's consent to the placement in a foster family is ascertained by an official of the institution where the child is placed in the presence of the foster parents and a representative of the guardianship and custody authority, and a corresponding document is drawn up. Foster children live and are brought up in a foster

family until they reach the age of 18, and in the case of studying in vocational and higher education institutions of the I-IV accreditation levels - until they graduate. Foster children retain the right to alimony, pensions, other social benefits, and compensation for loss of breadwinner that they had before being placed in a foster family.

The decision to create a foster family is made by the district, district in Kyiv and Sevastopol state administrations, the executive committee of the city (cities of the Republican Autonomous Republic of Crimea and cities of regional significance) council in accordance with the procedure established by the Cabinet of Ministers of Ukraine. A contract on the placement of children in a foster family is concluded between the foster parents and the body that made the decision to establish a foster family on the basis of a standard contract.

The agreement is terminated in the following cases:

- unfavorable conditions for raising children and living together in the foster family (serious illness of the foster parents, change in their marital status, lack of mutual understanding between parents and children, conflict relations

- failure of foster parents to fulfill their obligations for the proper upbringing, development and maintenance of children, violation of the child's antiretroviral therapy regimen, return of children to their birth parents (guardian, custodian, adoptive parent);

the child reaches the age of majority, the parents reach the age of retirement;

- by agreement of the parties and for other reasons provided for in the agreement. In the event of termination of the agreement, the family is deprived of the status of a foster family, and the issue of further placement of children is decided by the guardianship and custody authority (children affected by HIV infection - by the guardianship and custody authority on the basis of the conclusion of a health care facility), which takes exhaustive measures to prevent the return (placement) of children to residential institutions.

## TOPIC 12. PERSONAL NON-PROPERTY RIGHTS AND OBLIGATIONS OF OTHER FAMILY MEMBERS AND RELATIVES.

The existence of rights and obligations of each family member in relation to others is considered one of the most essential features of the family.

Family law defines the basic rights and obligations of not only each spouse and the subjects of family relations of the closest degree of kinship, including parents and children, but also other family members and relatives. These include grandparents, great-grandparents, great-grandparents, brothers, sisters, stepmother, stepfather, stepdaughter, stepson, brothers, sisters and other relatives. They have a legally defined ability to acquire and exercise both personal non-property and property rights, and have corresponding obligations.

The list of personal non-property rights and obligations of other family members and relatives is contained in Chapter 21 of the Family Code of Ukraine. These include, in particular:

- the right of grandparents to raise grandchildren and great-grandchildren (Article 257 of the Family Code of Ukraine)

- the right of brothers and sisters to communicate (Article 259 of the Family Code of Ukraine);

- the right of stepmothers and stepfathers to participate in the upbringing of their stepson or stepdaughter (Article 260 of the Family Code of Ukraine);

- the obligation of a person to take care of his/her grandparents, great-grandparents, and the person with whom he/she lived in the same family (Article 264 of the Family Code of Ukraine);

- the rights of relatives to protect children (Articles 258, 262 of the Family Code of Ukraine) and some other rights.

One of the main tasks performed by most families has always been and is the upbringing of children. Since time immemorial, not only parents have exercised their rights and responsibilities in raising their children, but also grandparents, great-grandparents (as well as other relatives) have been actively involved in the educational process, ensuring the development of their grandchildren and great-grandchildren.

In addition to the example of positive behavior on the part of older family members, communication plays a significant role in the upbringing of not only children

but also grandchildren and great-grandchildren. That is why the provisions of family law, while enshrining the rights of grandparents to participate in the upbringing of their grandchildren and great-grandchildren, also specifically define their mutual right to communication.

Parents or other persons with whom the child lives do not have the right to interfere with the exercise by grandparents, great-grandparents, great-grandparents of their rights to raise their grandchildren and great-grandchildren (part 2 of Article 257 of the Family Code of Ukraine). Other persons with whom a child lives may be, for example, adoptive parents, foster parents (Chapter 20 of the Family Code of Ukraine), guardians or trustees depending on the age of the child, and other persons (usually relatives). If the functions of a guardian or custodian in relation to a child are performed by the administration of the relevant children's or healthcare institution in accordance with the provisions of Article 245 of the Family Code of Ukraine, the obligation not to interfere with the communication of relatives is imposed on the officials representing it (director, chief physician, etc.).

In the process of forming established family ties, family foundations and ensuring natural human rights, it is important to legislate the right of a person to participate in the upbringing of his or her minor siblings, as well as the right of the latter to communicate.

Part 1 of Article 259 of the Family Code of Ukraine stipulates that siblings (full and half) have the rights and obligations established by law for brothers and sisters. Brothers and sisters, including those who live separately, have the right to communicate. Both adult and minor siblings have this right. Adult siblings exercise this right independently. The exercise of this right by minor siblings who live separately is ensured by the obligation of their mother, father, grandparents, and other persons with whom they live to facilitate their communication.

Part 4 of Article 259 of the Family Code of Ukraine defines the right of adults to participate in the upbringing of their minor brothers and sisters, regardless of their place of residence. Parents, grandparents, other relatives or persons with whom minor brothers and sisters of an adult live are obliged not to impede the exercise of this right.

The forms and methods used by adults in exercising the right to participate in the upbringing of their minor brothers and sisters must also not contradict the law and moral principles of society (part 3 of Article 151 of the Family Code of Ukraine).

The provisions of the Family Code of Ukraine define the right of other relatives to participate in the upbringing of children. Article 260 of the Family Code of Ukraine enshrines the right of stepmothers and stepfathers to participate in the upbringing of their stepchildren. They may exercise this right provided that they live together in the same family with their minor stepchildren.

In cases where a child has a natural father (mother) who lives in another family and is not deprived of parental rights, the law recognizes his (her) right to personal upbringing of his (her) children as preferable to other persons (Article 151 of the Family Code of Ukraine). Accordingly, stepmothers and stepfathers are obliged not to interfere with the exercise by their own father or mother of the right to personal upbringing of their children, communication with them, as well as to choose forms and methods of upbringing that do not contradict the law and moral principles of society (part 3 of Article 151 of the Family Code of Ukraine).

These quite reasonable legislative restrictions also apply to the forms and methods of upbringing used by stepmothers and stepfathers for their stepsons and stepsisters. The right of a child to proper parental upbringing (Article 152 of the Family Code of Ukraine), as well as the participation of stepmothers, stepfathers and other relatives in this process, are ensured by state control measures established by law.

Family legislation of Ukraine imposes obligations related to the support of specific persons not only on parents, adult children, wife, husband (including former ones), but also on other family members and relatives, including grandparents, great-grandparents, grandchildren and great-grandchildren, brothers and sisters, stepmother and stepfather, stepsons and stepsisters, actual caretakers and foster children.

The obligation to support other family members and relatives is dealt with in Chapter 22 of the CC of Ukraine. According to the current legislation, the following obligations are provided for:

1. The obligation of grandparents to support their grandchildren. Grandparents are obliged to support their minor grandchildren if they have no mother or father or if their parents cannot provide them with proper support for valid reasons, provided that the grandparents can provide material assistance.

2. The obligation of grandchildren and great-grandchildren to support their grandparents. Adult grandchildren, great-grandchildren are obliged to support disabled grandparents, great-grandparents, who need financial assistance and if they have no husband, wife, adult daughter, son or these persons cannot provide them with proper support for valid reasons, provided that adult grandchildren, great-grandchildren can provide financial assistance.

The obligation to support brothers and sisters. Adult brothers and sisters are obliged to support their minor brothers and sisters who are in need of financial assistance and if they do not have parents, spouses or these persons are unable to provide them with proper support for valid reasons, provided that adult brothers and sisters can provide financial assistance. Adult brothers and sisters are obliged to support disabled adult brothers and sisters in need of financial assistance if they do not have a husband, wife, parents or adult daughter, son, provided that adult brothers and sisters can provide financial assistance.

4. The obligation of stepmothers and stepfathers to support their stepdaughter or stepson. A stepmother or stepfather is obliged to support a minor stepdaughter or stepson who lives with them if they have no mother, father, grandparents, adult brothers and sisters or these persons cannot provide them with proper support for valid reasons, provided that the stepmother or stepfather can provide material assistance. The court may release a stepfather or stepmother from the obligation to support a stepdaughter or stepson or limit it to a certain period of time, in particular in the case of:

1) short-term cohabitation with their mother or father;

2) unworthy behavior in the marriage relationship of the child's mother or father.

5. Obligation of other persons to support the child. Persons in whose family the child was brought up are obliged to provide material assistance to the child if the child

has no parents, grandparents, adult brothers and sisters, provided that these persons can provide material assistance.

6. Obligation of stepdaughter, stepson to support stepmother, stepfather. An adult stepdaughter or stepson is obliged to support a stepmother or stepfather who is unable to work, if they need financial assistance and if they have provided systematic financial assistance to the stepdaughter or stepson for at least five years, provided that the stepdaughter or stepson can provide financial assistance. The stepdaughter's or stepson's obligation to support the stepmother or stepfather arises if the stepmother or stepfather has no husband, wife, adult daughter, son, brothers and sisters or if these persons are unable to provide them with proper support for valid reasons.

The obligation of a person to support those with whom he/she lived as a family before reaching the age of majority. If a person lived with relatives or other persons as a family before reaching the age of majority, he or she is obliged to support disabled relatives and other persons with whom he or she lived for at least five years, provided that this person can provide material assistance. This obligation arises if the person in need of financial assistance does not have a wife, husband, adult daughter, son, brothers and sisters or if these persons cannot provide them with proper support for valid reasons.

The amount of alimony recovered from other family members and relatives for children and disabled adults in need of financial assistance is determined as a percentage of earnings (income) or as a fixed amount of money. In determining the amount of alimony, the court takes into account the financial and marital status of the payer and recipient of alimony. If the claim is not filed against all obligated persons, but only against some of them, the amount of alimony is determined taking into account the obligation of all obligated persons to provide maintenance. At the same time, the total amount of alimony to be recovered for one child must be necessary and sufficient to ensure the harmonious development of the child and may not be less than 50 percent of the subsistence minimum for a child of the corresponding age.

The minimum recommended aggregate amount of alimony to be recovered from other family members and relatives for one child is the subsistence level for a child of

the corresponding age and may be awarded by the court if the alimony payer's earnings (income) are sufficient. The court may determine the period during which alimony will be paid.

At the same time, in order to determine the arrears of alimony collected from other family members and relatives, as well as their full or partial exemption from payment of the arrears, the legislator refers to the provisions of the Family Code of Ukraine regulating the relevant issues of alimony from parents for the maintenance of a child (Articles 194-197 of the Family Code of Ukraine).

Changes in the amount of alimony and exemption from its payment are provided in the following cases:

1. if the financial or marital status of the person paying alimony or the person receiving it has changed, the court may, at the request of either of them, change the established amount of alimony or exempt from its payment;

2. in the presence of other circumstances of significant importance.

As for the court practice, the analysis of the Unified State Register of Court Decisions shows that there are incredibly few cases on recovery of maintenance (alimony) from other family members and relatives compared to the so-called "classic" alimony cases on recovery of alimony from parents for the support of their children.

Most of the existing cases on the recovery of maintenance (alimony) from other family members and relatives concern the recovery of alimony from grandchildren for the maintenance of their grandparents, and these cases were most often finally resolved in the court of first instance and were not subject to appellate review and/or cassation.

However, unlike cases on the recovery of alimony from parents for the support of their children, the scope of proof in cases on the recovery of maintenance (alimony) from other family members and relatives is much broader, and therefore courts often dismiss such claims due to the failure of the plaintiff to prove the facts and circumstances to which he/she refers as the basis for his/her claims.

At the same time, it is worth noting that the mechanism for collecting alimony from other family members and relatives is still valid if the plaintiff properly substantiates and provides evidence to support his or her claims. For example, in case

No. 204/5755/18, the court ordered a grandson to pay alimony for the maintenance of his grandmother: "It has been established that the defendant is the plaintiff's grandson, is an able-bodied person, and has the ability to provide assistance. Taking into account that the plaintiff is an elderly person in need of constant financial assistance, as well as the health and financial situation of the defendant, the latter being a student of a state higher education institution, his marital status - the presence of a disabled child on his support, for the maintenance of which the court has ordered the defendant to pay alimony, the court considers it possible to recover from the defendant in favor of the plaintiff, alimony for her maintenance in the amount of UAH 250 per month, and for life. In addition, the court found that the plaintiff has a granddaughter, who also, according to the plaintiff, does not provide her with financial assistance, so the court notes that the plaintiff has the right to file such a claim against other grandchildren in accordance with Article 266 of the Family Code of Ukraine."

Thus, based on the analysis of the provisions of the current legislation of Ukraine and judicial practice, it can be concluded that the institute of alimony obligations of other family members and relatives exists and is regulated, however, the relevant provisions of the Family Code of Ukraine are rarely applied in practice.

## TOPIC 13. APPLICATION OF UKRAINIAN FAMILY LAW TO FOREIGNERS AND STATELESS PERSONS.

**Foreigners.** Legal regulation of family relations is unique in each system of law. Among the factors that cause significant differences in the family laws of different countries are the following: the level of economic development of states, demographic factors, national characteristics, traditions and customs that have historically developed, everyday life, moral and ethical norms, religious norms, norms of church law, other social norms that reflect the specifics of each nation, a particular society, etc. That is why there are many fundamental differences in the family law of different countries, mostly between the legal systems of countries based on different religious systems.

These factors also complicate the unification of substantive legal norms (for example, the lower limit of the marriage age in the legislation of different states varies from 12 to 21 years).

Differences in the legal regulation of the same factual circumstances give rise to conflicts, i.e., a clash of legal systems of different states when there is a need to regulate family relations complicated by a foreign element.

According to paragraph 2 of Part 1 of Article 1 of the Law of Ukraine "On Private International Law" of 23.06.2005 No. 2709-IV4 , a foreign element is a feature that characterizes private law relations governed by this Law and manifests itself in one or more of the following forms: at least one party to the legal relationship is a citizen of Ukraine residing outside Ukraine, a foreigner, a stateless person or a foreign legal entity; the object of the legal relationship is located in a foreign country; the legal fact that creates, changes or terminates the legal relationship occurred or is occurring in a foreign country.

Taking into account the definition of a conflict-of-laws rule contained in clause 3 of part 1 of Article 1 of the Law of Ukraine "On Private International Law", we note that a conflict-of-laws rule of family law is a rule that determines the law of which state is applicable to legal relations with a foreign element.

Sometimes, in practice, conflicts of conflicts - conflicts of conflict rules - occur as a result of a clash (contradiction) between the conflict rules of different states.

This problem arises in cases where national law refers to foreign law, and the latter's conflict of law provisions require recourse to national law or the law of a third state.

The conflict of conflicts gives rise to "lame" relations, i.e. legal relations that are valid and have legal significance under the legal order of some states, and equally invalid, illegal, and without legal force under the law of other states. Despite the fact that "lame" relations arise in any area of cross-border private law relations, they are much more common in the area of family law relations. Typical examples are "limping" marriages (Ukraine does not recognize marriages concluded in a religious form as a result of the relevant rites in a church by a priest and certified by a document issued by

him, in Ukraine it is impossible to enter into a marriage if a person is already in a registered marriage, even if the legislation of another state allows polygamy) and adoptions, which are recognized by certain states and not by others.

Conflicts of legislation are overcome, in particular, through universal (international treaties) and regional (CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22.01.1993, the Code of Private International Law (Bustamante Code) of 20.02.1928) unification.

For the most part, unification of family law consists in the creation of uniform conflict of laws rules, which partially solves the problem of "lame" legal relations. Ukraine's international treaties (including bilateral ones; Ukraine has signed them with more than 50 states) in the area of family relations are aimed at developing a unified regulation of personal non-property and property relations between different nationalities.

In accordance with the provisions of the theory of transformation of sources of private international law, signed and ratified international treaties of Ukraine are sources of national law (Article 9(1) of the Constitution of Ukraine, Article 3 of the Law of Ukraine "On Private International Law", Article 19 of the Law of Ukraine "On International Treaties of Ukraine").

A similar provision is contained in Art. 13 of the Family Code of Ukraine, according to which international treaties governing family relations, ratified by the Verkhovna Rada of Ukraine, are part of the national family legislation of Ukraine. If an international treaty of Ukraine, concluded in accordance with the established procedure, contains rules other than those established by the relevant act of family law, the rules of the relevant international treaty of Ukraine shall apply.

Along with the unification of family law, there is another way to overcome conflicts - harmonization, which means bringing national legal systems closer together and reducing differences between them.

At the level of the European Union, since September 1, 2001, the Commission on European Family Law has been operating, consisting of 26 experts in the field of family

law and comparative law. This Commission developed the draft Principles of European Family Law in the field of divorce and maintenance relations between former spouses.

At the national level, family legal relations with a foreign element are regulated by Section VI "Peculiarities of Adoption of Children by Citizens of Ukraine Residing Abroad and Foreigners" of the Family Code of Ukraine and Section IX "Conflict of Laws of Family Law" of the Law of Ukraine "On Private International Law".

**Conflict of laws regulation of marriage and its termination**. In each country, the right to enter into marriage is regulated by law in different ways. In cases of marriages with a foreign element, conflicts between legal orders arise. For example, different countries have different legal ages for marriage: in Ukraine, Germany, and Slovakia - 18 years for both men and women, in Australia - 16 years for women and 18 years for men, in France - 15 years for women and 18 years for men, in England - 16 years for both spouses, in Ecuador and Colombia - 12 years for women and 14 years for men, in Peru - 14 and 16 years respectively 16.

In almost all countries, under certain conditions, it is possible to lower (disperse) the marriage age. Not all states impose a legal requirement that persons intending to enter into marriage be of different genders. For example, a number of countries have legalized same-sex marriage: Argentina (2002), Belgium (1998), Brazil (2011), Denmark (1989), France (2013), Iceland (2010), Ireland (2010), Mexico (2009), the Netherlands (1998), New Zealand (2013), Norway (1993), Norway (2008), South Africa (2006), Portugal (2010), Spain (2010), South Africa (2013), Spain (2005), France (2013), Germany (2013), Germany (2013), and the United Kingdom (2014). ), Germany (2001), Sweden (1995), some US states (Vermont (2000), Massachusetts (2004), Connecticut (2008), Iowa (2009), Maine (2009), New Hampshire (2009), and the United States (2010). ), New Hampshire (2009), Colombia (2010), New York (2011), Maryland (2012), Washington (2012), Rhode Island (2013), Mexico (2013)).

In addition to marriages, the legislation of foreign countries regulates the legal status of other family unions between a man and a woman, for example, the Dutch Law on Registered Partnership of 05.07.1997; the Civil Solidarity Pact of 15.11.1999 in France; Articles 515-1-515-7 of the French Civil Code regulate the cohabitation

agreement; cohabitation as a form of family union is provided for in the legislation of Sweden, the Netherlands, Hungary, Belgium, France, and Portugal18. Legislations have different approaches to the expression of will to marry. The principle of voluntariness of marriage is enshrined in national law in most countries. However, for example, in Germany, the consent of parents or guardians is required if a person is underage, and in India and Yemen, a woman can be married without her consent.

A foreign element in marriage relations may be manifested in one of two forms or in a combination of both: a subject and a legal fact. For example, if a citizen of Ukraine and a citizen of a foreign country (a so-called mixed marriage) or foreigners from another or different countries, etc. enter into a marriage on the territory of Ukraine, the form of the foreign element is the subject of the legal relationship. If Ukrainian citizens enter into a marriage on the territory of a foreign state, the form of the foreign element is a legal fact. If a citizen of Ukraine enters into a marriage with a citizen of a third state on the territory of a foreign state, both forms of foreign element - subject and legal fact - are combined.

A "limping" marriage is a marriage with a foreigner that gives rise to the legal consequences of a marriage in some states and, at the same time, is considered invalid in others.

A significant number of states do not recognize the form and procedure of marriage if they differ from the requirements stipulated by their national legislation. For example, in Israel, mixed marriages concluded abroad are recognized only if the spouses were married in a synagogue.

"Limping" marriages are a destabilizing phenomenon in international life, as they create legal uncertainty and entail negative consequences.

Pursuant to Article 55 of the Law of Ukraine "On Private International Law", the right to marriage is determined by the personal law of each of the persons who have applied for marriage.

The rules for determining the personal law of an individual are provided for in Article 16 of the Law of Ukraine "On Private International Law". The personal law of an individual is the law of the state of which he or she is a citizen. If an individual is a

citizen of two or more states, the law of the state with which the individual has the closest ties, in particular, has a place of residence or is engaged in the main activity, is considered to be his or her personal law.

The personal law of a stateless person is the law of the state in which that person has his or her place of residence, or, in the absence of such a place of residence, his or her place of stay. The personal law of a refugee is the law of the state in which he or she has his or her place of residence. The conflict-of-laws provision of Article 55 of the Law of Ukraine "On Private International Law" contains rules for determining marriage capacity in family legal relations complicated by a foreign element. The national legislation of Ukraine applies the conflict of laws principle of lex personalis to the legal regulation of material conditions of marriage. The above conflict-of-laws rule is cumulative, i.e., two conflict-of-laws rules are applied simultaneously to the same legal relationship, since the application of one of the rules does not exclude the simultaneous application of the other.

The reference to the legal system of each spouse is logical, since the right to marriage is closely related to the person and the scope of his or her legal personality.

According to Article 55 of the Law of Ukraine "On Private International Law", in case of marriage in Ukraine, the requirements of the Family Code of Ukraine regarding the grounds for invalidity of marriage apply.

Conflict-of-laws regulation of the right to marry by applying the lex personalis attachment formula is inherent in most foreign laws belonging to the continental legal system (Algeria, Quebec, Germany, Hungary, etc.), and the lex domicilii attachment formula is inherent in the laws of the Anglo-Saxon legal system.

Taking into account the imperative provisions of Art. 121 of the CC of Ukraine, as well as Art. 12 of the Law of Ukraine "On Private International Law", which provides that a rule of law of a foreign state shall not be applied in cases where its application leads to consequences that are clearly incompatible with the foundations of law and order (public order) of Ukraine, it should be noted that in the context of the principle of monogamy, which is enshrined in the domestic law, it is impossible to enter into a new

marriage in Ukraine while being in a registered marriage, even if in countries of Islamic law a man has the right to enter into up to four marriages (polygamy).

Ukraine's international treaties also contain conflict-of-laws rules with lex personalis conflict-of-laws bindings combined with lex loci celebrationis (law of the place of marriage) regarding the right to marriage. Thus, according to Art. 26 "Marriage" of Part III "Family Matters" of the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22.01.1993, the conditions for marriage are determined for each future spouse by the law of the Contracting Party of which he or she is a citizen, and for stateless persons - by the law of the Contracting Party of their permanent residence. In addition, the requirements of the law of the Contracting Party in whose territory the marriage is concluded must be met with respect to obstacles to marriage.

According to Part 2 of Article 24 "Marriage" of Section II "Family Law Cases" of the Treaty between Ukraine and the Republic of Poland on Legal Assistance and Legal Relations in Civil and Criminal Matters of 24.05.1993, the conditions of marriage are determined for each of the persons entering into marriage by the legislation of the Contracting Party of which he/she is a citizen.

The Convention on Consent to Marriage, Age of Marriage and Registration of Marriages of 10.12.1962 provides for the full and free consent of both parties to marriage; Ukraine is not a party to it, but a number of its provisions have been implemented in domestic family law. According to Article 56 of the Law of Ukraine "On Private International Law", the form and procedure of marriage in Ukraine between a citizen of Ukraine and a foreigner or stateless person, as well as between foreigners or stateless persons, are determined by the law of Ukraine.

The above national rule on the formal conditions of marriage complicated by a foreign element contains a unilateral conflict-of-laws reference to Ukrainian law - lex loci celebrationis (law of the place of marriage). The formula of attachment of lex loci celebrationis in the regulation of formal conditions of marriage is contained in the laws of the following states: Austria, Algeria, Great Britain, Estonia, Egypt, Germany, South Korea, Poland, Portugal, Romania, the United States, Turkey, France, and Uruguay25.

In addition to the conflict-of-laws binding on the law of the place of marriage, the following other laws apply to the formal conditions of marriage lex fori (the law of the court), lex voluntatis (the law of autonomy of will), etc. There are fundamental differences in the laws of different states regarding the procedure and procedure for marriage registration:

1) states that recognize marriages concluded in a secular (civil) form (Ukraine, Austria, Belgium, Belarus, Estonia, Latvia, Lithuania, Moldova, the Netherlands, Germany, the Russian Federation, France, Switzerland, Japan, etc;)

2) states in which spouses may choose the form of marriage - civil and/or religious (Australia, England, Argentina, Brazil, Georgia, Denmark, Indonesia, Ireland, Italy, Colombia, Norway, Peru, Poland, Portugal, Croatia, Czech Republic, some US states, some Canadian provinces, etc;)

3) states in which only the religious form of marriage is recognized as valid (Andorra, Greece, Israel, Iran, Iraq, Cyprus, Liechtenstein, Mauritania, Saudi Arabia and some other countries of the Middle East and Africa, some US states);

4) states that recognize the so-called "turnout and de facto marriages "27 , i.e. legally unregistered marriages, marriages under common or customary law, when there is a de facto marriage relationship with a free will to become husband and wife (some US states, some Canadian provinces). For comparison, under UAE law, cohabitation between a man and a woman without marriage is punishable by imprisonment.

In some countries, special formal conditions that are mandatory for the validity of a marriage are: prior public notice of the intention to enter into a marriage (announcement in a church or municipality), prior registration of a public notice of the intention to enter into a marriage, obtaining a special marriage license, mandatory presence of adult witnesses, and engagement. Legislation in Argentina, Brazil, Ecuador, Spain, Italy, Mexico, Peru, Poland, and the United States provides for the possibility of marriage through a representative under certain conditions (so-called "glove" marriages).

In certain provinces of China, so-called posthumous marriages are performed. In Muslim countries, fixed-term marriages are possible. In France, Switzerland, Italy, and

Germany, there is a special "mourning period" for women, after which they can enter into a new marriage after the dissolution of their previous marriage or the death of their husband. Under the laws of France and some US states, a preliminary medical examination of each spouse is mandatory. In some states, there are restrictions on the subjects of marriage: incapacity, race, foreign citizenship, monastic vows, religion, adultery.

The formal conditions for marriage are regulated at the international level. For example, Art. 2 of the Hague Convention on the Conclusion and Recognition of the Validity of Marriages of 14.03.1978 provides that the formal requirements for marriages are governed by the law of the state of conclusion. Despite the fact that Ukraine is not a party to the Convention, the national legislator has borrowed a number of its provisions.

Pursuant to Article 57(1) of the Law of Ukraine "On Private International Law", a marriage between citizens of Ukraine, if at least one of them resides outside Ukraine, may be concluded at a consular post or diplomatic mission of Ukraine in accordance with the law of Ukraine. As can be seen from the above provision, the Ukrainian legislator has constructed a mandatory unilateral conflict of laws linkage. According to Part 2 of Article 4 of the Law of Ukraine "On State Registration of Civil Status Acts" of July 1, 2010, No. 2398-VI32, state registration of civil status acts of Ukrainian citizens residing or temporarily staying abroad is carried out by diplomatic missions and consular offices of Ukraine. According to Art. 29 of the Consular Statute of Ukraine, approved by the Decree of the President of Ukraine of 02.04.1994 No. 127/9433, a consul registers marriage and divorce in accordance with the legislation of Ukraine.

By virtue of the principle of observance of the form of legal acts (locus regit formam actus), according to which the form of marriage is determined by the legislation of the state of its conclusion, if Ukrainian citizens enter into a religious marriage in a state where such a form is valid under its legislation (Greece, Italy), this marriage is considered valid in Ukraine.

Pursuant to Article 58(2) of the Law of Ukraine "On Private International Law", a marriage between foreigners, a marriage between a foreigner and a stateless person, and a marriage between stateless persons concluded in accordance with the law of a foreign

state are valid in Ukraine. In other words, Ukraine recognizes marriages entered into by non-Ukrainians outside its borders in accordance with the legal order of the state of the place of marriage. In the above provision, the domestic legislator enshrines the conflict of laws binding lex loci actus.

In other words, if marriages between persons who are not citizens of Ukraine are concluded abroad under rules that do not meet the substantive (e.g., same-sex marriages) or formal conditions for the validity of marriage (e.g., a "glove" marriage concluded through a representative) provided for by the Family Code of Ukraine, but in compliance with national law, they are recognized as valid by Ukraine. Pursuant to Article 9 of the Convention on the Conclusion and Recognition of the Validity of Marriages of 14.03.1978 (Ukraine is not a party), a marriage concluded in accordance with all the requirements of the law of the state of conclusion or which subsequently becomes valid in accordance with that law is recognized in all contracting states. A marriage contracted by a diplomatic agent or consular officer in accordance with his or her law is similarly recognized as valid in all contracting states, provided that the marriage is not prohibited by the state of conclusion.

According to Art. 63 of the Law of Ukraine "On Private International Law", the termination of marriage and the legal consequences of marriage termination are determined by the law in force at the time regarding the legal consequences of marriage. Due to a significant number of discrepancies between the legal orders of individual states regarding the termination of marriage and its legal consequences, and the non-recognition of foreign divorces, there is a need for conflict-of-laws regulation of this issue. For example, in some countries, divorce is strictly prohibited (Argentina, Ireland, Colombia, Paraguay), while in others (Denmark, Egypt, the Russian Federation) it is possible only if there are clearly defined grounds (for example, on the basis of an application by one of the spouses, imprisonment for a long period for a crime, etc.). In most countries of the world, divorce is only possible through a court procedure (e.g., Poland, Germany, France), but in some countries (e.g., Ukraine, Japan), divorce is also recognized on the basis of a resolution of the state civil registry office.

The conflict-of-laws provision of Article 63 of the Law of Ukraine "On Private International Law" refers to the law of a particular state, which is the personal law of each of the persons who applied for marriage (lex patriae), to determine all issues related to the termination of marriage and the legal consequences arising therefrom. The use of conflict-of-laws reference to lex personalis (lex patriae or lex domicilii) to regulate the termination of marriage is common in the national legislation of a significant number of states.

According to Art. 2 of the Convention on the Recognition of Divorces and Decisions Relating to Separate Spouses of 01.06.197050 (Ukraine is not a party), for the recognition of divorces it is necessary that the defendant or the plaintiff have their last place of residence in the contracting state (or both parties), or only the plaintiff is a citizen of the contracting state.

**Syllabi for seminars, assignments for independent work of students**

**Content module 1: General principles of legal regulation of marriage and family. Legal relations of spouses.**

**Topic 1. The concept, subject and system of family law. Family legal relations.**

I. Consideration of theoretical issues:

1. The concept, subject and system of family law.

2. Methods of family law.

3. Sources of family law. The Constitution of Ukraine as the main source of family law.

4. The concept and features of family legal relations.

5. Subjects and objects of family legal relations.

**II. Testing of students' knowledge in the form of testing.**

**Tasks for independent work:**

1. The place of family law in the legal system of Ukraine. Stages of development of family law.

2. Principles and functions of family law.

3. The emergence, change and termination of family legal relations.

**Topic 2. Concept, conditions and procedure of marriage.**

I. Consideration of theoretical issues:

1. The concept of marriage, marriage age.

2. Voluntariness of marriage.

3. State registration of marriage.

4. Place of marriage registration.

5. Invalidity of marriage.

**II. Checking students' knowledge in the form of testing.**

**Tasks for independent work:**

1. The right to marriage.
2. Persons who cannot be married.
3. Application for marriage registration, time of marriage registration.

**Topic 3. Divorce and its legal consequences.**

I. Consideration of theoretical issues:

1. Grounds for termination of marriage.
2. Dissolution of marriage by the civil registry office.
3. Divorce by a court decision.
4. Recognition of divorce as fictitious.
5. Establishment of a separate residence regime for the spouses.

**II. Checking students' knowledge in the form of testing.**

**Tasks for independent work:**

1. The right to file a lawsuit for divorce.
2. The moment of termination of marriage in case of its dissolution.
3. Breach of obligation. Legal consequences of breach of obligation.

**Topic 4. Personal non-property and property rights of spouses.**

I. Consideration of theoretical issues:

1. The right to motherhood / fatherhood.
2. The right of personal private property of the wife and husband.
3. The right of joint joint property of the spouses. The right of the spouses to dispose of the property that is the object of the right of joint joint ownership of the spouses.
4. Exercise of the right of joint joint ownership after divorce.
5. Application of the statute of limitations to claims for the division of property that is the object of the right of joint joint ownership of spouses.

**II. Testing of students' knowledge in the form of testing.**

**Tasks for independent work:**

1. Property that is the personal private property of a wife or husband.

2. Methods and procedure for the division of property that is the object of the right of joint joint ownership of spouses.

3. Foreclosure on property that is the object of the right of joint joint ownership of spouses.

**Topic 5. Rights and obligations of the mother and father of the child.**

**I. Consideration of theoretical issues:**

1. Determination of the child's origin.

2. Determination of the origin of a child born as a result of the use of assisted reproductive technologies.

3. Personal non-property rights and obligations of parents and children.

4. The rights of parents to raise a child.

5. Grounds and legal consequences of deprivation of parental rights.

**II. Checking students' knowledge in the form of testing.**

**Tasks for independent work:**

1. Determination of the name and surname of the child.

2. Resolving a dispute by the guardianship and custody authority regarding the participation in the upbringing of the child of the parent who lives separately from the child.

3. Rights of parents and children to property.

**Topic 6: Alimony obligations of spouses.**

**I. Consideration of theoretical issues:**

1. The right of one of the spouses to maintenance.

2. Spousal agreement on the provision of maintenance.

3. Determination of the amount of alimony to one of the spouses by a court decision.

4. Termination of the right of one of the spouses to maintenance.

5. Deprivation of the right to maintenance or limitation of its duration.

**II. Checking students' knowledge in the form of testing.**

**Tasks for independent work:**

1. The right to maintenance after divorce.

2. Ways to provide maintenance to one of the spouses.

3. The time during which alimony is paid to one of the spouses.

**Topic 7. Marriage contract. The concept, content and form of a marriage contract.**

**I. Consideration of theoretical issues:**

1. The concept of a marriage contract: its general characteristics.

2. The content and form of the marriage contract.

3. Definition of the legal regime of property in the marriage contract.

4. Changing the terms of the marriage contract.

5. Termination of the marriage contract.

**II. Checking students' knowledge in the form of testing.**

**Tasks for independent work:**

1. The right to conclude a marriage contract.

2. The beginning and term of the marriage contract.

3. The right to withdraw from the marriage contract.

## CONTROL QUESTIONS FOR THE CONTENT MODULE

1. The concept of family law as a sub-branch of civil law.

2. Modern family law and its place in the system of law.

3. The subject of family law.

4. Methods of family law: dispositive and imperative.

5. Basic principles (principles) of family law.

6. General provisions on family law.

7. The concept, types, grounds for the emergence, change and termination, composition of family legal relations.

8. Family, kinship, half-breeding: concept and legal significance 9. Exercise of family rights and fulfillment of obligations, protection of family rights and interests by the court, guardianship and trusteeship authorities, notary. 10. Terms in family law: their types and significance. Terms of limitation.

11. The concept of marriage and its legal nature.

12. Conditions of marriage. The procedure for marriage.

13. State registration of marriage and its legal significance.

14. Persons who cannot be married to each other.

15. Invalidity of marriage and its types. Legal consequences of marriage invalidity.

16. Recognition of marriage as not concluded.

17. The concept, types, content of personal non-property legal relations of spouses, their features.

18. General characteristics of property legal relations of spouses and their types.

19. Legal regime of separate property of spouses.

20. Legal regime of joint property of spouses.

21. Division of marital property.

22. Contractual regime of marital property.

23. Rights and obligations of spouses to maintain. The right of one of the spouses to maintenance and methods of its provision.

24. Spousal agreement on maintenance.

25. The right to maintenance after divorce.

26. Determination of the amount of alimony by court decision.

27. Termination of the right to maintenance.

28. Deprivation of the right to maintenance or limitation of its duration.

29. The right of each spouse to maintenance in case of a child living with him/her and the grounds for termination of such maintenance.

30. The right to maintenance of a woman and a man who are not married to each other or in any other marriage.

31. The concept of a marriage contract and the right to conclude it.

32. Content, form, subject, subjects and term of the marriage contract.

33. Change of conditions, termination of the marriage contract and its invalidation.

34. Property relations of persons living in the same family without marriage registration.

35. Termination of marriage as a result of its dissolution. The procedure for divorce by the registry office.

36. Recognition of divorce as fictitious.

37. Divorce in court.

38. Restoration of marriage after its dissolution.

39. The regime of separate residence of spouses.

40. General grounds for the rights and obligations of parents and children.

41. Determining the origin of a child from a mother and father who are married to each other.

42. Determination of the origin of a child born as a result of the use of assisted reproductive technologies.

43. Determining the origin of a child whose parents are not married to each other.

44. Establishment of the fact of paternity (maternity) by a court decision.

45. Disputing paternity and maternity.

**Content module 2. Legal relations of parents, children, other family members and relatives.**

Topic 8: Personal non-property rights and obligations of other family members and relatives.

I. Consideration of theoretical issues:

1. The rights of grandparents, great-grandparents to raise grandchildren and great-grandchildren.

2. The rights of brothers and sisters to communicate.

3. Rights and obligations of a person who has taken a child into his or her family to raise him or her.

4. Court resolution of disputes concerning the participation of grandparents, great-grandparents, great-grandparents, brothers, sisters, stepmother, stepfather in the upbringing of a child.

5. The amount of alimony to be collected from other family members and relatives and the terms of its collection.

**II. Checking students' knowledge in the form of testing.**

**Tasks for independent work:**

1. The rights of sisters, brothers, stepmothers, stepfathers and other family members to protect children.

2. The obligation of grandparents to support their grandchildren. The obligation of grandchildren and great-grandchildren to support their grandparents.

3. Changes in the amount of alimony and exemption from its payment.

**Topic 9: Placement of orphans deprived of parental care. Adoption in Ukraine.**

**I. Consideration of theoretical issues:**

1. The concept of adoption.

2. Persons who have a priority right to adopt a child over others.

3. Invalidity of adoption. Legal consequences of invalidation of adoption.

4. Deprivation of parental rights of the adopter.

5. Cancellation of adoption. Legal consequences of the adoption cancellation.

**II. Testing of students' knowledge in the form of testing.**

**Tasks for independent work:**

1. Adoption of a child who was not taken from the hospital or abandoned, or who was found.

2. Adoption of a child who is a citizen of Ukraine but lives outside Ukraine.

3. Adoption by a foreigner of a child who is a citizen of Ukraine.

**Topic 10. Guardianship and custody of children.**

**I. Consideration of theoretical issues:**

1. The concept and importance of guardianship and custody.

2. Guardianship and custody of a child living in a health care facility, educational or other children's institution.

3. Rights of a child under guardianship or custody.

4. Rights and obligations of the guardian, custodian in relation to the child.

5. Termination of guardianship, custody of a child.

**II. Testing of students' knowledge in the form of testing.**

**Tasks for independent work:**

1. Children under guardianship, custody.

2. A person who can be a guardian, guardian of a child.

3. Powers of guardianship and custody authorities.

**Topic 11. Forms of placement of children left without parental care.**

**I. Consideration of theoretical issues:**

1. The concept, terms and procedure for concluding a patronage agreement.

2. Foster family.

3. Family-type children's home.

4. Foster parents of a family-type children's home.

5. Creation of a family-type children's home.

**II. Checking students' knowledge in the form of testing.**

**Tasks for independent work:**

1. Payment for raising a child.

2. Termination of the patronage agreement.

3. Establishment of a foster family.

**Topic 12: Application of Ukrainian family law to foreigners and stateless persons.**

**I. Consideration of theoretical issues:**

1. The procedure for marriage of Ukrainian citizens with foreign citizens and foreign citizens with each other in Ukraine.

2. Procedure for divorce of Ukrainian citizens from foreign citizens and marriages of foreign citizens among themselves in Ukraine.

3. Resolving issues of guardianship (custody) that are complicated by a foreign element.

4. The procedure for registering civil status acts of Ukrainian citizens residing outside Ukraine.

5. Application of foreign laws and international treaties.

**II. Testing of students' knowledge in the form of testing.**

**Tasks for independent work:**

1. The procedure for marriage of foreign citizens among themselves in Ukraine.

2. The procedure for the adoption of children who are citizens of Ukraine and reside in Ukraine or abroad by foreign citizens.

## CONTROL QUESTIONS FOR THE CONTENT MODULE

1. Personal non-property rights and obligations of parents and children.

2. Types of personal non-property rights.

3. Equality of rights and obligations of parents towards the child. Equality of rights and obligations of children to their parents.

4. Rights of parents to protect the rights of the child.

5. Rights and obligations of minor parents.

6. Exercise of parental rights and fulfillment of parental responsibilities.

7. Parental decision-making on child rearing.

8. Responsibility of parents for improper exercise of parental rights and responsibilities.

9. Deprivation of parental rights.

10. Restoration of parental rights.

11. Removal of a child from parents without deprivation of parental rights.

12. Property rights and obligations of parents and children.

13. Separation of property of parents and children.

14. Child's ownership of property intended for his/her development, education and upbringing.

15. Conditions under which joint property of parents and children may arise. Management of the child's property.

16. Ownership of alimony received for the child.

17. Alimony legal relations of parents and children.

18. Obligations of parents to support the child.

19. Ways of fulfilling the obligation of parents to support the child.

20. Determining the amount of alimony, changing the amount of alimony.

21. The procedure for collecting alimony for the past time and arrears of alimony.

22. Failure of parents to fulfill their child support obligation. Liability for late payment of alimony.

23. Agreement between parents on the payment of child support.

24. Termination of the parental obligation to support the child.

25. Termination of the right to child support in connection with the acquisition of ownership of real estate.

26. The obligation of parents to support adult children.

27. The obligation of adult children to support their parents and its fulfillment.

28. Forms of placement of orphans and children deprived of parental care.

29. The concept and essence of adoption. Subjects of adoption relations, requirements established by law for adoptive parents.

30. Conditions, procedure and legal consequences of adoption.

31. Recognition of adoption as invalid and its legal consequences.

32. Cancellation of adoption and its legal consequences.

33. Deprivation of parental rights of the adopter.

34. Features of adoption with the participation of foreigners and stateless persons.

35. The concept and importance of guardianship and care of children.

36. The procedure for establishing guardianship and custody of children.

37. Rights of a child under guardianship or custody. Rights and obligations of guardians and trustees.

38. Grounds and procedure for termination of guardianship and custody of children.

39. Release of the guardian and custodian from their duties.

40. The concept of child patronage. Grounds for child patronage. Patronage agreement.

41. Termination of child patronage.

42. Other forms of placement of children deprived of parental care.

43. The concept of a foster family, the procedure for its creation.

44. The concept of a family-type children's home. Creation of a family-type children's home. Agreement on the organization of the family-type children's home.

45. Personal non-property rights and obligations of other family members and relatives, their characteristics.

46. Types of personal non-property rights and obligations of other family members and relatives: the right to education, the right to protection of children, the right to communication, and the obligation to care.

47. Maintenance obligations of other family members and relatives. The obligation to support other family members and relatives.

48. The amount of alimony to be collected from other family members and relatives, the terms of their collection. Changing the amount of alimony and exemption from its payment.

**QUESTIONS FOR THE EXAM IN THE DISCIPLINE "FAMILY LAW"**

1. The concept of family law as a sub-branch of civil law.

2. Modern family law and its place in the system of law.

3. The subject of family law.

4. Methods of family law: dispositive and imperative.

5. Basic principles (principles) of family law.

6. General provisions on family law.

7. The concept, types, grounds for the emergence, change and termination, composition of family legal relations.

8. Family, kinship, half-brotherhood: concept and legal significance

9. Exercise of family rights and fulfillment of obligations, protection of family rights and interests by the court, guardianship and trusteeship authorities, notary.

10. Terms in family law: their types and significance. Terms of limitation.

11. The concept of marriage and its legal nature.

12. Conditions of marriage. The procedure for marriage.

13. State registration of marriage and its legal significance.

14. Persons who cannot be married to each other.

15. Invalidity of marriage and its types. Legal consequences of marriage invalidity.

16. Recognition of marriage as not concluded.

17. The concept, types, content of personal non-property legal relations of spouses, their features.

18. General characteristics of property legal relations of spouses and their types.

19. Legal regime of separate property of spouses.

20. Legal regime of joint property of spouses.

21. Division of marital property.

22. Contractual regime of marital property.

23. Rights and obligations of spouses to maintain. The right of one of the spouses to maintenance and methods of its provision.

24. Spousal agreement on maintenance.

25. The right to maintenance after divorce.

26. Determination of the amount of alimony by court decision.

27. Termination of the right to maintenance.

28. Deprivation of the right to maintenance or limitation of its duration.

29. The right of each spouse to maintenance in case of a child living with him/her and the grounds for termination of such maintenance.

30. The right to maintenance of a woman and a man who are not married to each other or in any other marriage.

31. The concept of a marriage contract and the right to conclude it.

32. Content, form, subject, subjects and term of the marriage contract.

33. Change of conditions, termination of the marriage contract and its invalidation.

34. Property relations of persons living in the same family without marriage registration.

35. Termination of marriage as a result of its dissolution. The procedure for divorce by the registry office.

36. Recognition of divorce as fictitious.

37. Divorce in court.

38. Restoration of marriage after its dissolution.

39. Mode of separate residence of spouses.

40. General grounds for the emergence of rights and obligations of parents and children.

41. Determination of the origin of a child from a mother and father who are married to each other.

42. Determination of the origin of a child born as a result of the use of assisted reproductive technologies.

43. Determination of the origin of a child whose parents are not married to each other.

44. Establishment of the fact of paternity (maternity) by court decision.

45. Disputing paternity and maternity.

46. Personal non-property rights and obligations of parents and children.

47. Types of personal non-property rights.

48. Equality of rights and obligations of parents to the child. Equality of rights and obligations of children to their parents.

49. Rights of parents to protect the rights of the child.

50. Rights and obligations of minor parents.

51. Exercise of parental rights and fulfillment of parental responsibilities.

52. Parents' decision on child upbringing.

53. Responsibility of parents for improper exercise of parental rights and responsibilities.

54. Deprivation of parental rights.

55. Restoration of parental rights.

56. Removal of a child from parents without deprivation of parental rights.

57. Property rights and obligations of parents and children.

58. Separation of property of parents and children.

59. Child's ownership of property intended for his/her development, education and upbringing.

60. Conditions under which joint property of parents and children may arise. Management of the child's property.

61. Ownership of alimony received for a child.

62. Alimony legal relations of parents and children.

63. Obligations of parents to support the child.

64. Ways of fulfilling the obligation of parents to support the child.

65. Determining the amount of alimony, changing the amount of alimony.

66. The procedure for the recovery of alimony for the past time and arrears of alimony.

67. Failure of parents to fulfill their child support obligation. Liability for late payment of alimony.

68. Agreement between parents on the payment of child support.

69. Termination of the parental obligation to support the child.

70. Termination of the right to child support in connection with the acquisition of ownership of real estate.

71. The obligation of parents to support adult children.

72. The obligation of adult children to support their parents and its fulfillment.

73. Forms of placement of orphans and children deprived of parental care.

74. The concept and essence of adoption. Subjects of adoption relations, requirements established by law for adoptive parents.

75. Conditions, procedure and legal consequences of adoption.

76. Recognition of adoption as invalid and its legal consequences.

77. Cancellation of adoption and its legal consequences.

78. Deprivation of parental rights of the adopter.

79. Peculiarities of adoption with the participation of foreigners and stateless persons.

80. The concept and importance of guardianship and care of children.

81. The procedure for establishing guardianship and custody of children.

82. Rights of a child under guardianship or custody. Rights and obligations of guardians and trustees.

83. Grounds and procedure for termination of guardianship and custody of children.

84. Release of the guardian and custodian from their duties.

85. The concept of child patronage. Grounds for child patronage. Patronage agreement.

86. Termination of child patronage.

87. Other forms of placement of children deprived of parental care.

88. The concept of a foster family, the procedure for its creation.

89. The concept of a family-type children's home. Creation of a family-type children's home. Agreement on the organization of the family-type children's home.

90. Personal non-property rights and obligations of other family members and relatives, their characteristics.

91. Types of personal non-property rights and obligations of other family members and relatives: the right to education, the right to protection of children, the right to communication, and the obligation to care.

92. Maintenance obligations of other family members and relatives. The obligation to support other family members and relatives.

93. The amount of alimony to be collected from other family members and relatives, the terms of their collection. Changing the amount of alimony and exemption from its payment.

**Recommended literature:**

1. Menjul M.V. Principles of family law (essence and problems of application): a monograph. Uzhhorod: Oleksandra Harkusha Publishing House. 2019. 420 c.

2. Family law of Ukraine: textbook / edited by A. Dutko. P.37 Lviv: Lviv State University of Internal Affairs, 2018. 480 c.

3. Family law: a study guide / Protskiv N.M., Hetmantseva N.D. Study guide. Chernivtsi: Yuriy Fedkovych Chernivtsi National University, 2021. 148 c.

4. Comparative family law: a study guide / Menjul M.V. Study guide. Uzhhorod: RUK-U, 2021. 296 p.

Regulatory and legal acts

1. Constitution of Ukraine of June 28, 1996 (as amended) URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80.

2. Universal Declaration of Human Rights of 10.12.1948 // Official Gazette of Ukraine - 2008 - No. 93 - P. 3103.

3. The UN Convention on the Rights of the Child of 20.11.1989 (entered into force for Ukraine on 27.09.1991).

4. The International Covenant on Civil and Political Rights of 16.12.1966 (entered into force for Ukraine on 23.03.1976) / Bulletin of the Constitutional Court of Ukraine. - 2007. - No. 11.

5. Family Code of Ukraine of 10.01.2002 № 2947-III URL: https://zakon.rada.gov.ua/laws/show/2947-14.

6. Civil Code of Ukraine of January 16, 2003, No. 435-IV URL: https://zakon.rada.gov.ua/laws/show/435-15/stru.

7. Civil Procedure Code of Ukraine of 18.03.2004 No. 1618-IV URL: https://zakon.rada.gov.ua/laws/show/1618-15.

8. On the Protection of Public Morality: Law of Ukraine of November 20, 2003, No. 1296-IV URL: https://zakon.rada.gov.ua/laws/main/1296-15.

9. On the Protection of Childhood: Law of Ukraine of 26.04.2001 URL: https://zakon.rada.gov.ua/laws/show/2402-14.

10. On ensuring organizational and legal conditions for social protection of orphans and children deprived of parental care: Law of Ukraine of January 13, 2005 URL: https://zakon.rada.gov.ua/laws/show/2342-15.

11. On State Registration of Civil Status Acts: Law of Ukraine of July 1, 2010 URL: https://zakon.rada.gov.ua/laws/show/2398-17.

12. On Freedom of Movement and Free Choice of Residence in Ukraine: Law of Ukraine of 11.12.2003 URL: https://zakon.rada.gov.ua/laws/main/1382-15.

13. On Preventing and Combating Domestic Violence: Law of Ukraine of 7.12.2017. URL: https://zakon.rada.gov.ua/laws/show/2229-19.

14. On Approval of the Procedure for Voluntary Medical Examination of Persons Applying for Marriage Registration: Resolution of the Cabinet of Ministers of Ukraine of 16.11.2002 No. 1740 URL: https://zakon.rada.gov.ua/laws/main/1740-2002-%D0%BF.

15. On approval of the Regulation on family-type children's homes: Resolution of the Cabinet of Ministers of Ukraine of 26.04.2002, No. 564 URL: https://zakon.rada.gov.ua/laws/main/564-2002-%D0%BF.

16. On Approval of the Regulation on Foster Care: Resolution of the Cabinet of Ministers of Ukraine of 26.04.2002 No. 564 URL: https://zakon.rada.gov.ua/laws/main/565-2002-%D0%BF.

17. Rules for Amending, Renewing and Revoking Civil Status Records: Order of the Ministry of Justice of Ukraine of January 12, 2011 URL: https://zakon.rada.gov.ua/laws/show/z0055-11.20.

18. On Amendments to the Rules of Civil Registration in Ukraine: Order of the Ministry of Justice of Ukraine of 18.10.2000, No. 52/5 URL: https://zakon.rada.gov.ua/laws/show/z0719-00.21.

19. Rules of Guardianship and Trusteeship, approved by the Order of the State Committee of Ukraine for Family and Youth, Ministry of Education of Ukraine, Ministry of Health of Ukraine, Ministry of Labor and Social Policy of Ukraine No. 34/166/131/88 of 26.05.1999. URL: https://zakon.rada.gov.ua/laws/main/z0387-99.

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2. Grigorieva A. Conditions for establishing in court the fact of living in one family of a man and a woman without marriage and the evidence that confirms it / Yurydychnyi vestnik. - 2014. - № 3. - C. 343-350.

3. Hrytsyk A. S. Analysis of judicial practice on the recognition of marriage contracts as invalid / Civil Procedural Thought. - 2016. - №4. - C. 21-24.

4. Dutko A. Marriage as a legal construct: realities and prospects / Bulletin of Lviv Polytechnic National University. Legal Sciences. - 2016. - No. 855. - P. 398-403.

5. Nikitenko R.S. Evidence and proof in cases of separate proceedings for divorce / Law and Society. - 2014. - № 3. - C.86-91.

6. Legal regulation of actual marriage relations under the legislation of foreign countries / Law and Society. -2015. - No 4(3). - C. 104-111.

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9. Spector O.M. Features of divorce by spouses who have minor children / Scientific Bulletin of Uzhhorod National University. Series: Law. - 2016.- Issue 41 (1). - C. 124-129.

**Information resources**

1. Electronic training course "Family Law" URL: https://elearn.nubip.edu.ua/course/view.php?id=2877

2. The only web portal of executive authorities in Ukraine. URL: http://www.kmu.gov.ua/control/.

3. Vernadsky National Library of Ukraine. URL: http://www.nbuv.gov.ua/.

4. Official website of the Verkhovna Rada of Ukraine. URL: http://portal.rada.gov.ua/.

5. Official website of the Ukrainian Legislation Database on the Internet. URL: www.lawukraine.com.

6. Government portal of the Cabinet of Ministers of Ukraine. URL: www.kmu.gov.ua.

7. Unified State Register of Court Decisions. URL: http://www.reyestr.court.gov.ua