ПОНЯТИЕ И СИСТЕМА ФУНКЦИЙ СЕМЕЙНОГО ПРАВА КАК САМОСТОЯТЕЛЬНОЙ ОТРАСЛИ РОССИЙСКОГО ПРАВА. ОСОБЕННОСТИ ЮРИДИЧЕСКОЙ ОТВЕТСТВЕННОСТИ В СЕМЕЙНОМ ПРАВЕ И ПРАВОВОЙ ПРИРОДЫ СОГЛАШЕНИЙ В СОВРЕМЕННОМ СЕМЕЙНОМ ПРАВЕ РОССИЙСКОЙ ФЕДЕРАЦИИ

Аннотация: в данной статье автор обосновывает самостоятельность семейного права как отдельной отрасли российского права, имеющей собственный метод регулирования, предмет, принципы и специфику, раскрывается понятие семейного права и система функций семейного права как отрасли права. Как известно, семейное право является обособленной, самостоятельной отраслью права, которая занимается регулированием конкретного вида общественных отношений – семейных отношений, возникающих непосредственно из факта брака и принадлежности к семье.

Ключевые слова: семейное право, отрасль семейного права, семейные правоотношения, семейно-правовая ответственность, соглашения.

THE CONCEPT AND SYSTEM OF FUNCTIONS OF FAMILY LAW AS AN INDEPENDENT BRANCH OF RUSSIAN LAW. FEATURES OF LEGAL LIABILITY IN FAMILY LAW AND THE LEGAL NATURE OF
AGREEMENTS IN MODERN FAMILY LAW OF THE RUSSIAN FEDERATION

Annotation: in this article, the author substantiates the independence of family law as a separate branch of Russian law, which has its own method of regulation, subject, principles and specifics, reveals the concept of family law and the system of functions of family law as a branch of law. As you know, family law is a separate, independent branch of law that deals with the regulation of a specific type of social relations – family relations that arise directly from the fact of marriage and belonging to the family.

Key words: family law, branch of family law, family legal relations, family legal responsibility, agreements.

Family law is a separate, independent branch of law that is responsible for regulating a certain type of social relations arising from the fact of marriage and belonging to the family – family relations. An exceptional feature of the norms of family law can be called their special connection with the norms of morality and moral principles. These features are characteristic exclusively for the sphere of family law and thus distinguish family relations from other types of social relations [2].

Determining the branch of family law can be safely called one of the most important problems in the modern legal regulation of family relations [1].

So, in the pre-revolutionary period, such well-known Russian scientists as G. F. Shershenevich, K. P. Pobedonostsev, K. A. Nevolin and others pointed out the signs of independence of family law. In the first years of Soviet power, this topic was of particular interest to D. M. Genkin, A. G. Goikhbarg, G. M. Sverdlov, and so on. These scientists took an active part in the development of family law as an independent science. Subsequently, in the late 50s and early 60s of the twentieth century, most authors agreed that the subject of family law is personal non-property relations. Property relations are exclusively derivative in nature [6].

After the adoption of the civil code of the Russian Federation and the events of 1991, there were some changes in this area, and the opinions of scientists were
significantly divided. For example, some of the legal institutions that were previously part of family law have become independent. Among other things, there have been fundamental changes in the theoretical approaches to the study of the subject and method of family and civil law [2]. In connection with this information, many scientists, for example, M. V. Antokolskaya, identified family and civil law, considered the method of legal regulation of these areas identical, and did not see the point in separating these branches of law.

However, in modern realities, the position of most scientists has changed. So, for example, N. N. Tarusina, S. A. Maratova, I. F. Aleksandrov and others are convinced that family law has its own subject of regulation, which includes personal and related property relations, which, in turn, arise from personal ones. The subject of civil law is the relations that arise in the course of entrepreneurial activity, based on the right of ownership and commodity-money relations [15].

A special difference is the moral character of almost every rule of family law. Family law has goals other than civil law, goals formed solely from personal motives. Also, as is well known, subjects of family relations have family legal capacity and legal capacity [14].

The emergence of family legal relations comes from certain legal facts: kinship, marriage, motherhood, paternity, adoption, and so on. Family relations are characterized by exceptional individualization of participants, irreplaceability by other people, which results in the inalienable rights and obligations of the family. It is for this reason that family rights and obligations are called "non-negotiable", that is, they cannot be sold, bequeathed or assigned to another person in any way.

Also, one of the distinctive features of family relationships is trust.

The method of legal regulation of family relations also has certain specifics. Two legal facts play a special role in shaping the content of family legal capacity: the fact of kinship and the fact of marriage. The legal method of regulating family relations is characterized by the fact that the norms of family law establish the relationship and interdependence of the rights and obligations of specific participants in these relations. Special features of the methods of regulating family relations are related to the fact that
they are strictly personal and the inalienable rights belonging to their subjects, the possibility of changing the scope of these rights and obligations by agreement only in strictly limited cases and within the limits defined by law [6].

The peculiarity of family relations is that they are regulated by imperative, rather than dispositive norms. The application of the mandatory method of legal regulation to family relations is determined by the fact that their regulation is largely carried out by public law. In modern conditions, family law proceeds from the fact that the method of family law is permissive in terms of the content of influence, and imperative in terms of the form of prescriptions, it is defined as permissive-imperative [1].

The permissibility of regulation is manifested in the fact that family law provides citizens with legal means to meet their needs and interests, which should include family legal capacity and specific subjective rights of spouses, parents, children and other family members. Among other things, family law contains binding and prohibiting norms and the imperative of family law regulation serves as a tool for ensuring the most reliable interests of participants in family relations [14].

Special attention should be paid to the functions of family law. The functions of family law should be analyzed as a complete system. According to this definition of A. S. Pashkov, the functions of law are understood as the main directions of its impact on public relations, reflecting the official purpose of law in the life of society and acting as a manifestation of its essence.

Methods of legal influence ensure the implementation of the functions of law, when the goals of a particular function are achieved, and the law fulfills its social role. In the mechanism of implementing the function of family law regulation, the main role, of course, belongs to the method.

The functions of family law reflect the unique features of social relations regulated by this industry. Thus, function and method in family law are different types of concepts and they should not be identified, otherwise the whole mechanism of legal regulation is distorted [15].

The most common classification of legal functions is regulatory and protective. The main general legal functions include the regulatory and protective functions.
Thus, the features of the organizational and transformative function of family law regulation can be found, for example, in the organizational function of the property rights of spouses. The peculiarity of the protective function is the compensatory or restorative aspect, which is expressed in the fact that family law protects the interests of individuals, preventing illegal actions. The implementation of the educational function of family law regulation is mainly related to the active lawful behavior of citizens [5].

To effectively address issues related to the construction of the rule of law, it is necessary to increase the role and importance of the institution of legal responsibility.

The problems of legal liability are traditionally debatable and practically significant. Legal liability appears to be a highly variable and dynamically developing legal category, as its ideological foundations, goals, tasks, functions and principles change.

Coercion is a characteristic feature of the law, and legal liability acts as one of the measures of influence on persons who violate someone's rights or do not fulfill their duties [14].

According to L. V. Kruzhalova, family legal responsibility is the measures provided for by law to influence the violator, which entail the deprivation or restriction of his property or personal non-property rights [5].

There is a different opinion, where responsibility is understood as the performance by the subject of a legal relationship of a certain legal obligation, if it is performed by force of state coercion. The state determines the measures of legal responsibility of subjects of legal relations, regardless of their will or desire. However, due to the dispositivity of family law regulation, the parties to the relevant agreement can provide not only rights and obligations for themselves, but also measures of responsibility [10].

Authors who have studied family law liability, for example, E. M. Vorozheikin, E. M. Zvyagintseva and others, note that family law liability applies only to participants in family legal relations [9].

Illegal behavior can manifest itself in both action and inaction, combining
actions and omissions. The second essential basis of the family-legal responsibility is fault.

The content of family legal responsibility is the deprivation or restriction of a person's subjective right. Also, in addition to all the above, the peculiarity of responsibility in family law, according to A.M. Nechaeva, is its moral and legal nature [12].

Currently, agreements in Russian family law are some legal means that allow family members or other persons to resolve certain issues of family life by mutual agreement [4].

The main reason for the separation of this type of agreement is that their legal regulation is established mainly by the norms of family law.

Some civilists have even developed a theory of family law contract. Among scientists on the subject particularly distinguished N. F. Zvenigorodskaya, O. N. Nizamieva, S. Y. Dashkova and others. In Soviet legislation there were already certain provisions of the agreements governing family relationships [11].

E. P. Titarenko notes that family law agreements are usually made by individuals who are family members. However, not all family members have the right to enter into agreements, but only spouses (former spouses) and parents. Thus, it can be concluded that contracts (agreements) that regulate family legal relations have a certain number of features [10].

Russian family law already contains an established system of agreements regulating family relations [4]. Such agreements include not only a marriage contract, but also an agreement on the payment of alimony, agreements regulating parental legal relations, an agreement on determining the child's place of residence, an agreement between parents on the procedure for exercising parental rights, a contract on surrogacy, and so on [17]. A lively discussion of the topic of family law agreements is caused by the fact that so far the legislator has not determined their legal status [6].

Some scientists consider them civil law contracts, others - family law, and others consider them as a civil law instrument of family law regulation. The solution of this issue, according to most scientists, largely depends on solving the problem of the
relationship between civil and family law, civil and family legislation.

M. V. Antokolskaya, speaking about the marriage contract, emphasizes that it is impossible to prove the family-legal essence of the marriage contract, which would distinguish it from civil contracts [2].

Thus, based on all of the above, it can be concluded that the Family code of the Russian Federation has sufficiently regulated only two types of contract: a marriage contract and an agreement on the payment of alimony [17]. Another important feature of agreements in Russian family law is that they cannot be changed or terminated unilaterally [3].

This is permissible if an agreement has been reached between the parties, if there is a court decision, or in cases provided for by law [7].

Another distinctive criterion is that agreements in Russian family law do not apply state enforcement measures in the event of unfair performance of obligations by one of the parties, since these agreements are intended for voluntary performance of obligations by the parties to this obligation. However, there are exceptions to this rule (for example, an agreement to pay alimony).

The institution of the marriage contract is a novelty of modern civil and family legislation. For the first time, Russian citizens have been able to enter into marriage contracts since March 1, 1996, with the adoption of the Family Code of the Russian Federation [11].

According to article 40 of the Family Code of the Russian Federation a marriage contract is the agreement of the persons entering into marriage, spouses or agreement defining property rights and responsibilities of spouses in marriage and (or) in case of divorce. The subject of a marriage contract is a relationship regarding the ownership of property, management and disposal of property, its division, provision of maintenance or alimony relations [3].

The peculiarity of the subject of a marriage contract is that its terms may relate not only to existing rights and obligations, but also to rights and obligations regarding the property that may be acquired by the spouses in the future [13].

A prenuptial agreement may be made under a suspensive or revocable condition.
Prenuptial agreement – consensual, bilateral. One of the features of a marriage contract is a special subject structure [16]. Only spouses or former spouses can be subjects of a marital agreement on the division of property [7].

A prenuptial agreement can determine the fate of property not only existing, but also acquired in the future.

But a prenuptial agreement is not given the force of a writ of execution, unlike an alimony agreement. Thus, we have considered the legal nature of the marriage contract in modern family law in Russia. The marriage contract is both an institution of civil and family law.

Thus, the above shows that family law is an independent branch of Russian law that regulates family relations arising from the act of marriage and belonging to the family, characterized by a special subject and method of legal regulation, which has its own principles, functions and distinctive features [8]. Family law, as is known, is the regulator of family legal relations, so it makes sense to distinguish the following functions of this industry: regulatory, protective, restorative, educational, stimulating.

So, the purpose of family law as a legal branch is to implement certain functions. In recent decades, the science of family law has been actively developing. Issues of responsibility in family law are becoming more and more deeply and comprehensively covered [2].

Measures of family legal responsibility are measures of state influence established by the family legislation on the guilty offender, which are expressed in depriving him of subjective responsibility.

From the above, it can be concluded that agreements in Russian family law are important legal tools for family members or other persons involved in family legal relations, allowing for mutual resolution of existing issues of family life [13].

I would like to note that the conclusion of a marriage contract is a right, not a duty of citizens. In the event of a divorce, a prenuptial agreement will avoid property disputes that usually invariably arise in the event of a divorce [7].

Thus, it can be concluded that agreements in Russian family law play an important role in maintaining normal relations between family members and other
persons involved in family legal relations, but have a number of features that differ from civil law agreements, which, of course, complicates the definition of the legal nature of such agreements [11]. However, the author considers it premature to assign agreements containing family legal relations to a separate independent group of agreements.

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