**MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE**

**National Aviation University**

**Educational and Scientific Law Institute**

**Department of Criminal Law and Process**

**Methodological recommendations**

**to prepare a student to practical classes**

**from the discipline**

**" Preparation of Notarial Procedural Documents "**

**for second year students**

**081 "law"**

**(the code and the name of the direction (specialty) of training**

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(scientific degree, academic rank, teacher's name)

Considered and approved

at the meeting of the criminal department

rights and process

                    Minutes No. from "\_\_\_" \_\_\_\_\_ 20\_\_.

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**INTRODUCTION**

The students' practical work is an important component of training in higher education institutions of highly skilled specialists.

Independent work of students is intended to help achieve the goal set before the discipline, namely the acquisition of theoretical knowledge and practical skills in applying the provisions of the current civil law governing succession as the transfer of rights and responsibilities from the deceased to his successors, and also the place and role of the notary in the design and legalization of such relationships.

         The student must understand the purpose of the discipline and the tasks that face it. The purpose of the discipline is to form students with a modern view of the rights and duties of the notary and its role in ensuring the rights of heirs to property, helping students comprehensively and deeply understand the nature and essence of notarial procedural relations in the sphere of inheritance, the development of students' ability to make informed decisions and preparing them for practical activity as qualified specialists in the field of inheritance law.

Tasks for practical work are aimed at consolidating the educational material. Their implementation involves assimilating the main content of discipline topics. At the same time, the execution of such tasks requires a creative approach from the student side, the ability to raise additional questions themselves, respond to them, evaluate their own work and compare them with others, analyze typical and non-standard situations.

**MODULE 1. COMPOSITION OF NOTARY PROCEEDIAL DOCUMENTS**

**Theme 1**

**Guidelines**

When preparing for the topic, students must first of all determine the concept of inheritance, the volume of inheritance rights and responsibilities of the person who is part of the inheritance, and sometimes the place of the opening of the inheritance, as well as the types of inheritance.

     Depending on the type of inheritance, the range of heirs is also determined. Thus, only natural persons who are alive at the time of the discovery of the inheritance, as well as those who were conceived during the life of the testator and born alive after the discovery of the inheritance, may be successors of the law. Circle of heirs according to will is much wider. In addition to the aforementioned individuals, heirs of the will may also be legal persons and other participants in civil relations (state Ukraine, territorial communities, foreign states and other subjects of public law).

      Students must understand and remember the provisions of Article 1223 of the Civil Code of Ukraine (hereinafter - the Central Committee of Ukraine), according to which the priority in the modern hereditary right is given to the will of the testator. Therefore, the right to inheritance has the person specified in the will. In the heirs, the law creates the right to inherit only in the case of the absence of a will, or the recognition of a will, invalid, rejection or refusal to accept the inheritance by all heirs under the will, or not covering the will of the whole inheritance.

     Separately, the students should consider the issue of the grounds and order of succession by the comforters. So, if the persons who could succumb one after another (commissar) died one for one day irrespective of the specific hour of death (Part 3 of Article 1220 of the Civil Code of Ukraine), or died during the common danger and the exact time of their death to establish it is impossible (Part 4 of Article 1220 of the Civil Code of Ukraine), the legacy is opened simultaneously and separately for each of the commissaires. This means that the comorans do not inherit one after the other; heirs of that of the commerce, who died the last do not inherit the rules of hereditary transmission; the right to inheritance is acquired by successors of each of the comforters separately. If, after the death of the first of the comforters (those who could inherit one after the other), the second of the comforters died the next day (regardless of the specific hour of death), the legacy is opened in the general order. This means that the second of the commissaries, as the heir, gets the right to inherit after the death of the first of them; if he did not have time to accept the inheritance, his heirs are inherited by the rules of hereditary transmission; if the second of the merchants is considered to have adopted the inheritance, his heirs by law or by will acquire the right to inherit in the general order.

      Students also need to know and, if necessary, apply in the practical work the provisions of the Central Committee of Ukraine regarding persons who, in the presence of certain circumstances and grounds, have or can be removed from the right to inheritance. From the analysis of Article 1224 of the Civil Code of Ukraine it can be concluded that it defines two models of relations that are connected with the deprivation of the heir of the right to inheritance. Thus, parts 1-4 of Article 1224 of the Civil Code of Ukraine stipulate that the heirs at all have no right to inherit, and therefore there is no need to deprive them of such a right. This is very similar to the construction of a void transaction, when, despite the presence of a formal moment (the commission of the transaction in the proper form), legal consequences for its participants and other persons do not arise. The same is true for inheritance: the heritage has been opened, but in cases specified in the law, the heirs do not acquire the right to inheritance. There are no such legal consequences for such persons at all, and the court's decision to deprive a person of the right to inherit is not required.

     Heirs who do not have the right to inherit are divided into two categories:

- heirs who do not have the right to inherit both by law and for

a will;

- heirs who do not have the right to inherit by law.

From the analysis of Article 1224 of the Civil Code of Ukraine, one can conclude that they exist

heirs who do not have the right to inherit both by law and by will. Even if the heir makes a will in relation to such a person, her right to inherit does not arise. Part 2 of Article 1224 of the Civil Code of Ukraine provides that they do not have the right to inherit a person who deliberately prevented the testator from making a will, making changes to it or canceling a will, thereby contributing to the right of inheritance from themselves or others or contributing to an increase in their share in inheritance It is sufficient for the Court to establish one of the above circumstances in order to assume that the heir is not entitled to inheritance.

      There is no right to inherit a person who deliberately deprives the testator or any of the possible heirs, or attempted to commit suicide. However, the above provisions of the law do not apply to the person who committed such an attempt, if the heir knowing about it, nevertheless appointed it to his heir according to the will. In a timely manner events should be deployed as follows:

     - an assault on the life of the testator ab

From the analysis of this norm, one can conclude that the appointment of an individual heir must be carried out after the heir has learned of the crime and is not intended for cases when the testator was first drawn up a will, then he learns about the crime committed and does not change the will.

     There is no right to inherit by law parents after a child for which they were deprived of parental rights and their rights were not renewed at the time of the opening of the inheritance (Part 3 of Article 1224 of the Civil Code of Ukraine). Deprivation of parents' parental rights does not, however, affect the child's right to be a successor after the death of parents. Article 17 of the Law of Ukraine "On the Protection of Childhood" stipulates that every child has the right to receive, in the order established by law, the inheritance of the property and funds of parents, or one of them, in case of their death or their recognition by decree of the deceased, regardless of place residence. A child whose parents are deprived of parental rights does not lose the right to inherit their property.

     There are no right to inherit by law parents (adopters) and adult children (adopted), as well as other persons who have avoided fulfilling the obligation to retain the deceased, if this circumstance is established by the court. This provision applies to persons who, under the rules of the Family Code of Ukraine, were obliged to hold the deceased. The fact of avoiding a person from fulfilling this duty shall be established by a court upon the application of the person concerned (other heirs or a territorial community).

     Part 4 of Article 1224 of the Civil Code of Ukraine provides that they do not have the right to inherit the law one after another, the marriage between which is invalid or recognized as such by a court decision. The death of a spouse or a husband is not an obstacle to the recognition of marriage as invalid (Article 43 of the Family Code of Ukraine).

      If the marriage is declared invalid after the death of one of the spouses, then the second from the spouse who survived and did not know and could not know about obstacles to the registration of the marriage, the court may recognize the right to inherit the share of the spouse who died in the property which was acquired by them during the marriage.

      Unlike cases where a person is not entitled to inheritance, the law provides for cases where a person may be removed from the right to inheritance. There is only one reason for this. Thus, in accordance with part 5 of Article 1224 of the Civil Code of Ukraine, a person may be removed from inheritance by law if it is established that she has avoided helping the decedent who was in a helpless state due to his age, serious illness or injury. The requirement to remove an heir from the right to inheritance may be brought by a person for whom such removal causes the inheritance of rights and obligations.

      Students should keep in mind that the provisions of Article 1224 of the Civil Code of Ukraine apply to all successors, including those who have the right to a mandatory share in the inheritance, as well as to persons in favor of a willful denial.

**Sources**: [2]; [3]; [5]; [11]; [14]; [15]; [17].

**Questions for self-checking:**

1. Identify the circle of people who can be called for inheritance for

by law

2. Identify the circle of people who can be called for inheritance for

a will

3. What kind of inheritance is a priority.

4. List the grounds for calling to inherit the heirs by law.

5. Describe the grounds and order of succession by the commentators.

6. Grounds for the removal from the right of inheritance of persons who have avoided granting

help the healer.

7. Describe the grounds and the order of removal from the right to inheritance

persons who have deprived the life of the testator, or prevented the testator from making a will.

8. The limits of the provisions of Article 1224 of the Civil Code of Ukraine.

**Theme 2.**

**Guidelines**

Getting practical training on the subject the student should know and properly navigate the regulations governing concept of covenant requirements for its form and content, as well as entities that are entitled to conclude their eligibility for heirs and determining the extent of the inheritance, including issues of restriction of the rights of heirs by will. Also, the student must be guided by bases that make it possible to recognize the will of the invalid and the conditions according to which the will is null and void. Students must determine the range of persons who have the right to certify the wills and the conditions that are necessary for the recognition of this transaction to be valid.

     The right to a will is a generalization concept. It consists of individual rights belonging to the testator. The content of the will, as a reflection of the will of the testator, may consist of:

- general orders of the testator concerning the inheritance (order

the testator on the appointment of successors, definition of the extent of the inheritance);

- special order of the testator.

     In particular, the testator specifically includes:

- testamentary refusal (legate) (Article 1237-1239 of the Central Committee of Ukraine);

- assigning to the heir duties of non-property nature

(Article 1240 of the Civil Code of Ukraine);

- definition of the condition of obtaining the inheritance (Article 142 of the Civil Code of Ukraine);

- under the appointment of an heir (Article 1244 of the Civil Code of Ukraine);

- establishment of servitude (st.1246 of the Civil Code of Ukraine);

- appointment of the executor of the will (Article 1286 of the Civil Code of Ukraine).

Testamentary denial (legate) means that the testator in the will puts on

the heir of an obligation to transfer to another person (to the lessee) in the ownership or other material property the property rights or things that are included or are not part of the inheritance. If there are legacy relationship between successor, who must pass vidkazooderzhuvachu property right or thing belonging to the decedent and vidkazooderzhuvachem (lehatariyem), which may require the transfer of successor rights or things. By bequeathed property, the testator's property can go to the final recipient for ownership or use. At the same time, the law proceeds from the fact that the rights of the final recipient are personal in nature, therefore they are not transferred or transferred to other persons. In addition, the testamentary denial has certain limits. The rights of the heir, upon which the testator is made a willful denial, can not be violated. So heir to whom the testator entrusted legacy is obliged to perform it only within the real value of property that passed to him, less debt testator share attributable to the property (ch. 3, Art. 1238 Civil Code of Ukraine).

      In addition to a legate that always involves an obligation of property character, the heir may put on the heirs and some other duties. In contrast to the willful denial, which has a property character, the assignment of duties of a non-property character is called "testamentary rejection" and may have a personal or social character. In this case, the decree of the testator may not have an illegal character or contradict the moral principles of society. A detailed resolution of this issue is provided for in Article 1240 of the Civil Code of Ukraine.

     The testator can determine in the will certain conditions for the successor of the inheritance. In accordance with Part 1 of Article 1242 of the Central Committee of Ukraine, the testator may stipulate the emergence of the right to inherit as a condition, related and not related to the heir's conduct. At the same time, orders of this kind must be made within certain limits and can not violate the personal rights of the heirs. Therefore, there will be no valid will, which limits the ability of an individual to exercise the right to choose a kind of occupation, place of residence, the right to freedom of movement, etc. If the testator wants to determine the right to inherit in a will in the will with the presence of a certain condition, he can do so in a way that does not restrict the personal freedom of the heir.

       A separate order the testator may assign the heir (Article 144 of the Civil Code of Ukraine). The decoder can not predict in advance all life circumstances that will arise after the making of the will, but some of which he can determine by making a special indication in the will. Yes, the testator

can indicate not only the main, but also the other - the heirs assigned. The law provides that under the appointed heir will acquire rights if:

- the heir specified in the will, will die to the opening of the inheritanceor not

will accept the inheritance or refuse to accept it or will be removed from the right to inherit;

- the circumstances defined in the will as a condition for obtaining the inheritance will be

absent

Thus, instead of the main heir will inherit under the appointed.

In this case, the acceptance of the inheritance is his right, and not the obligation of the potential heir, and he may refuse to accept the inheritance. In such circumstances, inheritance under the will will not take place, since it does not have any identifiable testator in the will of the persons who would have expressed the desire to accept the inheritance. Therefore, in this part or completely (if all property is commanded) the rules of inheritance by law will be applied. For example, the heir all his property bequeathed to his eldest son. In this case, he indicates in the will that if the son will die to the opening of the inheritance or on other grounds, he will not accept the inheritance, then the next heir will be the niece of the testator (daughter of his brother). The main heir (the son of the testator) died before the discovery of the inheritance. After the death of the testator and the discovery of the inheritance, the niece (under the appointed heir) refused to accept the inheritance. In this regard, inheritance under the will does not apply and the right to inheritance is acquired by the heirs by law (Part 1 of Article 1223 of the Civil Code of Ukraine). In connection with the death of the son of the testator, his son (the grandson of the decedent) may inherit the property for the right of representation (Article 1266 of the Civil Code of Ukraine).

      By his order, the testator in the will can establish an easement, according to which the owner of the servitude acquires the right to use someone else's property - property that, according to the will, becomes the heir's property (Article 403 of the Civil Code of Ukraine). The servitude is established solely with respect to real estate (land, building, apartment, garden house, garage, non-residential premises). Settled in the will of the easement becomes legal after the death of the testator and the inheritance of the heirs and remains valid in the event of the transfer of ownership of the property to other persons for which he is established. The servitude is not subject to alienation.

     A special order the testator may appoint an executor of the will - a physical or legal person, both from the heirs, and from those who are not heirs (Article 1286 of the Civil Code of Ukraine). A person may be appointed as the executor of the will only with its consent, which may be set forth in the text of the will or added to it. However, this order of the testator can be canceled by a court decision on the claim of the heirs about the removal of the executor of the will appointed by the testator, if he can not ensure the fulfillment of the will of the testator.

     Separate types of wills are the secret testament and testament of the marriage.

     For a more complete and comprehensive protection of the testator's interests and the preservation of the secret of the will, it is foreseen the possibility of making a secret will, which will be certified by a notary without familiarity with its content. The independent nature of such a will is conditioned by the procedure for its certification and subsequent disclosure. So the person who made the secret will puts it in a sealed notary's envelope. The envelope must have the signature of the testator. The notary puts an inscriptive inscription on the envelope, secures the seal and, in the presence of the testator, places it in another envelope and seal. Like the usual will, the secret will becomes legally meaningful in combination with other legal facts, in particular, the death of the decedent and the discovery of the inheritance. It is here that the peculiarities of the nature of the secret will take their bright expression, since the secret will is subject to a public announcement. According to part 1 of Article 1250 of the Civil Code of Ukraine, upon receipt of information on the opening of the inheritance, the notary assigns the day of the announcement of the will. On this day, he informs the family members and relatives of the testator if their place of residence is known to him or makes a notice in print media. On a certain day and in the presence of the interested persons and two witnesses, the notary opens the envelope in which the will was kept and the content of the declaration was kept. To secure the rights of the heirs and prevent the breach of the will of the testator, a declaration is made on the declaration of the will, signed by the notary and witnesses. The protocol records the entire contents of the will (Part 3 of Article 1250 of the Civil Code of Ukraine). The secret testament after his announcement remains in the materials of the notary business in the state notary public (private notary), which kept a secret will. The testament of marriage is a new civil law. From the analysis of Article 1243 of the Civil Code of Ukraine it can be concluded that for the will of the spouses to come into force a combination of the following conditions is necessary:

- the proper subject structure of this transaction (the will can be entered into

only persons who are registered marriages and the testamentary will cease to be valid in the event of divorce or invalidation of the marriage);

- proper object of the transaction (the spouse can make a common will

in respect of property owned by him only on the right of joint ownership);

- the presence of the joint will of the spouses regarding the disposal of property (refusal

one of the spouses from the common will causes the cessation of the will in general, and not in particle);

The law provides for two main stages of the development of events after the marriage of a common will:

1. one of the spouses dies:

- its share in the right of joint ownership is determined (it

makes up ½ share in the right of ownership of joint property);

- this share passes to the second of the spouses who survived it;

- In relation to this part, the inheritance does not open and the heirs of the right to property

do not get

2. the second spouse dies:

- the right to inherit is acquired by the persons specified in the testamentary marriage;

- the other heirs do not acquire rights regarding the property specified in the will

married couple.

If the wife and husband die at the same time, for example, during an accident, then the heirs assigned to the spouses in the will will immediately acquire the right to inherit. In such circumstances, the proportion of one of the spouses to the other does not pass.

     It should be noted that in the law all aspects of the will of the spouses are written out clearly, therefore, there are many issues, in particular, with regard to the registration of rights to immovable property, which is the subject of the will of the spouses, the order of imposing a ban on the alienation of property, which is the subject of the will of the spouses . And in general, the common will of the couple as a novelty of legislation raises serious doubts. It is difficult to predict all the consequences that may arise in the practice of applying this norm. As a result of the making of a common will, the heirs of the spouse who dies first, (including those who have the right to a mandatory share), are in fact eliminated from the acceptance of the inheritance. On the other hand, the surviving spouse will not have the right, during his life, to alienate the property which is the subject of a common will, since it will be subject to a prohibition on alienation. In this case, direct indication of the law does not allow the implementation of the refusal of a common will after the death of the first of the spouses.

     Students should keep in mind that the rights of the heirs under the will are limited by the provisions of Article 1241 of the Civil Code of Ukraine, which defines the circle of persons who, regardless of the content of the will, have the right to a mandatory legacy, and also determines the size of this share and the opportunity only to on the basis of a court decision to reduce this amount.

     When deciding on the implementation of the inheritance rights of persons defined in paragraph 1 of Article 1241 of the Civil Code of Ukraine (juvenile, minor, adolescent disabled children of the decedent, disabled widower (widower), disabled parents), it is necessary to keep in mind the following:

- the right to a mandatory share arises from the heir when he does not

specified in the will at all or left to him the share of the inheritance, less than the obligatory share belonging to him;

- the right to a mandatory share does not depend on the consent of other heirs,

the will of the testator, other circumstances;

- the right to a mandatory share of the aforementioned persons is acquired, provided that,

that their disability by age or state of health took place at the time of the discovery of the inheritance.

Determination of the obligatory share is carried out according to the following rules.

1. Close the will. Because obligatory heirs are inherited

regardless of the content of the will, its provisions should not be taken into account in determining the mandatory share. The content of the will will become meaningful in the future after determining the obligatory share and distribution of property in kind.

2. We determine the shares in the inheritance by the rules of inheritance by law. For

This is determined by the circle of heirs by law, the volume of inherited property, the share of each of the heirs by law. The circle of heirs by law is determined by the rules of part 1 of Article 1222 of the Civil Code of Ukraine. Even if the heir pointed out one of the heirs by law, turning them into heirs by will, this fact does not matter. In determining the obligatory share in the inheritance, all heirs under the law are considered, which could be called for inheritance. It does not matter the will of such heirs in relation to the real acceptance of the inheritance or the refusal of it.

     Persons claiming inheritance as obligatory heirs must confirm the existence of the necessary grounds. Upon issuance of the certificate of the right to inheritance, the notary requires evidence proving the right of such heirs to obtain a mandatory share. A successor who is entitled to a mandatory share in the inheritance, a notary clarifies his right to obtain a certificate of the right to inheritance by law for a mandatory share. However, such a successor may file a statement that the requirements of Article 1241 of the Central Committee of Ukraine have been clarified to him and he does not claim to receive such a certificate, since his share in the inheritance is secured at the expense of other hereditary property. In such a case, the heir has the right to obtain a certificate of the right to inherit by law or by will on the property he has bequeathed to him and not receive a certificate of the right to inherit to a mandatory share.

     It is also necessary to determine the inherited property belonging to the decedent on the day of death (Article 1218 of the Civil Code of Ukraine). in determining the obligatory share, all property belonging to the inheritance (things, property rights and responsibilities of the testator) are taken into account. Counted as the bequeathed and not the bequeathed property of the testator. Part 2 of Article 1241 of the Civil Code of Ukraine stipulates that the obligatory share in the inheritance also includes the value of the things of the ordinary home environment and use, the value of the willful denial established in favor of the person entitled to a mandatory share in the inheritance, as well as the value of others things and property rights that have passed to it as an heir. The structure of inherited property also includes the right to contribute to a bank (financial institution). According to Article 1228 of the Civil Code of Ukraine, the right to contribute forms part of the inheritance regardless of the manner in which it is ordered. On this basis, in determining the obligatory share in the inheritance, it is necessary to take into account the size of the deposit. As is known, the order of succession of deposits fundamentally changed. In accordance with Article 564 of the Civil Code of the Ukrainian SSR, the procedure for disposing of deposits in case of death of the depositor was determined by the charters of credit institutions and the relevant rules. Therefore, the contribution on which the testamentary order was made was not part of the hereditary property and had a separate legal regime. Today, these rules only apply if the legacy was opened before January 1, 2004 and was adopted by that same date at least one heir (paragraph 5 of the Final and Transitional Provisions of the Central Committee of Ukraine). The next step is to determine the proportion of each heir to the legacy inheritance. In accordance with part 1 of Article 1267 of the Civil Code of Ukraine, parts of the inheritance of each of the heirs are equal. The size of the particle depends on the number of heirs by law.

3. Among the heirs by law, we identify those who have the right to

obligatory inheritance share.

4. Based on the provisions of part 1 of Article 1241 of the Civil Code of Ukraine on this share,

which is a legally obligatory heir, we calculate the obligatory share in the inheritance.

5. Legacy inheritance deprived of inheritance who are not entitled to

 mandatory share in the inheritance, are only taken into account in determining the size of the mandatory share and in the future will not inherit.

     For example, the father transferred all his property to an outsider. Thus, having deprived of the inheritance of an inactive wife and three of his sons: two adults and one juvenile. As we see, a wife and a minor son have the right to a mandatory share in the inheritance. We calculate the proportion of each share. To do this, we determine the shares in the inheritance according to the rules of inheritance by law:

      and. Circle of heirs by law. In our case, there is a wife and three succession sons;

     b. amount of inherited property (rights and obligations of the testator);

     in. the share of each heir by law. In our case, in inheritance by law, the wife and each of the sons would have the right to receive ¼ share in the inheritance.

     According to our example, the right to a mandatory share in the inheritance has a disabled spouse and minor son. Half of ¼ of the share that each of the recessions would have to get

Such a procedure for determining the size of the obligatory share occurs in the case when the testator passed on the will of all the property belonging to him.

      Certain questions regarding the determination of the mandatory share in the inheritance arise when the testator has determined in the testament not only all the property, but only its shares, that is, when there is a testamentary property and not a testamentary property. In such circumstances, in relation to the will of the estate, there is a right to inherit the will, and in relation to the will not the will - the right to inheritance by law. The ratio of the first and second types of property acquires a decisive value.

     To determine the order of inheritance of a mandatory share, in the case of the existence of both protected and not protected property, it is necessary to take a few steps:

- determine the size of the obligatory share in the inheritance;

- determine the amount of bequeathed and not ordered property;

- to match the size of the obligatory shareand the size of the will and the n

 bequeathed property;

- if possible, transfer to the obligatory heirs the property which

left free

      The law gives priority to the will of the testator. It is he who has the right to determine the fate of property in the event of his death. In order to fully fulfill the wishes of the testator, the main attention should be directed to the property that remained unprotected. It is from such property that a proper heir must be given the proper share of it in the first place. And only in the case when the size of the property uncontrollable by the testator is smaller, in comparison with the size of the mandatory share in the inheritance, the interests of the obligatory heir are provided at the expense of and protected property.

**Sources**: [2]; [4]; [5]; [9]; [12]; [14]; [15]; [17].

**Questions for self-checking:**

1. Identify the circle of people who have the right to make a will.

2. Features of the certificate of will of the spouses.

3. Persons who have the right to certify the will.

4. Which of the following statements is correct:

and. the right to a mandatory share in the inheritance are only incapacitated

widow (widower) and disabled children;

b. the size of the mandatory share in the inheritance is half the share which

belonged to each of the heirs of the first stage in the case of inheritance by law;

* + in. the size of the mandatory share in the inheritance may be increased by agreement between the heirs;
  + The size of the mandatory share may only be reduced by the court;
  + is. the obligatory share in the inheritance does not count the cost of a willful denial.

**Theme 3.**

**Guidelines**

By working on this topic, students first of all have to determine the circle of persons entitled to inheritance by law, the procedure for calling them to inheritance and the size of their shares, and also, based on the provisions of the current legislation, to study the issues of grounds and order of changing the succession of inheritance rights .

     The possibility of accepting the inheritance by successors is not in the order defined by the law, partly Article 125 of the Civil Code of Ukraine provides.

     The order of changing the priority of obtaining the right to inheritance:

- Voluntary order, when the change is carried out notarially

an agreement signed by the heirs concerned;

- judicial procedure, when a natural person can receive a decision by a court

the right to inherit with the heirs of the queue, which has the right to inheritance.

     The heirs can recognize the right of others who are not formally belonging to successors who inherit the right, that is, the heirs of further queues.

     Change of the priority of the right to inheritance is carried out by a notarized agreement of the interested heirs, concluded after the opening of the inheritance.

     There are several rules here:

- the purpose of the contract is to change the order of obtaining the right to inheritance

heirs by law;

- the contract can not violate the rights of the heir, who does not take in it

participation, as well as heir, who has the right to a mandatory share in the inheritance;

- the contract is subject to a notarial certificate.

As you know, the principle of priority does not apply to the heirs for

a will Therefore, the turn of a queue can be "directed" only to the person who inherits the law. However, the question of the subject structure of the contract to change the order of obtaining the right to inherit is not straightforward. In Part 1 of Article 1259 of the Civil Code of Ukraine it is stated that the contract of change of priority is concluded by "interested heirs". Obviously, the term "heirs by law" and "interested heirs" do not coincide. In particular, one can not exclude the possibility that the contract for the change of the succession of inheritance may participate and heirs of the will.

    In addition to the heirs, by law or by will, the party in the contract to change the order must recognize the heirs of the law, which are not called to inherit, in connection with the existence of successors of the previous queue. Such persons can be conventionally referred to as "potential" heirs, in particular, because in case of refusal and on other grounds of heirs who are called for inheritance, persons who were only potential heirs actually "transform" into real heirs and may inherit property on general grounds. In essence, the contract for the change of priority is concluded precisely in the interests of potential heirs, since they claim to inherit with those who are called for inheritance.

     It should be noted that the legally defined term "change of priority" for obtaining the right to inherit is unclear, although it is difficult to find the ideal time in this case. In the full sense of the phrase, the change of priority would mean that the parties change their queues, that is, one of the heirs changes the other, and he in turn takes his place. For example, the contract is concluded by the heir of the first and the heir of the second stage. As a result of changing the heir of the second queue "passes" in the first place, and the heir of the first turn takes his place in the second turn. However, this is impossible, because it would mean that the heir of the first stage will no longer inherit (the second line of the heirs will not inherit in the presence of heirs of the first turn). Such a change of priority would essentially mean the rejection of the heir of the first stage from the adoption of the inheritance. However, special rules apply to refusal (Part 2 of Article 1274 of the Civil Code of Ukraine). Therefore, the change of priority is a situation where heirs who are entitled to inheritance, in essence, want only to "share" part of the inherited property. They "pull" to their turn the heirs of the next turn.

     For the conclusion of a contract on the change of priority necessarily requires the consent of the "potential" heir, because he may not express his **desire for the acquisition of inherited property.**

Consequently, the heirs who are interested in entering into an agreement to change the order of obtaining the right to inherit are three categories of persons, namely:

- heirs by law;

- heirs of the will;

- "potential" heirs (persons who are successors to the law, but not

are called for inheritance in connection with the presence of successors of previous queues).

    In determining the subject structure of the contract on the change of priority, the question arises whether it can be concluded by minors or representatives of young and incapacitated persons. These persons may refuse to accept the inheritance (Article 1273 of the Civil Code of Ukraine). However, the fate of the contract to change the succession of inheritance in this aspect is not defined. We have to assume that there are general rules for the conclusion of the treaties established in Articles 32, 71 of the Civil Code of Ukraine, Article 177 of the Family Code of Ukraine, and Article 17 of the Law of Ukraine "On the Protection of Childhood".

    In part 1 of Art. 1259 of the Civil Code of Ukraine established certain reservations. An agreement to change the order of obtaining the right to inheritance can not violate rights:

- an heir who does not take part in it;

- heir, who has the right to a mandatory share in the inheritance.

It may happen that the contract for the change of the succession of inheritance will not be concluded by all, but only by several heirs. The general requirement of the law is that such a contract can not violate the rights of those heirs who did not participate in it. Such a requirement is entirely justified and fair. The agreement to change the order of priority, obviously, will have the purpose of including in the circle of heirs of persons who are the heirs of further queues. This will increase the number of successors inheriting the right to inherit, and correspondingly reduce the proportion of each of them. Such consequences can not arise for persons who did not take part in the contract to change the priority of obtaining the right to inherit, as they would mean violation of their property rights.

    For example, the right to inherit by law as heirs of the first turn

have four persons - the parents of the testator and two of his daughters. Parents want to conclude an agreement under which the mother and the grandfather of the decedent will receive the right to inherit (heirs of the second stage). For this, the shares owned by parents (by ¼) will be reduced to 1/8. Only two of the four successors to the law were involved in this treaty. Rights of heirs who did not take part in the contract of contract can not be violated, and their shares, respectively, reduced. As a result, the succession will be carried out in the following way: the daughter of the testator who did not take part in the contract will receive 1/4, each parent of the testator, as well as his grandfather and woman - by 1/8 of the inheritance.

     The contract for the change of priority can not also violate the rights

an heir who is entitled to a mandatory share. As noted, due to the conclusion of the contract on the change of priority, the number of heirs who will get the right to inherit is likely to increase due to the inheritance of the heirs of subsequent queues. This will affect the size of the heirs' inheritance in the direction of their reduction. Since the reduction of the shares may concern only the parties to the contract (and not those who did not participate in the contract), it is obvious that the requirement of the law on the securing of the rights of the heir, who has the right to a mandatory share in the inheritance, refers to cases of participation in the contract itself ' heiress heir. Obviously, it is said that the heir, who has the right to a mandatory share in the inheritance, can not restrict the contract on the change of priority of his rights so that the share which he incurred after the conclusion of such an agreement would be less than obligatory the share he is entitled to receive in accordance with the law. As in the example above, the parents of the decedent want to bring the grandfather's grandfather's inheritance, but the parents themselves are incapacitated. It is necessary to determine the size of the obligatory share belonging to each of them and when entering into an agreement to change the order of obtaining the right to inheritance to take into account that the size of the parental part of the contract can not be less than the legally required inheritance inherited by them. By our example, the obligatory share of each parent will be 1/8 (1/2 of ¼). Under the contract, each parent will receive 1/8 of the share. Thus, the rights of obligatory heirs are not violated.

    The contract for the change of priority entails important legal consequences. Ago there are certain time limits for its conclusion. Part 1 of Article 1259 of the Civil Code of Ukraine states that such a contract is concluded only after the opening of the inheritance. It is right. Until the death of the testator, the inheritance rights of potential heirs do not exist yet, so they can not decide on the order of inheritance. In addition, potential heirs to the discovery of the inheritance may have the intention to further conclude an agreement to change the order, and after the discovery of the inheritance, change their intentions. The conclusion of an agreement to change the order of succession during the life of the testator would violate all ethical norms.

    Although the law does not specify the final date for the conclusion of the change agreement

it is possible to assume that it should be limited to the general period for the adoption of the inheritance (Article 1270 of the Civil Code of Ukraine).

    If there is no agreement between the heirs, the succession of succession can

to be carried out and in court. According to Part 2 of Article 1259 of the Civil Code of Ukraine, an individual who is the successor to the law of the following queues may, by a court order, obtain the right to inherit with the heirs of the queue which has the right to inherit with the heirs of the queue which has the right to inherit for condition that she:

- for a long time took care of, materially provided,

provided other assistance to the testator;

- The deceased due to old age, serious illness or injury was in

helpless state.

    In general, the change of priority in the court should be considered as

exclusion from the general rule. The law states that such a change is possible only in the presence of two conditions - objective and subjective. An objective condition is that the testator was provided with material or other assistance from the heir; subjective - the helpless state of the testator. Only a combination of the two conditions may serve as the basis for giving the court the right to inherit the heirs of subsequent queues. A simple residence with the testator for a certain time and the corresponding mutual care of persons living together can not serve as a basis for changing the sequence of inheritance. The latter is possible only in the presence of the stated objective and subjective grounds in full.

    According to judicial practice, courts recognize the right to

inheritance of persons who lived with the decedent of one family at least five years before the time of opening the inheritance. According to Article 1264 of the Civil Code of Ukraine, such persons are successors of the fourth stage of the heirs by law. Typically, the heirs of such a remote queue does not reach the case, since the right to inheritance is obtained by the heirs of the previous queues. However, the actual wife (husband), it is usually the closest to the testator, people who take care of the testator until his last time. Proceeding from the principle of justice, the courts give such persons the right to inherit with the heirs of the queue, which falls into inheritance, first of all - the children of the testator or his parents. It should be borne in mind that the fact of living together with the testator is not in itself sufficient grounds for change

priority. Therefore, in a court decision, it must be determined how and for how long the victim was given the guardianship and assistance of the heir, whether the heir was in a helpless state and that is the reason of the emergence of such a state of the testator.

    Regarding the possibility of changing the priority of obtaining the right to inheritance

one more point to be noted about the following. In accordance with Part 2 of Article 1235 of the Civil Code of Ukraine, the testator may, without an indication for the same reasons, deprive of one of the heirs of the law of inheritance by law. In this case, this person can not obtain the right to inherit. The will of the testator is of paramount importance and can not be ignored except in cases stipulated by law (in protecting the rights of obligatory heirs). As to the question of changing the order of obtaining the right to inheritance, it can be assumed that it can not inherit the order of the succession of the heir by law, if the heir directly in the will removed it from the inheritance. For example, the heir pointed out in the will that he would deprive his ancestors of the right to inherit (heiress of the third stage). All inheritance by inheritance by law inherits two native sisters of the testator (the heirs of the second stage). Unlike the testator, his sisters have a good relationship with her aunt and consider it unfair to remove her from heritage. From the point of view of the possibility of changing the order of succession by concluding the relevant contract, the sisters could conclude an agreement by which their own aunt changed her turn and inherited with her sisters, the heir of the second stage. However, we can assume that such a contract can not be concluded. Heirs of his contract on the change of priority can not change the will of the testator.

**Sources**: [2]; [3]; [5]; [7]; [10]; [12]; [14].

**Questions for self-checking:**

1. Queues of successors by law and the order of calling them to inheritance.

2. Circle of heirs who have the right to inherit the right of representation.

3. Time frame for the conclusion of a contract on the change of priority of obtaining the right

for inheritance

4. Subjective composition of this contract.

5. Those whose succession rights should not violate the treaty of change

the priority of obtaining the right to inheritance.

**Topic 4.**

**Guidelines**

Studying on this topic, students will receive knowledge on the order of realization by successors of their right to accept the inheritance and, as a consequence, the acquisition of inherited property.

    Hereditary relationships require a clear definition. Since they can not last indefinitely, the law establishes the period within which the heirs must express their will to accept the legacy or to refuse to accept it. Article 1270 of the Civil Code of Ukraine establishes two terms for the adoption of the inheritance:

- total, which is set in six months;

- special, which is determined in three months.

By their legal nature, the time for the adoption of the inheritance can

defined as the terms:

- realization of civil rights (terms, during which the person can

to realize its right to accept the inheritance);

- absolutely definite (terms that provide the exact time period,

during which the right to inheritance can be realized and from which the relevant legal consequences are associated);

- imperative (terms that are precisely defined by law and not subject to change for

agreement of the parties);

- legal (terms, fixed in the law - the Central Committee of Ukraine).

In the process of realizing the rights and interests of successors, other interested parties

It is important for the persons to have the correct establishment of the beginning and ending of the time for the adoption of the inheritance. The determination of the period of acceptance of the inheritance is carried out in accordance with the general rules for determining the terms in civil law. According to Article 253 of the Civil Code of Ukraine, the period of validity begins on the next day after the corresponding calendar date or the onset of an event with which its beginning begins. Part 1 of Article 1270 of the Civil Code of Ukraine states that the total period of six months begins with the time of the opening of the inheritance. According to Part 2 of Article 1220 of the Civil Code of Ukraine, the time of the discovery of a legacy is the day of death of the person or the day from which it is declared dead. The death of a person is an event associated with the term for the opening of the inheritance. Accordingly, the timing for the opening of the inheritance begins on the day following the day of the death of the testator. If, for example, the person died on April 10, 2012, the deadline for accepting the inheritance begins on April 11, 2012.

    In accordance with the general rules is determined and the procedure for termination of the acceptance of the inheritance. According to Part 3 of Article 254 of the Civil Code of Ukraine, the term, determined by months, expires in the corresponding number of the last month of the term. Since the period of time begins after the corresponding event of the day, then the mathematical first and last digits coincide, which greatly simplifies the calculation. For example, if a person died on August 5, 2013, the deadline for accepting the legacy will be February 5, 2014. However, this is a rule is not absolute, with it there is an exception. So, if the expiration of the term determined by the month falls on a month that does not have the corresponding number, the term expires on the last day of this month. For example, if a person died on March 31, 2013, the date for the adoption of the inheritance expires on September 30, 2013.

    Part 2 of Article 1270 of the Civil Code of Ukraine lays down special rules for the definition of reduced terms for the adoption of the inheritance. If the person's right to inheritance arises from the rejection of the inheritance or the refusal of its acceptance by other heirs. The term for her inheritance decreases. It is established in three months from the moment of not accepting other heirs of the inheritance or refusal of its adoption. If the remaining term is less than three months, it will continue for up to three months.

      Thus, the law provides that:

- there are successors who acquire the right to inherit only in the case

rejection of the inheritance or refusal to accept it by other heirs (conventionally, "secondary" heirs);

- these heirs can accept the inheritance within three months;

- this term begins to emerge from the moment of rejection of the inheritance by others

"Primary" heirs or refusal to accept it.

In the above article, the same consequences are fixed if, before the abandonment of the inheritance, and its rejection of the "primary" heirs. In the first case, and in the second case, the right to inheritance becomes "secondary" heirs.

     As it is seen from the provisions of the current legislation, rejection of the inheritance is possible only with respect to minors, capable successors who did not live together with the decedent. Such heirs are "primary" and have six months to accept the inheritance, and therefore the rejection of their inheritance can only be said after the expiration of this term. Thus, the "secondary" heirs will acquire the right to inherit immediately after the expiration of a six-month period and they have a shorter period of acceptance of the inheritance for three months. One can conclude that in the case of non-acceptance of the inheritance by the "original" heirs, the general period from the moment of opening of the inheritance until the expiration of the term for its adoption by "secondary" heirs will be nine months. For example, the person died on January 10, 2012. The last day of the legacy is July 10, 2012. If the wife of the testator did not accept the inheritance for six months then the right to accept the inheritance from the decedent's brother's brother (second turn of the heirs) arises from July 11, 2012 and lasts on October 11, 2012.

    The issue is somewhat complicated in the case of a refusal to accept the inheritance. As noted, refusal to accept the inheritance is foreseen for such successors as minors, minors, incapacitated persons, as well as persons whose capacity is limited. To refuse the inheritance, they (their representatives) must submit to the notary's office a statement of refusal. How this affects the acceptance of the inheritance by the "secondary" heirs can be seen in this example. Proceeding from part 2 of Article 1270 of the Civil Code of Ukraine, "secondary" heirs shall acquire the right to accept the inheritance from the day following the day the submission of the declaration of refusal to accept the inheritance is submitted to the "primary" heir. In this case, "secondary" heirs can take the inheritance within three months. Consequently, if the heir of the first stage submitted an application for refusal to accept the inheritance on September 22, 2010, the heir of the second stage acquires the right to inherit from the next day, that is, from September 23, 2010.

    The specified rules are not clear and cause the possibility of their double interpretation. Moreover, the main problems arise in relation to the rights and interests of the "secondary" heirs.

    Such a three-month timeframe for acceptance of the inheritance by "secondary" heirs from the date of refusal of the "original" heir is not final. By virtue of clause 6 of Article 1273 of the Civil Code of Ukraine, the refusal to accept the inheritance may be revoked within the time limit set for its adoption. There is a paradoxical situation. The "original" heir filed a declaration of refusal to accept the inheritance to the notary's office and at the same time retains the right to refuse from his or her refusal for the whole period remaining for him to accept the inheritance. Under such circumstances, the right of the "secondary" heir to accept the inheritance is strictly conditional, since it is bound by the right of the "original" heir to change his mind. The commentary states that the "secondary" heir acquires the right to inherit from the moment of the refusal of the "original" heir. However, what is the point in the day when the application for a refusal was submitted, or the day when the term for the possible withdrawal of such a refusal was passed by the "primary" heir?

Since the "primary" heir can, at any time before the expiration of a six-month time-limit, withdraw his refusal, in the full sense the right of the "secondary" heir occurs after the expiration of this six-month period. Thus, even in the event of a refusal (filing an application), it is necessary to wait for the six-month period to expire, as during this period the "primary" heir may change his mind. If a notary and request a "secondary" heir to the notary's office with a proposal to write an application for acceptance of the inheritance, he should explain that his "right" right to inheritance is not final until the time of the expiration of the time for acceptance of the inheritance by the "original" heir, since the latter may withdraw filed an earlier application for the waiver of the inheritance.

    It should be noted that the right granted to the heirs to withdraw the application for refusal to accept the inheritance, at first glance, extends the rights of the heirs. At the same time, it creates insurmountable difficulties in the process of determining the rights of "secondary" heirs in relation to the adoption of the inheritance and the terms of their "promotion" to the inheritance. But if we take into account that there are not two, but five queues of heirs for the new Central Committee of Ukraine, then we can speak not only about the "secondary" ones, but also about "Trinity" and other types of heirs. As a result, the deadline for final resolution of the issue of acceptance of the inheritance may take many months.

    The Article 1270 of the Central Committee of Ukraine stipulates that the procedure for calculating terms for the adoption of the inheritance is considered vulnerable. The solution to the question, firstly, would be the exclusion of part 6 of Article 1273 from the Central Committee of Ukraine and the establishment of a single rule on the irreversibility of the refusal to accept the inheritance. Then the refusal would mean a failure, and not a possible refusal, and would provide a real right to the "secondary" and other heirs to exercise their inheritance rights. Secondly, it is necessary to extend the time for acceptance of the inheritance by the "secondary" heirs to the total six-month period of acceptance of the inheritance in the event that their right to inheritance arises "within" the six-month period. And only then, the remaining time is less than three months, it can be limited to these three months. Thirdly, it is necessary to establish that an additional three-month period for acceptance of the inheritance should be applied to all successors of subsequent queues simultaneously. This will enable you not to wait for the gradual deployment of events, when only after the expiration of one three-month term begins the next up.

    In accordance with Article 1272 of the Civil Code of Ukraine, the consequences of omission of the period for the adoption of the inheritance have been determined, in particular, if the heir during the period established by Article 1270 of the Civil Code of Ukraine, did not submit an application for acceptance of the inheritance, he is considered to have not accepted. By written consent of the heirs who have inherited the heir, who has missed the time for acceptance of the inheritance, may apply for the adoption of the legacy of the notary at the place of the opening of the inheritance. Upon the claim of the heir who has missed the time for acceptance of the inheritance for a valid reason, the court may determine for him an additional term sufficient for him to submit an application for acceptance of the inheritance.

    Thus, the claim for the determination of the additional time period for filing an application for acceptance of the inheritance is filed:

- in the absence of written consent of all successors who have accepted

the inheritance for submission by the heir who has missed the statutory term, applications for acceptance of the inheritance to the notary's office;

- in the case of a six-month deadline for filing an application for admission

the legacy of the notary and the absence of other heirs who have inherited and could give written consent to the submission of this statement.

    On the basis of a court decision on the determination of an additional period for the adoption of the inheritance, the heir must, within the time-limit specified by the court, apply to the notary and submit a corresponding application, after which he will be deemed to have accepted the inheritance.

    It is also worthwhile to address the explanation to the Plenary Session of the Supreme Court of Ukraine, according to which the court will re-determine the additional term the law does not provide for the application for acceptance of the inheritance by the same heir.

**Sources**: [2]; [4]; [5]; [12]; [14]; [17].

**Questions for self-checking:**

1. Legal implications of not filing an application for inheritance in

statutory term.

2. The beginning of the period for the adoption of the inheritance.

3. Grounds for appeal to the court to determine an additional term,

sufficient to file an application for acceptance of the inheritance.

4. Hereditary transmission.

5. Legal consequences of recognition of the inheritance from the dead.

Topic 5

Guidelines

When dealing with the issues, the student must know and orient in matters regarding the grounds and conditions for such a notarial act, as well as the procedural order of its commission. The student should understand the practical significance of such actions by the notary and its legal consequences.

     The taking of measures on the protection of ancestral property is carried out by a notary through the description of the inherited property, which is conducted with the participation of the interested persons (at will) and at least two witnesses, as well as with the obligatory presence of the executor of the will (if such is intended). It should be borne in mind that the commission of such a notarial act can take place only prior to the adoption of the inheritance by successors or in the absence thereof.

      As a result of the description of the hereditary property, an act of description is drawn up, which must specify:

- The date and time of the drafting of the description of the act, as well as the surname, name, patronymic

the notary conducting the description;

- the name of the state notary office or notary district,

in which a private notary is registered;

- the date of receipt of the application for taking measures to protect the hereditary

property (notification of the indicative composition of the inherited property) or the order of the notary, which is the hereditary case, of taking measures to protect hereditary property, surname, name, patronymic, address, and, where necessary, the place of work and positions of the persons participating in the description;

- surname, name, patronymic of the testator, date of his death, place

opening of the inheritance and location of ancestral property;

- information about the heirs;

- information about whether the premises were sealed prior to the arrival of the notary and

by whom, the state of seals and seals if the room is sealed;

- a description of the inherited property with a detailed description of each item separately

(color, weight, face value, size, variety, mark of the year of issue, and for foreign currency - the denomination, its face value, the value at the rate of the National Bank of Ukraine, etc.) and the determination of its value, taking into account the percentage of depreciation.

    In the event of disagreement with the assessment, the heirs may invite a specialist expert or appraiser. Payments of specialists (experts, appraisers) are carried out by successors.

    Each page of the description of the act summarizes the number of things (items) and their value, and after the end of the description is a summary of the number of things (items) and their value. By the act of description includes all the property that is in the house (apartment) of the deceased.

    Statements of neighbors and other persons about the affiliation of certain things to them are recorded in the act of descriptions, and the persons concerned are clarified the procedure for applying to the court with a claim to exclude this property from the act of descriptions.

    In the case of obtaining a court decision notarial decision to exclude property from an act describing hereditary property, a special inscription on this act is made, which specifies the details of this decision, on the basis of which the property is removed from the act of description, the list of seized items. The inscription is affixed by the signature and seal of the notary, and a copy of the court decision is attached to the materials of the hereditary affair.

    If the description is interrupted or continues for several days, the premises are sealed with a notary public every time. The statement describes the reasons and time for the termination of the description and its restoration, as well as the state of seals and seals at the next display of the premises.

    At the end of the description, the name, surname, patronymic, year of the guardian's birth, the property transferred, the name of the document certifying his identity, number, date of issue, the name of the institution that issued the document, the place of residence of the person shall be indicated.

    The description of the act consists of not less than three copies. All copies shall be signed by a notary, interested persons, witnesses and guard, to whom the inherited property has been deposited, and the notary shall warn of criminal liability in the event of loss or concealment, as well as the liability for the damage caused. One copy of the description of the act is issued to the bodyguard.

    If among the hereditary property there will be foodstuffs, the notary transfers them to the heirs. If the description is conducted without the heirs, long-term food storage products are passed to the relevant organizations for implementation. The transfer is carried out by a separate act, which is signed by the notary public and the witnesses, the representative of the organization or the heir to which these foodstuffs are transferred.

If during the description of the inheritance property there are things that due to deprivation have no value, a notary with the consent of the heirs or a financial institution, if the description is conducted without the heirs, does not include such things in the act of descriptions, and transfers them according to a separate description for destruction or on the stockpile of waste materials.

    Detected explosive substances and explosives, ammunition, weapons (cold, firearms, pneumatic), special means of self-defense, charged with substances of tear and irritant action are transmitted by a notary on a separate description to the organs of internal affairs.

     If, during the taking of measures for the protection of inherited property, the notary has identified the money (securities) remaining after the deceased, they are entered into the relevant accounts for the account of the deposit amounts of the notary or bank, which is issued a corresponding receipt. The receipt is attached to the hereditary case.

    The storage of inherited property in the deposit of a notary or a banking institution is carried out at the expense of the heirs.

    If gold, platinum, silver, metals of the iridium-platinum group in any form are found during the description, foreign currency and expressed in foreign currency or monetary metals, payment documents, silver products, monetary metals, precious stones, as well as precious stones and pearls, they are deposited with the bank for a separate description.

    Before transferring the specified values ​​for storage to the institution of the bank, the notary registers them in the Book of the accounting of values ​​when taking measures to protect the inherited property.

    Orders, medals, badges, as well as documents for rewards in the presence of heirs remain in the family of the testator.

    With the consent of the heirs, state awards can be transferred for temporary or permanent storage to museums. State awards are transferred to museums on the basis of a decision of the Commission of State Awards and Heraldry at the President of Ukraine at the request of a museum institution.

    Transferred to museums for the permanent storage of state awards to the heirs of the deceased are not returned.

    In the absence of successors, state awards and awards will be deposited with the state (Article 18 of the Law of Ukraine "On State Awards of Ukraine").

    Valuable manuscripts, literary works, letters, etc., having historical and scientific significance, are included in the act of descriptions and transferred to the heirs. If there are no heirs, the notary shall transfer the documents for storage, according to a separate description, to the relevant organizations (institute, museum, etc.) in the manner prescribed by the current legislation.

    If the property which is in state registration as a monument of history and culture is identified in the composition of the hereditary property, the notary shall notify the relevant authorities of the protection of historical and cultural monuments.

    Savings books, mortgaged on the things of the testator, located in the pawnshops, etc., are deposited to the heirs, and if there are no heirs, they are kept at the notary's office.

**Sources**: [2]; [4]; [5]; [6]; [7]; [12].

**Questions for self-checking:**

1. Grounds for taking measures to protect hereditary property.

2. Terms of taking measures for the protection of inherited property.

3. Responsibility of guardship property.

4. Features of the transfer of weapons and special equipment

self defense.

5. Procedure for registering the values ​​transferred to the institution for storage

the bank.

**Topic 6**

**Guidelines**

In studying this topic, the student must familiarize himself with the provisions of Articles 68, 69 of the Law of Ukraine "On Notary", Chapter 10 of Section II of the Procedure for the performance of notarial acts by notaries of Ukraine and Appendix No. 25 to the Rules of Notarial Clerical Work.

    The certificate of the right to inheritance is issued by the notary on the basis of the application of the heirs who accepted the inheritance. In this case, in the case of inheritance by will, it is necessary to keep in mind the circle of persons who are successors of the law and on which, regardless of the content of the will, the right to receive a certain share in the inheritance is reserved. It:

- minors, minors, adolescents of incapacitated children of the testator,

disabled widower (widower) and disabled parents have the right to inherit independently of the contents of the will;

- Circle of heirs who are entitled to a mandatory share in the inheritance,

extended interpretation is not subject to;

- the testator can not deprive the right to inherit the persons entitled

for a mandatory share in the inheritance;

- The validity of the will for such persons is set at the time of opening

inheritance;

- Article 1224 of the Civil Code of Ukraine regarding the removal from the right to

succession to such heirs is extended;

- the size of the mandatory share in the inheritance is established by the Central Committee of Ukraine;

- the change in the size of the mandatory share in the direction of increase is impossible;

the reduction of the share may only take place by decision of the court;

- the obligatory share in the inheritance is counted cost of things

the usual home furnishings and use, the cost of a willful denial established in favor of the person entitled to a mandatory share, as well as the value of other things and property rights that have passed to it as an heir;

- any restrictions and encumbrances imposed on the heir in the testament;

which has the right to a mandatory share in the inheritance, are valid only in respect of that part of the inheritance that exceeds its mandatory share;

- the right to a mandatory share is personal, and therefore not

passes through the hereditary transmission;

- heir to a mandatory share, has the right, and not the obligation to accept

inherit or refuse to accept it;

- refusal to accept the inheritance by the heir who is entitled to

the obligatory share can be only "without address".

    As already mentioned, Article 1241 of the Civil Code refers to persons who have the right to a mandatory part of disabled persons - adolescents of incapacitated children of the decedent, disabled widow (widow), or disabled parents. When deciding on the possibility of calling a person to inherit as a compulsory heir, it is difficult to define the concept of "disability" as signs of a certain circle of persons who have the right to a mandatory share in the inheritance. The current legislation does not clearly define which individuals should be considered as disabled, but the analysis of the relevant civil law rules gives grounds for asserting that the following categories of persons belong to the disabled, who are incapacitated, who have the right to a mandatory share in the inheritance:

- persons who have reached the statutory retirement age (Article 26)

Law of Ukraine "On Compulsory State Pension Insurance");

- Disabled persons of any disability group (Article 2 of the Law of Ukraine "On

the basis of social protection of persons with disabilities in Ukraine "provides definition of a disabled person as a person with persistent disorder of an organism's function, caused by illness, the result of injuries or birth defects, which leads to limitation of life, to the need for social assistance and protection. Disability as a measure of loss of health is determined by expert examination in the organs of medical and social expertise of the Ministry of Health of Ukraine. It should be borne in mind that the date of establishment of a disability is the day of receipt of such documents by the authorities necessary for examination of the patient).

    When issuing a certificate of the right to inheritance by testament, the notary must necessarily find out the existence of heirs who are entitled to a mandatory inheritance and who have submitted an application for its adoption or are considered to have adopted the inheritance and did not submit an application for refusal to accept the inheritance (juvenile, juvenile children of the testator, incapacitated, severely capable heirs of the first stage, as well as the heirs of the first turn who lived on the time of opening the inheritance together with the testator and are incapacitated by age or state of health).

    The notary should explain to the successor who has the right to a mandatory share in the inheritance, his right to receive a proper share of the inheritance. The heir may waive the right to a mandatory share in the inheritance by filing an application to the notary regarding the fact that he is acquainted with the content of the will, the content of Article 1241 of the Central Committee of Ukraine clarified to him and he does not claim a mandatory share in the inheritance.

    In determining the size of the mandatory share, the notary must take into account that part of the first article of the above-mentioned article of the Central Committee of Ukraine established that the mandatory share in the inheritance is determined independently of the content of the will in the amount of half of the share that would belong to each of the heirs in the case of inheritance by law. In determining the size of the mandatory share in the inheritance, the notary takes into account all the heirs under the law, which could be called into succession, if the order of inheritance had not been changed by the testator (including the heirs who would inherit the right of representation). The notary offers both the heir to the will and the heir, who has the right to a mandatory share in the inheritance, to say in his declarations of acceptance of the inheritance of all heirs by law, as well as on his own, within the limits of his powers, he takes steps to establish a circle of heirs first turn

    In determining the size of the mandatory share, all inherited property, both bequeathed, and that which is not covered by the will, and also things of the usual home environment and use are taken into account. The property also includes the right to contribute to a bank (financial institution), regardless of whether the order is made in the will or directly in the financial institution.

    If only a part of inherited property is bequeathed, the obligatory share is determined on the basis of the value of all inherited property, but is allocated to the obligatory heir from the part of the inherited property that remained beyond the will. If the proportion of the remaining inherited property is less than the size of the mandatory inheritance share, the obligated heir receives a share which is insufficient from the legacy part of the inherited property.

    Having determined the size of the obligatory share, having checked by requesting the relevant documents, the fact of the family relationship between the testator and the obligatory heir, and also verifying the inability of this heir, the notary issues such a successor the certificate of the right to inheritance by law, and the heir to the will - the certificate of the right by inheritance by will.

**Sources: [4]; [5]; [6]; [7]; [9]; [14]; [15].**

**Questions for self-checking:**

1. Which of the following statements are correct:

- the heir may deprive the right to inherit the persons who have

the right to a mandatory share in the inheritance;

- the validity of the will concerning persons who are entitled to a mandatory share in

an inheritance, is established at the time of the discovery of the inheritance;

- in determining the size of the share in the inheritance does not take into account the heirs,

who have the right to inherit in the order of submission;

- The size of the mandatory share in the inheritance may be increased or

reduced by court;

- when issuing a certificate of the right to inherit a compulsory heir

the notary is obliged to check both the fact of family relations and the fact of disability of this heir.

**Topic 7**

**Guidelines**

Studying this subject, the student should pay attention and get acquainted with the problematic issues arising in the notarial practice in the registration of inheritance rights to certain objects that are part of the inheritance.

    In the context of the inheritance of property rights of intellectual property (hereinafter referred to as the IP) to objects of IP rights, special legislation in some cases only specifies the corresponding rights (in relation to industrial property objects), while in others, on the contrary, it broadens substantially, providing heirs of additional opportunities in the realization of property rights IP (regarding the objects of copyright and related rights). The right to IP is a person's right to the result of intellectual, creative activity or other object of IP rights, defined by this Code and other law (Article 418 of the Civil Code of Ukraine). IP rights are the personal non-property rights of the IP and (or) proprietary rights of intellectual property, the content of which for certain objects of this right is determined by the Central Committee of Ukraine and other laws.

    The personal non-property rights of the IP are:

1) the right to recognize a person as a creator (author, performer, inventor

etc.) object of the right IP;

2) the right to interfere with any encroachment on the right IP, capable

damage the honor or reputation of the creator of the IP rights object;

3) other personal non-property rights of the IP, established by law.

Personal non-property rights of the IP belong to the creator of the IP object. IN

In cases stipulated by law, personal non-property rights may be owned by other persons. The personal non-property rights of the IP do not depend on the property rights of the IP. Personal non-property rights IP can not be alienated (transferred), with the exceptions established by law.

    The property rights of the IP are:

1) the right to use the object of intellectual property rights;

2) the exclusive right to authorize the use of the object of IP rights;

3) the exclusive right to interfere with the unlawful use of the object

IP rights, including prohibiting such use;

4) other property rights of the IP, established by law.

The law may set exceptions and restrictions in property rights

IP provided that such restrictions and exceptions do not create significant obstacles for the normal realization of property rights of IP and the legitimate interests of the subjects of these rights. Property rights IP can, in accordance with the law, be a contribution to the charter capital of a legal entity, the subject of a pledge agreement and other obligations, and also used in other civil relations.

    Conditional IP objects can be divided into two groups. The first group includes industrial property objects (inventions, utility models, industrial designs, trademarks, trade marks, etc.). The second group consists of copyright and related rights (works of science, literature and art, audio and video products, programs and databases, etc.).

    The essence of the legal protection of industrial property objects consists in the creation by the state of a system of expert institutions (Ukrainian Institute of Industrial Property) that carry out a technical examination of the results of creative activity of a person to dispose of the results of his creative activity, reflected in the application, by acquiring intellectual property rights in including the right to defend their rights in court within the statutory time limit. In case of successful examination and payment of the relevant fees and state fees, information about the result of intellectual and creative activity of a person is registered in the relevant state register and published in an official bulletin, and since the publication of this information, the author (or indicated in the application) acquires the intellectual property rights Ownership of the object of industrial property rights and receives the title document: a patent for an invention or utility model, an industrial design, a certificate for a sign for goods and services (in meaning of Civil Code of Ukraine - trademark).

* The essence of legal protection of copyright and related rights is the establishment by the state of the legal regime of the presumption of authorship. For the origin and implementation of copyright is not required to register a work or any other special design, as well as the execution of any other formalities.
* If the objects of industrial property are protected by the content of the result of creative and intellectual activity of a person, then the objects of copyright are protected by the form of creative activity of man. When protecting industrial property, the state conducts an examination and informs the public about the content of the results of the creative activity of the creators. When protecting copyright objects, the state offers, and does not bind, to register the form of the result of creative activity for the purpose of deposit, while informing the society only of the very fact of registration without disclosing the forms.
* In accordance with part 5 of Article 11 of the Law of Ukraine "On Copyright and Related Rights", the subject of copyright for the certification of authorship (copyright) to the published or not published work, the fact and date of publication of a work or treaties relating to the author's right to work , at any time during the term of copyright protection, may register its copyright in the relevant state registers. State registration of copyright and contracts relating to the rights of the author to the work is carried out by the Office in accordance with the procedure approved by the Cabinet of Ministers of Ukraine. The institution makes and periodically issues catalogs of all state registrations. For the preparation by the Office for the state registration of copyright and contracts relating to the rights of the author to the work, fees are paid, the size of which is determined by the Cabinet of Ministers of Ukraine. About the registration of copyright to a work A certificate issued by the Office is issued. For the issue of a certificate, a state fee is paid, and the funds paid from it are transferred to the State Budget of Ukraine. The size and procedure for payment of the state fee for the issuance of a certificate are determined by law. Such agency is the state-owned enterprise Ukrainian Agency for Copyright and Related Rights.
* In accordance with the current legislation on a notary, at the time of issue of the certificate of the right to inheritance the notary requires documentary confirmation of the rights to inherited property, which passes to the heir. In the context of this requirement, it is necessary to clearly outline the documents on the basis of which the notary has the right to include the property rights of the IP on the objects of IP right to the certificate of the right to inherit by law or by will. Regarding industrial property objects, these are extracts from the following state registers:
* - State Register of Patents of Ukraine for inventions;
* - State register of certificates of Ukraine on signs for goods and services;
* - State Register of Patents of Ukraine for industrial designs;
* - State register of Ukraine topographies of integrated circuits;
* - State register of declarative patents of Ukraine on utility models;
* - State Register of Declarative Patents of Ukraine for secret useful
* models;

State Register of Patents and Declarative Patents of Ukraine to the Secret

inventions

    Regarding the State Register of Patents and Declarative Patents for inventions and useful models, the rules of the data provisions of the registry do not provide for the provision of an extract (for all other registries, such a request may be filed by any person). However, in connection with the discovery of the inheritance, it is still necessary to contact the State Department of Intellectual Property to provide at least information that would allow identification of the identity of the deceased and the proprietary intellectual property rights that belonged to it.

    It is considered that the proprietor of intellectual property rights is a person (physical or legal) indicated in the column "Owner" of such statement from the State Register. It should be noted that the original title document will always be the name of the last owner, in the context of this study - the testator.

    As to the objects of copyright, based on the essence of the presumption of authorship, the notary can not identify and describe the objects of copyright in the certificate of inheritance (except for those registered in the UACRP). Actually for this identification it is necessary to file two requests to the State Department of Intellectual Property concerning two registers:

1) State register of certificates of registration of copyright to work

(in order to establish the fact of registration by the heir);

2) the State Register and the State Register of Treaties relating to

the rights of the author to the work (in order to find out whether the property rights for the registered work are transferred to other persons).

    In essence, only on the basis of an answer from these registers the notary may include the property rights of the IP on the object of copyright to the certificate of inheritance, but again the question arises with the assessment.

 In case of death of the founder (participant) of the economic partnership, first of all

it is necessary to determine what will be inherited, that is, with the object that will be part of the inheritance, the theory considered the following variants of inheritance:

     - the right to participate in a partnership;

- the right to a share in statutory (paid-in capital);

- corporate rights of the participant of the company.

The right to participate in a society is defined by Article 100 of the Civil Code of Ukraine as a personal law

non-property right that can not be separately transferred to another person. In connection with the above immediately the question arises of the possibility of its transfer in conjunction with other rights, and if such an opportunity exists, with what exactly. Does not resolve this issue and part 1 of Article 1219 of the Civil Code of Ukraine, which states that they are not part of the inheritance the right to participate in the partnership, unless otherwise provided by law or constituent documents.

    Corporate rights can not directly be the object of inheritance, since they certainly do not pass to the heirs. The heir may acquire corporate rights (rights of a participant in an economic partnership) only with the consent of other participants for his membership in the partnership. If corporate rights are embodied in the share (that is, when it comes to inheritance of the rights of the shareholder), then the object acts as a security paper.

    Thus, the inherent inheritance of the right to a share in the authorized (stock) capital is the most acceptable.

So, we can sum up:

- if corporate rights are embodied in the stock, the shares will be inherited;

- if the corporate rights of such an embodiment did not get (the rights of participants of other economic partnerships), then the share in the authorized (accumulated) capital will be inherited.

Shares as objects of civil rights and securities are inherited, and the heirs of the shareholder pass all the rights granted by it. That is, the heirs become shareholders (members of a joint stock company), which means that both property and non-property rights to participate in a partnership are transferred to them (corporate rights). There is no difference between the inheritance of shares and other things.

The share in the authorized capital of a limited liability company passes to the heir of an individual if the charter of the partnership does not provide that such a transition is allowed only with the consent of other members of the partnership. Settlements with the heirs of a participant who have not entered into a partnership shall be carried out in accordance with the provisions of Art. 148 of the Civil Code of Ukraine.

In cases where the heir did not agree to enter into a partnership or other members of the partnership did not consent to the transfer to the heir of the share in the charter capital of the partnership, the heir has the right to demand payment of his share of the property of the partnership, proportional to the proportion of the deceased. In such a situation, the share in the authorized capital does not pass to the heir, but instead passes the right of property claim.

**Sources: [2]; [5]; [6]; [12]; [15]; [16].**

**Questions for self-checking:**

1. The order of inheritance and registration of rights to real estate.

2. List the proprietary intellectual property rights inherited.

3. From which state registers should be extracted to confirm the right of the testator on the object of industrial property.

4. The data of which registers are used by notaries in determining the proprietary rights of intellectual property to the object of copyright.

5. Shares as an object of inheritance.

6. Inherited share in the authorized capital.

**Referece**

1. Конституція України: Прийнята Верховною радою України 28.06.1996 р. / Відомості Верховної Ради України, 1996. – № 30. – Ст.141.

2. Цивільний кодекс України / Відомості Верховної Ради України, 2003. – № 40.– С. 356.

3. Сімейний кодекс України / Відомості Верховної Ради України. 2002. – № 21 – С. 135.

4. Про нотаріат: Закон України від 2 вересня 1993 року № 3425-ХІІ / Відомості Верховної Ради України, 1993. – № 39.– С. 383.

5. Порядок вчинення нотаріальних дій нотаріусами України, затверджений наказом Міністерства юстиції України від 22 лютого 2012 року № 296/5 / Офіційний вісник України. – 2012. – № 17. – С. 632.

6. Правила ведення нотаріального діловодства, затверджені наказом Міністерства юстиції України від 22 грудня 2010 року / Офіційний вісник України. – 2015. – № 24. – С. 714.

7. Про державне мито: Декрет Кабінету Міністрів України від 21 січня 1993 року № 7/93 / Відомості Верховної Ради України, 1993. – № 13.– С. 113.

8. Інструкція про порядок обчислення та справляння державного мита, затвердженого наказом Міністерства фінансів України від 7 липня 2012 року № 811 / Офіційний вісник України. – 2012. – № 74. – С. 3011.

9. Положення про спадковий реєстр, затверджене наказом Міністерства юстиції України від 7 липня 2011 року № 1840/5 / Офіційний вісник України. – 2005. – № 15. – С. 798.

10. Порядок ведення Єдиного реєстру спеціальних бланків нотаріальних документів, затверджений наказом Міністерства юстиції України від 4 листопада 2009 року № 2053/5 / Офіційний вісник України. – 2004. – № 28. – С. 1929.

11. Радзієвська Л.К. Нотаріат в Україні: навч. Посібник / Л.К.Радзієвська – К.: Юрінком Інтер. –2008. – 528 с.

12. Нікітін Ю.В. Нотаріат в Україні: навч. посіб. / Ю.В. Нікітін – К.: КНТ. – 2009. – 632 с.

13. Нотаріат в Україні: законодавство, суд. Практика / Міністерство юстиції України: за заг. ред.. Л.В.Єфіменка. – К.: Юрінком Інтер, 2009. – 400 с.

14. І.В.Жилінкова. Актуальні питання спадкового права України / І.В. Жилінкова. – КСИЛОН. 2009. – 148 с.

15. Носік В.В., Спасібо-Фатєєва І.В., Жилінкова І.В., Печений О.П. Проблемні питання нотаріальної практики. – Х., 2008. – 96 с.

16. Новий Цивільний Кодекс України: проблемні питання застосування. – К.: Поліграф-Експрес, 2008. – 138 с.

17. Про судову практику у справах про спадкування: Постанова Пленуму Верховного Суду України від 30 травня 2008 року № 7. [Електронний ресурс]. – Режим доступу: http://zakon4.rada.ua/laws/show/v-753740-13.