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S. I. Shimon
Doctor of Juridical Sciences, Associate Professor
National M. P. Dragomanov Pedagogical University,
The Department of Civil and Labor Law
Pirogova str., 9, Kiev, 01601, Ukraine

THE ALTERNATIVE VIEW ON THE PROPRIETARY AND ITS OBJECTS FROM THE STANDPOINT OF CIVIL LAW THEORY, LEGISLATION AND PRACTICE

The paper deals with the modern concepts of property rights. It solves the problem of determination content of property rights; proves that property rights may be the objects of ownership. Inability of a traditional construction of property to serve a real civil circulation is proved. The conclusion that in a modern law order of Ukraine there are two types of the proprietary is made: the real property right the object of which is property material benefit, and not real property right the object of which is the property non-material benefit. The problem of the maintenance of the proprietary which is offered to be determined not by the list of powers, but by legal freedom of the owner is solved. It is proved that the proprietary is an exclusive property right, and its contents is elastic. Possibility of distribution of action of the proprietary to property rights is substantiated.

Key words: ownership; objects of proprietary rights; property rights.

Problem statement. The common notion on the proprietary leads it to a triad of the rights: possession, usage and disposition which can be applied only to a thing — a corporal subject which is admitted as the only object of the proprietary. In the domestic law this triad was offered by V. G. Kukolnik and fixed in law on the initiative of M. M. Speransky who, however, still then realized that this formula didn't settle the maintenance of the proprietary [1, p. 206–207]. Since then the proprietary is steadily treated as body of powers, however, to identify with them the proprietary as S. I. Arkhipov notices, means not to understand its essence; «any three or thirty three concrete powers can not replace the proprietary; it is impossible «to stick» the proprietary of them..., whereas it is possible to withdraw tens and hundreds concrete powers from the proprietary... and thus, it won't be identical to their sum; a secret of proprietary is not in number of its elements, but in a special quality which distinguishes it from other powers» [2, p. 454].

The traditional interpretation of the proprietary doesn't satisfy the requirements of a civil circulation, competence of the owner with regard to different objects, for example immovable and movable things, consuming and non-consuming, it significantly differs depending on properties and the social importance of the benefit. In reality the powers of the owner leave far beyond the specified triad, and the list of objects of the proprietary can not be long ago associated only with this thing.

Analysis of recent researches and publications. Despite that traditional views of the proprietary prevailed in science, the triad of the rights of the owner as unique was struck to doubt by classics of civil law (G. F. Shershenevich, K. P. Pobedonostsev, U. S. Gambarov, K. D. Kavelin). In Soviet times it was reinterpreted critically, in particular, by A. V. Venediktov, S. M. Bratus, V. P. Gribanov. There were made offers to add the content of the proprietary with the following powers: destruction of a thing, usage, management; consumption, destruction, modification, improvement, sale, exercise, transferability in rent or upon the security, etc. More fundamental change of the concept of the proprietary was offered by U. G. Basin; he applied the term «proprietary» in value of a generic term and allocated four types of the proprietary due to criterion of the object: on things («own by things»); on subject symbols of the property benefits; on current assets; incorporeal right [3, p. 38–39].

Paper purpose. A uniform template establishment of owner's competences in a standard design or in theoretical model brings to «a legal blindness so complicated legal phenomenon is treated according the schemes accepted for pins and pencils» [2, p. 458]. In this connection there is a necessity to find out a question of the content of the proprietary and special aspects of the objects from a position of modern legal science and practice, as it is the purpose of our work.

Paper main body. The concept of this scientist didn't find support in science; the concept of «owner» offered them as owner of immaterial property was especially critically apprehended. O. S. Ioffe denied it as «the owner isn't a generic indicator of all types of property, therefore in this concept there is neither general definition of proprietary, nor special character of those separate types that the author tries to bring under it» [4, p. 460–462].

In return, on these remarks we will note that in the mentioned sense concerning all objects it is necessary to consider the generic subject of civil law, and about property — the owner. Existence of such generic terms (property, owner) predetermines need in determination of patrimonial powers which we suggest to consider competence of possession which would mark the full power of the subject over rights of the object.

During the same period three theoretical models of the proprietary with different «social cores» were allocated. In elementary model the fixing component is such (norms about fixing of a proprietary to a person and reclamations of a thing from others illicit possession); in model of the split proprietary — a positioning component (norms which define the status of the owner and mediates a turn of objects of proprietary); in model with the separated management — components of management and positioning [5, p. 148–157].

Such change of views on the property right and now causes solicitude of some scientists. So, S. S. Alekseev pays attention to joint-stock property where the shareholder is the owner of exclusively certain share of the society capital, the rights on it lose the material nature and pass into the category of the relative. The property «disappears in the original form», being poured from material legal relationship in obligations, and loses value of the stabiliz-

ing factor of all economy. The scientist sees the only direction of development of the proprietary in ensuring harmony of the property material nature and its advanced organizational and legal forms. A condition of that is firm and indisputable recognition behind each fragment of social reality which applies to be called as property, its inseparability from concrete material object. «No matter in what image there is the property — the owner of securities, and the shareholder, and the owner of a stock bond, they all have to continuously remember that there are metallurgical complexes, other unique material, intellectual, cultural wealth behind all this «paper» things» [6, p. 61–62, 207, 223–224].

But, defending the need to preserve the material aspect of property, the author includes such elements to the objects of this right as: things, the immaterial benefits (in particular, honor, dignity of the person), objective results of authorship, invention, discoveries, means of an individualization, documentary or in any other way designated signs (securities), including «money carriers»; and also «property complexes as system which includes besides property also the personnel (that predetermines inclusion to the maintenance of the property right and the right of management)» [6, p. 55–59]. It is obvious that such list of proprietary objects isn't compatible to the settled triad of powers.

Failure of the traditional proprietary concept to serve requirements of a civil circulation through the example of shares is also proved by I. V. Spasibo-Fateeva according to whom, this concept answers the realities of the idea of the owner as the person who has the right of «property ownership» which parts both proprietary, and objects of incorporeal right [7, p. 32–35]. The same view of the corporate property right is expressed by V. V. Galov and A. S. Zinchenko: the object of the right of the participant is the exclusively cost value of the production capital, therefore it can't be the material; it is an absolute proprietary right which is complicated by a non-property element — the right of participation. Complexity of the property right in corporate bodies lies in fact, that both participants and the organization, have the same cost of property benefit as the object of rights. For participants of the body the object of rights is settled by this, whereas the body has the right and for real object — property in kind [8, p. 117]. Other functional aspect of the property relations from a position of these scientists is connected with the fact, that the participants have the rights and perform duties not for themselves but for the body and from its name; and in their actions the proprietary interest of this body to the production capital is exercised. This unique structure of property has no analogs in the classical forms and demands the enshrinement in the law: participants have to be allocated with an absolute proprietary on authorized capital and cost part of assets of the body [8, p. 118]. Such proprietary is exercised directly and through organizationally administrative relations which develop through implementation of the material proprietary by the body in the course of use of the production capital (real estate).

Certainly, the relations of corporate property are extremely specific and certify that the traditional proprietary needs revision. At the same time, in

our opinion, in the nature of the corporate property relations we can find elements of confidential property which allows using different options of legal designs, for example such as providing appointment the founder as the confidential owner. Such structure is suitable for explanation of the shareholders' not material absolute property rights and the material rights of the joint-stock company.

Generalizing views on the property right, O. M. Solovjyov allocates three approaches in science: 1) treating it as complete, fullest and unlimited material authority; 2) the comminution of rights that allows to consider several persons with different «pinches» of powers as owners of the same object at the same time; 3) traditional interpretation of the proprietary as universal model which includes a triad of rights which take out its contents. Considering the second of the named approaches unacceptable, the scientist defines the proprietary as «the fullest and unlimited subjective material right, which is legally provided to the owner possibility of exercising any action with the property (in particular — on possession, usage and disposition) voluntarily and irrespective of other persons' will, and the restriction of it is allowed and should be provided only in cases, provided by the law» [9, p. 49–53].

Thus, having approached the main conclusion about narrowness of legal interpretation of the proprietary through «possession, usage, disposition», the author, paying a tradition tribute, did not dare to reject these terms while forming a definition. Whereas realities of legal life dictate this need, as the existing relations of property leave far beyond such understanding of this legal phenomenon and provide subjects with powers, which do not fall within the standards of «possession and usage», but allocate owners with the fullest power concerning objects of their rights. Therefore, it is necessary to recognize that either in legal system there is some another right, near the proprietary, similar behind completeness of the powers over object, or the proprietary, which allocates the person with the highest power of rather property object, goes beyond material legal relationship, that seems more logical. And consequently, near the material property right there is not material property right which extends on those components of property, which aren't things.

In general the proprietary allocates the person with uncommon opportunities; it establishes total empery of the person over property object and is characterized by inexhaustibility of owner's powers. So, the proprietary should be considered as an exclusive right of the person, exercised over property, which he carries out on own discretion according to the law and the moral principles of society.

Freedom of the subject to carry out within the law any actions, significant from the legal point of view, concerning object of the right is embodied in the proprietary. Therefore S. I. Arkhipov proves a conclusion that the proprietary is a legal freedom of the owner, and not concerning a thing but in relation to other subjects, the main power of the owner he considers as the right of the person to act as the center of legal communication and individually legal regulation concerning a thing. The owner is «a decisive legal instance concerning a thing in the relations with other persons; his will shouldn't be defined by

the law from the position of its direction, statement and achievement of the objectives pursued by its interests; the law establishes only an external framework of its implementation» [2, p. 453–454].

In that we can see exclusiveness of the proprietary which lies in that: 1) the proprietary is the fullest authority for property object; 2) this right can belong only to the owner and cannot belong to other people at the same time; 3) the proprietary authorizes the subject to create for himself any powers within the law and the moral principles of society; 4) the owner is able to create the new subjective rights with narrower contents concerning the object and to allocate other subjects with them (the right of confidential property, a right of usage); 5) the content of the proprietary can't be defined by establishment of the exhaustive list of powers of the subject, it is defined by legal freedom of the owner. The proprietary according to its content is elastic and that means its ability to expansion (narrowing): the content of the proprietary is defined by legal freedom of the owner, types and volume of owner's powers depend on characteristics of object and specifics of legal status (mode) of a legal entity.

Such understanding of the proprietary according to the content embraces any powers and allows to include the various benefits in number of its objects, but, in our opinion, attempts to extend its action to the sphere of the non-property relations looks out not absolutely successful. For example, V. V. Galov and S. A. Zinchenko allocate such types of «proprietary»: 1) rights in rem, which objects are production products which get commercial property form; 2) property and non-property rights — concerning objects of the state and municipal ownership, which sphere of trading circulation defines completely not material, combination of material and not material and completely material principles of formation, implementation and termination of the proprietary; 3) non-property rights, which exist and are carried out in the sphere of the personal non-property benefits, and also physical and social wellbeing of the person; not material proprietary and material proprietary are defined in them [8, p. 28–29, 77–78]. Concerning such division, it should be noted that allocation of group «non-property rights» seems not absolutely logical, after all the name of specific concept completely coincides with the name of the second subspecies — «non-property rights»; and the name of the first subspecies indicates property nature of the right whereas the name of a concept claims that there is a speech about the not material rights. Thus, in both cases the principles of classification are broken.

Besides, these authors practically identify the proprietary with concept of subjective civil law which isn't true. We think that the system of objects of the proprietary has to be limited by the property benefits. In the context of a subject of our attention it is important which object of types of the proprietary these authors consider as a property right? They define proprietary as absolute property rights and think that this right as object of legal relationship is «the right for other rights». The content of such right («property ownership») is expressed through commodity competence of that measure by which this right is good [8, p. 37–39, 50].

The criterion of a division of the «right in rem» and «property» rights allocated the information carrier behind which each of these rights «is learned». For the right in rem it is a thing, and for a proprietary of property it is a document or other way of its fixing. These scientists represent the commodity and property party of the proprietary content through the powers: possession of the property benefit that is fixed on the information carrier; usage — in the form of the account as an asset in economic activity of the subject; disposition that allows the person to alienate or to decide destiny of a proprietary in a different way [8, p. 51]. In some way such image contradicts those statements of these scientists, where they deny identity of the right in rem and proprietary. Besides, the criterion of information reflection of a proprietary in the document isn't universal because there may also be subjective rights which are not affirmed in the document. And the information carrier is necessary for some types of «rights in rem», for example, in the form of the state registration of the rights for real estate.

Mistake in the mentioned concept is also referencing proprietary as an object to a type of the property right («an absolute property right»). Here authors mix different levels of these rights: «the subjective proprietary» is object of the property right whereas they consider it as a type of the last one. In a design «the right for a proprietary» object is not the first right (as V. V. Galov and S. A. Zinchenko wrote), but the second of these ones.

Thought that property rights can act as objects of the proprietary is expressed by many scientists, who explain it in that way: the law allocates property rights with properties of a thing, therefore recognizes them as objects of the proprietary (I. A. Gumarov [10, p. 80–84]); recognition as rights' object only the things is too narrow, because there also may be some rights for actions of other person (M. I. Braginsky [11, p. 124]); sale of property rights is a type of purchase sale, therefore the general patrimonial sign of the last one — meaning an object transmitted in property — is inherent to property rights (D. V. Murzin [12, p. 98]); «coming off» the obligations basis, the proprietary gains possibility of autonomous existence outside the primitive obligation, but in connection with it there is «an obligations quasything» (V. O. Lapach [13, p. 242–243]); object of the proprietary is undoubtedly the property right on a share in the authorized capital of the body (I. V. Spasibo-Fateeva [14, p. 12], I. A. Spasibo [15, p. 10]), etc.

Arguments of the opponents are mainly reduced to the next statements: it is possible to speak about the proprietary to property rights only conditionally, in aspect of the instruction on their accessory to a certain person (O. M. Lysenko [16, p. 78, 82]); the relevant provisions of the law are only reception of legal equipment which allows to apply norms which regulate purchase sale to commutative alienation of property rights (A. S. Yakovlev [18, p. 122–124]). L. O. Chegovadze notes that if there is «a proprietary on a property right», it is necessary to extend thing's signs to the last one, but physical transfer of rights is impracticable as they can be transferred only legally [19, p. 371–372]. Apparently, such argument does not make the proprietary on property rights impossible. Just as the subjective right is the phenomenon of

the ideal world so it is natural that legal actions are necessary for its transferability; thus they can be followed by the actual actions (delivery of documents which confirm existence of such right, and so forth). The question concerning physical transfer of a thing also shouldn't be considered unilaterally. After all one of the means of transferring goods to the purchaser under the contract is the delivery of the consignment or other title document (Par. 2 of Art. 334 of the Civil Code of Ukraine).

Denying possibility of existence of the proprietary on property rights, E. O. Krasheninnikov notes that if the proprietary to the right of claim is admitted then the debtor will be connected with the creditor by two legal relationships and will have two mutually exclusive duties: relative — to make a certain action, and absolute — to abstain from actions which would lead to the termination of the claim right. Implementation of claim stops the rights on it therefore violates the proprietary, and failure to meet requirement will violate a liability law of the creditor. Besides, recognition of the proprietary to the claim right will compel to consider retreat of the right as transferring of the proprietary on it [20, p. 31–32, 35].

However, writing out a design of «mutually exclusive» duties of the creditor, this scientist doesn't take into account the fact that they exist at the different levels of legal relationships, and the termination of the right of the claim by performance doesn't lead to destruction of the right as the debtor provides to the creditor a certain benefit which becomes object of the right. The author contradicts to himself, noting that «accessory of the claim right to a certain person eliminates all others from intervention in its coherence with the claim and in this sense it is absolute, and infringement of it allows the creditor to apply the same means of protection which are used at violation of the absolute rights». Further he loosens his position stating that «it is clear that transferring of the right means change of accessory of the right without change of its contents» [20, p. 35–36]. So it means that in imagination of the author «a condition of accessory» has absolute character, in contrast to the proprietary, and «change of accessory» is treated as alienation of the right.

In the question if property rights are objects of the property right, the position of the legislator is important. We will try to define it from the analysis of standards of the Civil Code of Ukraine. So, Par.1 of Art. 316 of the code establishes that the proprietary is the right of the personality for a thing (property). It is obvious that such specification is expedient only under a condition if the term «property» in value of set of things and property rights is used.

And the construction «the right of the personality for a thing (property)» allows both the right for any property object, and any right which can arise depending on characteristics of the object. Therefore, we could note that universal approach which answers realities of life more than views of traditional science is displayed in the law. If, in particular, there is not the situation of Par.1 of Art. 317 according which the owner has the rights of possession, usage and ordinances of the property which is possible only in reference to a thing.

It is necessary to keep in mind that the law recognizes property rights as a subject of various contracts, and public practice testifies that property rights are widely used in civil circulation. However, the law does not establish separate rules of their address. As far as rules of the things address are established in norms on separate types of contracts, the law extends them to all property objects. From a position of legal equipment it is most convenient to make it in the general norm which defines concept of property and proclaims property rights the material rights and a non-consuming thing as it is made in Art. 190 of the Civil Code.

Besides, the owner possesses the rights of possession, usage and ordinances of the property (Par.1 of Art. 317 of the Civil Code of Ukraine) that he carries out on his own discretion (Par.1. of Art. 319); the owner is able to make any actions which don't contradict the law (Par. 2 of Art. 319). The term «property», but not «thing» is applied in provisions of Articles 329, 347, 349 (about the termination of the proprietary), 355, 369 and others (about the general property) and so forth. Though some other norms give ground for a conclusion that objects of the proprietary are only things: so it is referred to a property apportionment from the general property in nature (Article 364, 366, 370, 371); about structure, quantity of property (Par. 3 of Art. 325); about the contents (Art. 322), risk of casual destruction and casual damage of property (Art. 323); about the transferability, delivery of property to the purchaser and so forth. Along with it, in line with Par.1 of Art. 658 right of sale of goods, by the general rule, belongs to the owner of goods; and property rights can be a subject of sales (Par. 2 of Art. 656); therefore the seller of a proprietary is the owner of this right.

And in some norms the proprietary on property rights is directly recognized. It is sure, according to Art. 27 of the Law of Ukraine «About Pledge» of October 2, 1992, pledge stores force if the property or property rights (a pledge object) become the property of the person. The right of rent or use of real estate which according the law on a mortgage is considered real estate (Par. 7 of Art. 5) which belongs to a mortgagor on the proprietary. According to P. 1 of Par. 2 of Art. 7 of the Law of Ukraine «About Mortgage Bonds» of December 22, 2005, mortgage assets which are the right of the claim for the liability of the debtor provided with a mortgage, belong to the issuer on the proprietary. The Law of Ukraine «About Depository System of Ukraine» of July 6, 2012 establishes in Par. 13 of Part1 of Art. 1 that the rights for securities are «the rights in rem for securities (the proprietary, others are defined by the law as the material rights)». Besides the rights for a security there are the rights in rem, and the rights behind a security are the rights which arise from the obligation (Par. 13 of Part. 1 of Art. 1). Thus, we have the proprietary to rights in personam in the law.

Synonymous position concerning existence of the proprietary on property rights the Supreme Court of Ukraine pronounced in resolutions of September 4, 2013 in civil cases No. 6–72t «civil case» 13 and No. 6–51 «civil case» 13 concerning contest of legitimacy of transferability on the security of property rights without consent of investors. The court notes that investors, who

completely fulfilled the obligations under investment contracts, are the owners of property rights on object of investment (construction) that is why the conclusion of the contract of pledge without their consent contradicts the law.

It means that recognition of property rights of objects of the proprietary has already taken place at the legislative and practical levels. There is only a question if any property rights are objects of the proprietary? It seems that objects of the proprietary have to be admitted as such an objectable property rights which give opportunity to get in property the benefits (things or money). These are property rights which are allocated with such attributes: a) they are the part of property of the person as its elements, b) they provide acquisition of real property (things, money) in property in the future (it is practically «the potential real benefit»), c) concerning them the person (the owner, a proprietor) is allocated with the property ordering independence — has the absolute right to dispose them. Two groups of the rights belong to them: 1) property rights on object-thing which will arise in the future (for example, property rights on real estate which construction is incomplete, property rights on object of investment); 2) property rights of the claim concerning payment of money, transferability of other estate in property. Object of the proprietary can be such property right which is in personam and in the future it will be transformed to the real benefit (thing).

Limited material rights are not the objects of the property rights and the precedents confirms this. So in Par. 33 of the Resolution of Plenum of the Supreme Court of Ukraine No. 13 of October 24, 2008 «About Practice of Consideration by Courts of Corporate Disputes» it is noted that the property contribution of the participant to authorized (made) capital is the object of the proprietary of society except for that cases when acts of acceptance and transfer and the provision of constituent documents of society don't provide cautions that a contribution of the participant to authorized capital are property rights, in particular, a right to use the property.

The impossibility of distribution of the mode of the proprietary to the limited material rights is connected with that that they are, firstly, indissoluble with things which have other owner; secondly, they can't be alienated without consent of the owner as long as the right owner doesn't have completeness of the power; thirdly, these rights have attributes of the absolute rights therefore concerning them there can't be a proprietary.

Conclusions. Summing up the results, it is expedient to note that achievements of the civil theory certify cardinal shifts in views on the concept of the proprietary, moving from the leading place idea of this right as to an exhaustive triad of powers of the owner concerning a thing. And the condition of the legislation and right applicable practice gives the ground for a conclusion that the proprietary in the modern world has been transformed according to scientific and technical progress and development of the economic relations that has led to formation of two types of the proprietary — in rem and not in rem.

The proprietary is the fullest authority of the personality for property; it is absolute civil law, an exclusive property right and it is also elastic according to the contents which is defined by legal freedom of the owner; types and

volume of powers of the owner depend on features of object and specifics of legal status (mode) of a legal entity. Property material benefits (right in rem) and property non-material objects, in particular rights of the claim (right in personam) can act as objects of the proprietary.

References

1. Синайский В. И. Русское гражданское право [Текст] / В. И. Синайский. — М. : Статут, 2002. — 638 с.
2. Архипов С. И. Проблема триады права собственности [Текст] / С. И. Архипов // Научный ежегодник Института философии и права Уральского отделения Российской академии наук. — 2011. — Вып. 11. — С. 448–466.
3. Басин Ю. К вопросу о понятии права собственности [Текст] / Ю. Басин // Гражданское законодательство Республики Казахстан : статьи, комментарии, практика. — Алматы : ЮРИСТ, 2003. — Вып. 17. — С. 28–40.
4. Иоффе О. Рецензия на статью Ю. Басина «К вопросу о понятии права собственности» [Текст] // О. С. Иоффе. Избранные труды: В 4 т. / Отв. ред. И. В. Елисеев, И. Ю. Козлихин. — СПб. : Изд-во Р. Асланова «Юридический центр Пресс», 2010. — Т. IV. — С. 460–462.
5. Точилин В. В. Право оперативного управления и право хозяйственного ведения: особенности правового регулирования [Текст] : монография / В. В. Точилин. — Армавир : Редакционно-издательский центр АГПУ, 2006. — 196 с.
6. Алексеев С. С. Право собственности. Проблемы теории [Текст] / С. С. Алексеев. — 2-е изд., перераб. и доп. — М. : Норма, 2007. — 240 с.
7. Спасибо-Фатєєва І. В. Корпоративна власність [Текст] / І. В. Спасибо-Фатєєва // Українське комерційне право. — 2006. — № 7. — С. 25–41.
8. Галов В. В. Собственность и производные вещные права: теория и практика [Текст] : монография / В. В. Галов, С. А. Зинченко. — Ростов-на-Дону : Изд-во СКАГС, 2003. — 200 с.
9. Соловйов О. Суб'єктивне право власності (деякі аспекти проблеми) [Текст] / О. Соловйов // Право України. — 2010. — № 2. — С. 48–54.
10. Гумаров И. Понятие вещи в современном гражданском праве России [Текст] / И. Гумаров // Хозяйство и право. — 2000. — № 3. — С. 78–84.
11. Брагинский М. И. К вопросу о соотношении вещных и обязательственных правоотношений [Текст] / М. И. Брагинский / Гражданский кодекс России. Проблемы. Теория. Практика : сборник памяти С. А. Хохлова / Г. Е. Авилов, С. С. Алексеев, М. И. Брагинский [и др.]; отв. ред. А. Л. Маковский. — М. : Изд-во Междунар. центра финансово-эконом. развития, 1998. — С. 113–130.
12. Мурзин Д. В. Ценные бумаги — бестелесные вещи. Правовые проблемы современной теории ценных бумаг [Текст] / Д. В. Мурзин. — М. : Статут, 1998. — 176 с.
13. Лапач В. А. Система объектов гражданских прав в законодательстве России [Текст] : дис. … докт. юрид. наук : 12.00.03 «Гражданское право; предпринимательское право; семейное право; международное частное право» / В. А. Лапач. — Ростов-на-Дону, 2002. — 537 с.
14. Спасибо-Фатєєва І. В. Поняття майна, майнових та корпоративних прав як об'єктів права власності [Текст] / І. В. Спасибо-Фатєєва // Українське комерційне право. — 2004. — № 5. — С. 9–18.
15. Спасибо І. А. Набуття права власності у цивільному праві України [Текст]: дис. ... канд. юрид. наук. : 12.00.03 «Цивільне право і цивільний процес; сімейне право; міжнародне приватне право» / І. А. Спасибо. — К., 2009. — 226 с.
16. Лысенко А. Н. Имущество в гражданском праве России [Текст]/ А. Н. Лысенко — М. : Деловой двор, 2010. — 200 с.
17. Брагинский М. И. Договорное право : Договоры о передаче имущества [Текст] / М. И. Брагинский, В. В. Витрянский. — М. : Статут, 2000. — Кн. 2. — 800 с.
18. Яковлев А. С. Имущественные права как объекты гражданских правоотношений. Теория и практика [Текст] / А. С. Яковлев. — М. : Ось-89, 2005. — 192 с.

19. Чеговадзе Л. А. Система и состояние гражданского правоотношения [Текст] : дис. ... докт. юрид. наук : спец. 12.00.03 «Гражданское право; предпринимательское право; семейное право; международное частное право» / Л. А. Чеговадзе. — М., 2005. — 585 с.
20. Крашенинников Е. А. К вопросу о «собственности на требование» [Текст] / Е. А. Крашенинников // Очерки по торговому праву. — Ярославль, 2005. — Вып. 12. — С. 31–36.

С. І. Шимон
Національний педагогічний університет імені М. П. Драгоманова,
кафедра цивільного та трудового права
вул. Пирогова, 9, Київ, 01601, Україна

АЛЬТЕРНАТИВНИЙ ПОГЛЯД НА ПРАВО ВЛАСНОСТІ ТА ЙОГО ОБ'ЄКТИ У СВІТЛІ ЦИВІЛЬНО-ПРАВОВОЇ ТЕОРІЇ, ЗАКОНОДАВСТВА ТА ПРАКТИКИ

Резюме

У праці розглядаються сучасні цивілістичні концепції права власності. Доводиться неспроможність традиційної конструкції власності обслуговувати реальний цивільний оборот. Обґрунтовується висновок, що у сучасному правопорядку України функціонують два види права власності: речове право власності, об'єктом якого є майнові матеріальні блага, та неречове право власності, об'єктом якого є майнові нематеріальні блага. Вирішується проблема змісту права власності, який запропоновано визначати не переліком повноважень, а правовою свободою власника. Доводиться, що право власності є виключним майновим правом, а його зміст — еластичним. Обґрунтовується можливість поширення дії права власності на об'єктоздатні майнові права.

Ключові слова: право власності, об'єкти права власності, майнові права.

С. И. Шимон
Национальный педагогический университет имени М. П. Драгоманова,
кафедра гражданского и трудового права
ул. Пирогова, 9, Киев, 01601, Украина

АЛЬТЕРНАТИВНЫЙ ВЗГЛЯД НА ПРАВО СОБСТВЕННОСТИ И ЕГО ОБЪЕКТЫ В СВЕТЕ ГРАЖДАНСКО-ПРАВОВОЙ ТЕОРИИ, ЗАКОНОДАТЕЛЬСТВА И ПРАКТИКИ

Резюме

В работе рассматриваются современные цивилистические концепции права собственности. Доказывается неспособность традиционной конструкции собственности обслуживать реальный гражданский оборот. Обосновывается вывод о том, что в современном правопорядке Украины функционируют два вида права собственности: вещное право собственности, объектом которого выступают имущественные материальные блага, и невещное право собственности, объектом которого являются имущественные нематериальные блага. Решается проблема содержания права собственности, которое предлагается определять не через перечень полномочий, а через правовую свободу собственника. Доказывается, что право собственности является исключительным имущественным правом, а его содержание — эластичным. Обосновывается возможность распространения действия права собственности на объектоспособные имущественные права.

Ключевые слова: право собственности, объекты права собственности, имущественные права.