



## **World Conference on Social Sciences, Law and Public Policy**

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### **ISSUES OF APPLYING THE INVALIDITY OF TRANSACTIONS THAT DO NOT COMPLY WITH LEGISLATIVE REQUIREMENTS**

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#### **Аннотация**

Мазкур мақолада Ўзбекистон Республикаси Фуқаролик кодексининг 116-моддасида назарда тутилган қонунчилик талабларига мувофиқ бўлмаган битимларнинг ҳақиқий эмаслиги масалалари илмий-ҳуқуқий жиҳатдан таҳлил қилинган. Битимни қонун ёки одоб-ахлоқ асосларига зид деб топишнинг назарий асослари, ўз-ўзидан ҳақиқий бўлмаган ва низоли битимлар ўртасидаги фарқлар ҳамда суднинг *ex officio* ваколатлари очиқ берилган. Миллий қонунчилик нормалари хорижий (айниқса, Россия Федерацияси) тажрибаси билан қиёсий таҳлил қилиниб, амалдаги ҳуқуқни қўллашда юзага келаётган муаммолар кўрсатиб ўтилган. Мақолада ФК 116-моддасини такомиллаштириш бўйича муаллифлик таклифи илгари сурилган.

**Калит сўзлар:** битимнинг ҳақиқий эмаслиги, қонун талабларига зид битим, одоб-ахлоқ ва ҳуқуқий тартибот, ўз-ўзидан ҳақиқий бўлмаган битим, низоли битим, *ex officio*, суд амалиёти.

#### **Аннотация**

В статье анализируются проблемы применения недействительности сделок, не соответствующих требованиям законодательства, предусмотренные статьей 116 Гражданского кодекса Республики Узбекистан. Раскрываются



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теоретические основания признания сделок недействительными в связи с их противоречием закону или основам правопорядка и нравственности, а также разграничение ничтожных и оспоримых сделок. Рассматриваются полномочия суда по применению последствий недействительности сделок по собственной инициативе (*ex officio*) и выявляются пробелы и противоречия в судебной практике. Проведён сравнительно-правовой анализ с законодательством Российской Федерации, на основе которого обосновываются предложения по совершенствованию статьи 116 ГК.

**Ключевые слова:** недействительность сделки, сделка, противоречащая закону, основы правопорядка и нравственности, ничтожная сделка, оспоримая сделка, *ex officio*, судебная практика.

### **Abstract**

This article examines the issues related to the application of invalidity to transactions that do not comply with statutory requirements, as regulated by Article 116 of the Civil Code of the Republic of Uzbekistan. The paper analyzes the theoretical grounds for declaring transactions invalid due to their contradiction to law or to the fundamentals of public order and morality, as well as the distinction between void and voidable transactions. Particular attention is paid to the court's power to apply the consequences of invalidity *ex officio* and to existing inconsistencies in judicial practice. A comparative legal analysis with Russian civil legislation is conducted, leading to proposals aimed at improving the current regulation of invalid transactions.

**Keywords:** invalid transaction, transaction contrary to law, public order and morality, void transaction, voidable transaction, *ex officio*, judicial practice.



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---

The Civil Code establishes a rule on the invalidity of transactions that do not comply with the requirements of legislative acts (Article 116). In this context, legislative requirements are always perceived as an “ideal” norm, since the existence of a legal rule inherently implies a regulatory purpose aimed at effectively resolving an existing social problem. However, the question arises as to what legal consequences should follow from non-compliance with such requirements.

In certain cases, a transaction is deemed invalid due to non-compliance with statutory requirements. There are several grounds for declaring a transaction invalid, the principal ones being the conclusion of void or voidable transactions. A void transaction is considered invalid by virtue of the law from the moment of its conclusion. Consequently, claims based on a void transaction are subject to dismissal. In such cases, if the court establishes the existence of a defect in the transaction that entails its invalidity, it is obliged, regardless of the parties’ claims, to take this circumstance into account *ex officio*.

Law-enforcement and judicial practice seek to ensure justice by introducing concepts related to moral and ethical norms through evaluative legal categories. At the same time, given that standards of morality and ethics may differ from one individual to another, it is natural that interpreting the concept of “the foundations of morality and public order” in a uniform manner gives rise to certain difficulties. Although the above-mentioned “term” has an evaluative nature, it is widely applied by courts and allows them, at their discretion, to render decisions in favor of the injured party. If this issue is examined in more detail, it becomes evident that even where the court lacks the possibility to declare a transaction invalid (for example, Article 112 of the Civil Code protects the interests of a bona fide party by applying the consequences of non-compliance with the notarial form of a transaction or its registration requirement), the injured party under the transaction



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---

may still have the opportunity to protect their rights. This, in turn, presupposes the direct application by the court of the consequences of the invalidity of a transaction.

Not all violations related to the conclusion of transactions are recognized as being contrary to the law or to moral norms. In classifying a transaction, particular attention is undoubtedly paid to the purpose of the parties and their intent in committing unlawful acts. Even in Ancient Rome, there existed a need to recognize transactions as invalid, as the understanding of this issue bears considerable similarity to contemporary conditions. In Roman law, jurists classified transactions into three categories depending on the degree of invalidity: non-existent transactions (*negotium nullum*), absolutely invalid transactions (*negotia irrita*), and partially invalid transactions (*negotia rescindibilia*).

According to U. Yusupov, certain anti-social transactions are reflected in paragraphs 9–10 of Resolution No. 17 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated 22 December 2006, “On Certain Issues Arising in Judicial Practice in the Application of Legislation Regulating Transactions.” These transactions not only fail to comply with the requirements of law or other legal acts, but also undermine the fundamental principles of the national legal order, the social, political, and economic foundations of society, as well as its moral values. Although corruption is not explicitly mentioned in this list, it may be concluded that a corrupt transaction, as a form of corrupt offense, possesses an anti-social character. It should also be noted that the term “anti-social transaction” was proposed by O. A. Krasavchikov.

If attention is paid to the author’s proposal, a contract must comply with the mandatory rules established for the parties by the law and other legal acts (imperative norms) in force at the time of its conclusion. If, after the conclusion of a contract, a law is adopted establishing mandatory rules for third parties, and



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---

such rules differ from those in force at the time the contract was concluded, the terms of the contract shall remain in effect, except in cases where the law expressly provides that its effect extends to relations arising from previously concluded contracts.

In our view, an excessive strengthening of contractual requirements is not expedient. The law expresses the interests of society as a whole and establishes general requirements, whereas a contract reflects and serves the interests of the parties. In relative legal relationships, the excessive tightening of legislative requirements may reduce the willingness to conclude contracts and distract the parties with an undue number of issues in the pursuit of protecting their interests. Moreover, it should not be overlooked that a contract inherently contains a certain degree of “risk.” Otherwise, the boundary between the requirements of legal norms and contractual terms becomes blurred.

According to I. T. Rahimov, “only lawful actions consciously performed in accordance with the free will of individuals and aimed at producing corresponding legal consequences are considered transactions.” In this context, emphasis is placed on the essence of a transaction as an act. However, this approach does not sufficiently address defective elements within the transaction, the presence or absence of formal recording, nor does it focus on the primary issue—its legal consequences.

It is well known that the Civil Code of the Republic of Uzbekistan entered into force on 1 March 1997. Without dwelling on the legislative process of its adoption, it should be noted that the Model Civil Code of the CIS countries served as its prototype. Nevertheless, approaches to the interpretation of these norms are not uniform. Under Article 168 of the Civil Code of the Russian Federation, a transaction that violates statutory requirements is regarded as a voidable transaction (pursuant to the amendments of 7 May 2013). In the earlier version, a



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---

transaction contrary to legislative requirements was deemed void ab initio. As a result, any unlawful transaction could automatically be recognized as invalid, which gave rise to serious problems in law-enforcement and judicial practice.

Amendments have been introduced to Article 116 of the Civil Code over time. The version adopted by Law No. ORQ-683 of 21 April 2021 is substantively very close to the previous one. That is, provisions concerning the recognition of invalidity and the application of its consequences had existed earlier as well. However, the consequences of invalidity require further clarification. In particular, alongside recognizing that such a transaction is void by itself, the blanket transfer of everything received into state revenue is not always justified. It is necessary to determine what consequences should arise in cases where both parties acted intentionally, where only one party acted with intent, as well as where intent was absent altogether. For example, in judicial practice there have been cases where a governor was held criminally liable and the decisions adopted by him were declared invalid. As a result, a “domino effect” was applied to purchasers of land plots, and the corresponding transactions were also declared invalid. Naturally, in each such case, judicial interpretation is required.

In our opinion, Article 116 of the Civil Code should be set out in the following wording:

*“A transaction concluded for a purpose contrary to public order or the foundations of morality shall be deemed invalid and shall entail the consequences provided for in Article 114 of this Code. In cases provided for by law, the court may recover into state revenue all property received under such a transaction by the parties who acted intentionally, or apply other consequences established by law.”*



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