

## DEFECTS IN TRANSACTION CAPACITY AND PROBLEMS IN ITS DETERMINATION

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### Abstract

Determining whether or not there is a defect in the capacity of the persons to negotiate is the basis of the validity or invalidity of the agreements or contracts being concluded. The large number of factors affecting the will and intellectual state of the participants of civil relations is the reason that the contractual and legal relations do not proceed with justice. Due to the violation of the state of the will, people cannot control their behavior, and changes in the intellectual state lead to the inability to understand the actions. In the modern world, there are various means that cause impairment of the ability to deal, and some of them are not regulated in our legislation. This article analyzes the possibilities of using technological methods to determine the state of the human psyche during the conclusion of a deal. Also, in the article, the different views of scientists on the factors that affect the human mind and cause the appearance of a defect in the ability to deal with it were studied, and the author gave the necessary opinions.

**Keywords:** person with a disability, violation of will and intellectual state, affect, legal affect, pathological affect, complex psychological and psychiatric expertise, electronic cigarette, cigarette, patronage, gift, and other housing under the condition of lifelong provision assignment contract.

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### Enterence.

The state of mind of the persons involved in the civil-legal relationship is important. This is because contracts entered into by a person with a defect in legal capacity may subsequently be invalidated. One of the criteria for the normal participation of individuals in civil relations is the absence of the ability to understand the importance of one's own actions or to control them, which indicates that a defect has appeared in the capacity of this subject. In this case, the civil-legal assessment of a person's mental state and mental capacity is based on the scientific data of such sciences as psychiatry and psychology.

Today, in the science of psychology and psychiatry, along with the term "**mental disorder**", **a number of concepts such as "mental illness", "mental defect (anamoly)", "psychosis state", "psychopathological defect", "borderline state of the human psyche"** are expressed. the term is applied to persons with a permanent change in their psyche [1, 54].

Before analyzing the defects in processing capacity and the factors that cause them, it is appropriate to define the concept of a person with a processing capacity defect as follows: A person with a processing capacity defect is an adult, has full processing capacity, or has been limited by the court. a de facto incompetent person who has not been declared incompetent, but who for certain reasons is temporarily unable to understand the importance of his actions or control them due to a violation of his will and intellectual state. So, in order to consider a person as having a defect in legal capacity, he must be an adult, have legal legal capacity, and although he is de facto incompetent, he must not be recognized by

the court as having limited legal capacity or incompetent. In this case, defects in the ability to deal can be divided into two: a defect in the intellectual state and a defect in the state of the will.

Mental disorders occur when certain factors affect the psyche of adults, and as a result, they cannot understand the importance of their actions or temporarily lose the ability to control them. Scholars interpret the term mental disorder in different ways [2]. For example, *N.N. Belokobilsky and Y.Y. Komissarova* call the state of a person's inability to control his actions when there is a disorder or some deviations (changes) under his consciousness, and they emphasize that it is distinguished from sane people by this aspect [3, 157]. And *D.V. Sitkovsky* considers mental disorder to be a failure of neuropsychiatric fibers in a wide range [4, 14]. Scientists such as *G.V. Nazarenko, I.A. Semensova, A.V. Kislyakova, Jamie Walvisch [5], S. Woloshin, L.M. Schwartz, H.G. Welch* have analyzed cases of mental disorders from a criminal-legal point of view and are supporters of not accepting temporary mental disorders as mental illnesses. We also support their opinion. Because there is a possibility of a temporary disorder in the psyche of healthy and able-bodied persons, and in such a case they are not considered mentally ill. But it is necessary to distinguish between a temporary mental disorder and a chronic mental illness that recurs from time to time. According to our current legislation, mental illnesses with repeated causes serve as a basis for finding a citizen incompetent.

The mental state of persons with disabilities involved in civil-legal relations and their mental disorders have been studied more by European scientists than by Russian scientists. In particular, in his research, *J.C. Wakefield* got acquainted with the results of actions performed by persons who have the ability to act, but whose mental state has changed as a result of internal or external influence. He even included hypnosis (not dependent on medicine) among such cases [6, 149-156]. But medical scientists such as *S. Varga [7, 10], K. S. Kendler, K. A. Phillips, J. Z. Sadler, K. W. M. Fulton, D. J. Stein, D. Bolton [8, 1759]* hypnosis is an external effect, and in this case the human mind is not "he can work and control his movements to a certain extent," they decided. In our opinion, hypnosis has nothing to do with mental retardation, and the reason for hypnosis is the temporary suspension of the psyche by deception under the influence of other persons. Therefore, it is more correct to say that the hypnotized person is deceived.

**Material and methods.** In the framework of research, scientific methods were used in legal sciences: historicity, systematic-legal analysis, comparison, comparative law, induction and deduction, and statistical data analysis.

**Research results.** The appearance of defects in the capacity of persons with full legal capacity is related to special circumstances. Including pathological drunkenness; pathological sleepiness; pathological affect; "short circuit" reaction [9, 686]. Although these concepts constitute the medical criteria of human mental disorders, they are considered together with legal criteria in the field of law. In turn, legal criteria include the following elements, and the defects in the capacity to act are caused by their violation:

- **Intellectual state** - being able to understand the importance of one's actions;
- **The state of will** - the ability to control one's actions.

Violation of the intellectual state is inextricably linked with the human mind, in which a person is unable to see the consequences of his actions, and is unable to understand. Deviation of the intellectual state is caused by medical criteria, for example, we can cite pathological affect, chronic disease, severe fever, etc.

A strong mental change of a person is called an affect. Affects are very intense feelings that appear suddenly and last for a short time. There are several types of affect, and this type of affect is part of the study because it is directly related to pathological affect, when a person is in a state where he cannot fully understand his actions.

According to medical research, pathological affect can appear as a result of feelings of rage, anger, surprise and even joy. The terms "affectio" and "affective" are synonymous and were used in Roman law to denote the concepts of "will, intention, inclination" [10]. In modern psychology, the state of

affect is expressed as a mental state that appears as a result of strong emotional excitement and lasts for a short time [11]. Also, **G.V. Morozova, O.F. Savina, A.A. Tkachenko** defined pathological affect as "a short-term, rapid and violent emotional explosive reaction" [12]. However, **A. Damasio**, who conducted research on the works of Spinoza and the historical development of affect, opposes the idea that pathological affect is only violent and expresses the opinion that it can also occur as a result of fear [13]. This opinion was also supported by **M. Gregg and G.J. Seigworth** [14]. Also, while **S.T. Khapchaev** said that pathological affect can also appear due to the effects of despair, anger, terror [15], **A.V. Kolomina, L.K. Komarova** say that in this mental state, which lasts for several minutes, the individual's will, consciousness, imagination they emphasized that the ability to do and think narrows [16]. Alcoholics, people with epilepsy, people with brain injury are prone to pathological affect [17, 432].

So, pathological affect is a temporary disturbance of human mental activity, which manifests itself in the form of a deep disturbance of consciousness, an excessive level of influence, and a complete departure from the usual state. Therefore, a person in a state of pathological affect is recognized as a person with a defect in the ability to deal, being in a state of pathological affect is considered to be a defect in the ability to deal.

As people have different emotions, the state of pathological affect also occurs under the influence of the arousal of these emotions. In a word, the central element of affect is emotions [18, 35]. However, any emotion does not create legal effects, that is, it does not affect the civil-legal relationship. First, the legal consequences of affective behavior are determined. Because not every emotional state can be considered legitimate, therefore, not every psychological effect should be recognized as legitimate. For example, a person is in a state of pathological affect and has not committed any legal action, transaction or contract. Therefore, there will be no legal criteria. The characteristics of legal affect are as follows:

**Firstly**, a decrease in the ability of a person to be a subject of legal relations;

**Secondly**, it significantly limits freedom of will and expression of the subject's will;

**Thirdly**, it is considered to lead to the beginning and occurrence of certain civil-legal consequences.

So, in the case of pathological affect, we can evaluate the legal status of a person who has entered into a civil-legal relationship as a legal affect. The reason is that legal affect is not a specific emotional state, but a set of emotional states that meet certain requirements and have legal significance.

Based on the above analysis, we consider it appropriate to define legal affect as follows. Legal affect is a special emotional state that occurs as a result of the influence of an external factor on the will and consciousness of the subject of legal relations and leads to legal consequences (emergence, change, annulment of legal relations).

Expertise is of great importance in order to determine the legal consequences that have arisen after entering into a civil-legal relationship by the subject of legal affect [19]. The reason is that in other types of affect, a person has a minimal degree of freedom and does not lose his mind (physiological affect). During the trial, there is no answer to the question of the mental state of the person at the time of concluding the transaction or signing the contract, the presence or absence of affect. Only a forensic psychiatric examination can determine this. Usually, a psychological examination is prescribed to determine a physiological affect, and a psychiatric examination is prescribed to determine a pathological affect. However, **K. Marinelli** expressed the opinion that the matter will be solved fairly only if a comprehensive psychological and psychiatric examination is appointed regarding the state of affect [20, 465]. We agree with him. Because if we look at the practice, we can see confusion regarding the appointment of psychological and psychiatric expertise by the courts in order to determine the mental state of the citizen. As a result, we should also note that an incorrect diagnosis is being made when determining the state of a person at the time of entering into a civil-legal relationship, and an expert opinion is being given on this diagnosis. Therefore, it is necessary to involve representatives of both fields, that is, both psychologists and psychiatrists, in determining the intellectual and willful state of a person in the process of making a deal. In our opinion, only then all measures are taken to make court decisions fair.

Also, when describing the characteristics of the state of affect, it is necessary to note the aspects that distinguish the state of affect in civil law from the affect in criminal law.

In criminal law, affect often occurs as a result of an external attack, and in civil law, affect can also occur as a result of internal feelings. In addition, in criminal law, a special emphasis is placed on the state of physiological affect (albeit at a minimal level, a person can control his actions and understand the importance of what he is doing). That is, although the persons who committed an administrative offense or crime under the influence of physiological affect are recognized as offenders or criminals, it can be considered as a mitigating circumstance in relation to the act committed due to the appearance of physiological affect. In civil law, according to Article 121 of the Civil Code, only pathological affect is studied. The reason is that the lack of understanding of the legal consequences of the transaction may later be invalidated.

Today, with the help of an expert appointed by the court, determining whether the persons understood the importance of their actions in the process of concluding a transaction or were able to control them is the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan No.24, adopted on December 12, 2008 "Appointment of an expert in civil cases, It is regulated by the decision "About some issues that arise in the judicial practice in conducting and evaluating the expert's opinion". In the second paragraph of paragraph 6 of this decision, it is mentioned that a forensic psychiatric examination should be appointed in all cases where it is necessary to determine the mental state of a person at the time of committing a certain act. But, in our opinion, it should be conducted to fully determine the mental state of the person. Therefore, the second paragraph of Clause 6 of the decision should be stated in the following wording: in all cases where it is necessary to determine the mental state of a person at the time of committing a certain act, a comprehensive psychological and psychiatric examination should be appointed, for example, a transaction is invalid determining whether the person did not understand the importance of his actions or could not control them at the time of the conclusion of the transaction (Article 121 of the Civil Code).

As we mentioned above, a person does not understand and does not understand his actions due to a violation of the intellectual state. As a result of the violation of the state of will, the citizen cannot control his actions, he cannot control himself, but he understands the consequences and the essence of his actions. If the two are at the same time and in a stable state, that is, if the person's mentality changes regularly, then it is possible to appeal to the court to declare this citizen incompetent. But the disorder of intellectual and will state is manifested in different ways. For example, an individual may borrow money from a close friend as a result of excessive alcohol consumption. In this situation, he understands that he is taking a loan, but because he needs money, he cannot control his actions and enters into a contractual-legal relationship, and in this case, the state of the will of the person is violated. The legislator notes that in some cases, arson disease (pyramonia), theft disease (kleptomania), and shopaholics cause a violation of the will, but the intellectual state is not disturbed. However, in such situations, individuals are fully responsible, that is, they are not exempted from responsibility.

Violation of the state of the will occurs mainly as a result of the consumption of alcohol, various drugs, psychotropic substances, precursors and drugs. Because the substances and elements contained in the listed means make a person intoxicated, as a result, a person performs these actions even though he sees the consequences of his actions.

A drink containing ethyl alcohol is called alcohol or spirits. Ethyl alcohol has the property of intoxicating a person, and depending on its amount, alcohol varies. Regardless of the amount of alcohol they contain, they all have the same harm. Taking into account the influence of alcohol, it is determined that there was a violation of the will of the person during the conclusion of the transaction.

An article was published in *the journal JAMA Psychiatry by German, Italian and Spanish scientists* about the detection of alcohol's effects on the brain using modern technologies. According to him, even after a person stops consuming alcohol, its negative effects remain for 6 weeks (one and a half months) [21]. Therefore, if a person consumes alcohol in excess of the norm, there will be a disturbance in the state of will and he will not be able to control his behavior.

Narcotics and psychotropic substances also affect the human mind and derail actions. Natural and synthetic substances, preparations and plants containing narcotic substances are narcotics and narcotic substances. Substances used for the preparation of narcotic drugs, psychotropic substances and their analogues are precursors, while natural and synthetic substances similar to narcotic substances according to their chemical properties and structure, which have a strong effect on the human psyche, are analogues of narcotic drugs and psychotropic substances. . The legal definition of these means is reflected in the Law of the Republic of Uzbekistan "On Narcotic Drugs and Psychotropic Substances" adopted on August 19, 1999 and included in a separate list controlled by our country.

For information, it should be mentioned that in 2018 there were 265 narcotic drugs, 53 restricted narcotics, 85 restricted psychotropic substances, and 29 precursors [ 22].

In this regard, "the use of alcohol and drugs among young people has become an epidemic, especially since the beginning of the 21st century, there is a serious fight against it in the countries of **the USA, Japan, Australia, Southeast Asia, Eastern Europe and South Africa**" [23, 142 ]. As a result of individuals consuming excessive amounts of alcohol and toxic substances, the functioning mechanism of the mind is weakened [24, 752]. In addition, in some cases, narcotic drugs cause individuals not only to be unable to control, but also to not understand the actions, and this state is called pathological intoxication [25, 25]. These points were also emphasized by **E.S.Shamsiyev, M.Kh.Rustambayev [26, 46] and D.M.Sabirov** [27, 297]. As a result of this, there is a violation of the will of individuals and a defect in the ability to act.

Can smoking cigarettes and electronic cigarettes, which are common among today's "modern" youth, also cause a violation of the state of will?

In our country, among both minors and adults, substitutes for regular tobacco are becoming widespread. In order to prevent this and eliminate the problems that may arise as a result, on July 2, 2018, the Republic of Uzbekistan adopted the law "On the restriction of smoking cigars and electronic cigarettes in public places". According to it, a device intended for smoking tobacco or consuming a smoking mixture that does not contain tobacco is a pipe. In it, smoke or steam passes through the water tank of the cigarette into the human body. An electronic cigarette is an electronic device used for inhalation, which produces smoke, and is used as a means of delivering a nicotine or nicotine-free product [28].

Although electronic cigarettes and vapes, which are widely distributed among young people, are advertised as harmless, they contain nicotine, which is the basis of regular tobacco. The composition of the liquid in electronic cigarettes and vapes consists of the following elements: propylene glycol, glycerin, nicotine, flavoring [29]. These tools harm not only human health, but also moral rules in society. It is for this reason that all relations with electronic cigarettes and vapes are prohibited in some countries. For example, **Argentina, Brazil, Colombia, Mexico, Panama and Uruguay, which are South American countries**, prohibit the sale, import and advertising of any type of electronic cigarettes, regardless of whether they contain nicotine or not. **Belgium, Canada, Denmark, the Netherlands, Norway, and Israel** have also banned e-cigarettes. In Japan, e-cigarettes are considered medical goods and cannot be purchased from pharmacies without a prescription [30]. However, the substances contained in cigarettes and electronic cigarettes do not lead to the level of control of the human mind, but they poison the body. Also, we should not forget one thing: if the smoke is mixed with narcotic drugs and drugs, there is a high probability of a person's will state being disturbed.

## Conclusion.

Therefore, individuals cannot understand the importance of their actions or cannot control them due to the appearance of behavioral defects (pathological affect, excessive consumption of alcohol, drugs or other psychotropic substances). Checking the sanity of a person is one of the complex processes. The reason is that, in many cases, long after the conclusion of the transaction, one of the parties or interested parties claim that this transaction was executed in a state of invalidity and demand that it be declared invalid. It is very difficult to determine the intellectual and will state of a person a few years ago.

Therefore, psychological tests are used in the USA, Great Britain, France, and Germany to thoroughly check a person's ability to deal in the process of making a deal [31]. We can cite them as an example:

- Cognitive test;
- Affective test (affective test);
- Motivational test (motivational test).

For example, a cognitive test is a family of psychometric tests designed to determine a person's general intelligence. It is determined to what extent the citizen's mental ability is developed. These tests are usually created in a multiple-choice format. Cognitive tests consist of verbal, numerical, abstract and logical tests. Their level of complexity and difficulty can vary considerably between different tests in this category [32, 242]. Motivational tests, in turn, are conducted to determine the purpose of the behavior and what motivates the person for it. The application of this practice in our legislation will greatly help in determining whether a person has a mental capacity defect and in preventing disputes that may arise later. It would be appropriate to use the above test mode in the notary system. Because the cases of making a will or a gift contract in order to take advantage of the persons whose mental state has changed due to their old age are taking advantage of their weak condition are increasing day by day. It is necessary to increase legal awareness and legal culture in neighborhoods where people without permanent caregivers, people with disabilities and people who need help live. Also, the notaries should inform the parties who are signing the gift agreement about the contract of transfer of the house (apartment) to another person under the condition of lifetime security. Most of the population has no idea that such a contract exists, and some notaries refuse to sign this contract. As a result, elderly people, especially people with disabilities, lose their property and are left without the promised care. Therefore, it is necessary to require notaries to use the test to determine whether there is a change in the state of intellect and will of individuals, and to determine the essence of the contract and the real purpose of concluding this contract for citizens who come to sign a gift contract, and to give recommendations about other types of contracts. would be appropriate.

In addition, one of the urgent problems in determining the lack of mental capacity is to determine whether or not there was a violation of the will and intellectual state of the deceased person. The reason for this is the high number of interested parties applying for annulment of the written will in court practice. In such appeals, it is indicated that the citizen did not understand the importance of his actions or was unable to control them during the process of making the transaction as a basis for invalidating the will. In the process of concluding a transaction, an expert is appointed to determine whether or not the deceased has a defect in the capacity to deal. In this process, experts study the medical history of the deceased person, and ask questions about the condition of the person before his death with his relatives. There is also a "patronage service" provided by doctors to citizens in our country. In this case, the general practitioners working in the family polyclinic and assigned to each region are assigned the task of monitoring the health of the population in that region and recording changes in their health. It is the observations made by them that should serve as the basis for the conclusions made by the experts. But usually, the conclusions given in these observations are left aside, and this is caused by various circumstances (the doctor did not fulfill his duty, the general practitioner's notes were not studied by experts, etc.). In our opinion, it would be appropriate to widely promote this practice. The reason is that only with such measures will be put an end to various doubts about whether or not the person who died had a defect in his capacity to act.

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