

Determination of the Nature of the "Property Granted to Children" Clause in the Divorce Agreement

Xiangxiang Zhao

Zhongnan University of Economics and Law, Wuhan, 430073, China

Abstract: Through the analysis and comparison of "Yu XX case" and similar cases, it is found that the provision of "giving property to children" in the divorce agreement has both personal and property attributes. For this reason, it is inappropriate to simply apply the rules of the Civil Code on gift contracts. From the two dimensions between husband and wife and between parents and children, this clause can be interpreted as a divorce property liquidation agreement and a contract for the benefit of a third party. Under this qualitative framework, within each dimension, this clause can be divided into "statutory obligations" and "contractual obligations". However, this does not mean that the legal obligation part only has personal attributes but not property attributes, and the agreed obligation part only has property attributes without personal attributes. It is precisely because the personal attributes and property attributes are intertwined in the whole content of the divorce agreement that will lead to the phenomenon of different judgments in the same case when the judge hears similar cases.

Keywords: Divorce agreement; Gift contract; Contracts for the benefit of third parties; Divorce Property Liquidation Agreement

1. Introduction

In recent years, the number of divorce dispute cases accepted by the people's courts in various regions has generally increased. At the same time, according to the data released by the Ministry of Civil Affairs, the divorce rate has been growing at a high rate in the past decade. For couples who need to dissolve their marriage relationship, they prefer to dissolve their marriage relationship by agreement. As parents, they often agree in the divorce agreement that one of the husband and wife's property or common property should be owned by the children. This type of clause is called "giving property to children" clause. In judicial practice, such clauses often lead to property disputes after divorce after the dissolution of marriage. Take the typical case of marriage and family disputes released by the Supreme Court in 2015, "Yumou v. Gaomou, property disputes after divorce", as an example. There are provisions on "giving property to children", which include not only identity behavior, but also property behavior, and the two are intertwined. They are the premise and result of each other, and are a whole. The nature of such clauses is not clearly defined in Chinese law. In the actual judgment, some judges believed that such provisions were ordinary gifts, and the donor could revoke the gift before the transfer of the right of the gift; The judge who held the opposite view believed that the clause formed a whole relationship with the clause of dissolution of marriage, and could not be regarded as an ordinary gift separately, and the parties were not allowed to retract after dissolution of marriage, otherwise the interests of children would be seriously damaged.^[1]

In China's judicial practice, the mainstream practice is to evaluate the "giving property to children" clause in the divorce agreement as a gift. Although this is the mainstream view, there are several different perspectives under the nature of gift behavior, which mainly include the following four kinds: ordinary gift, purposive gift, moral obligation gift, conditional gift. The basis of the above four views is the whole tribe's donation behavior. However, none of these four interpretations can well solve the application of the "giving property to children" clause. On the contrary, by sorting out its reasons, it can be found that the main dispute of the "giving property to children" clause stems from its unclear nature. If the problem of determining its nature can be solved, the subsequent disputes involved will be able to apply relevant legal rules within their respective qualitative scope. This article will start from the relationship between husband and wife. Starting from the dual dimensions between parents and children. This paper attempts to identify the nature of the provision of "giving property to children" in the divorce agreement.

2. Inadequate explanation path for "gift"

2.1. The Dilemma of the Application of "General Gift Theory"

The term "giving property to children" in the divorce agreement is characterized as a common gift, indicating that the parties to the divorce agreement can exercise the right of revocation at will before the property rights are transferred after the marriage relationship is successfully dissolved. This means that in order to achieve the purpose of divorce, the parties can falsely accept the provision of "giving property", and immediately retract the provision of giving property after the dissolution of the marriage relationship. This is extremely detrimental to protecting the interests of the observant party and children. In this qualitative way, it will provide a negative guidance to those who want to divorce as soon as possible but do not want to have any property concerns, and also provide a basis for their treachery and damage the interests of their children. Therefore, we should not define the "giving property to children" clause agreed by parents in the divorce agreement as an ordinary gift relationship. On the one hand, it is based on the consideration of the principle of good faith. On the other hand, it is also considered that not all the "giving property to children" clauses in the divorce agreement are free, which needs to be qualitative based on the specific content of the divorce agreement. It may involve the issue of raising children, compensation for divorce damages, economic compensation for divorce and divorce relief, which are within the scope of legal obligations, but these are not free.

2.2. The Dilemma of the Application of "Purpose Gift Theory"

Scholars who adhere to the view of "purpose donation" believe that in the legal relationship of the provision of "giving property to children", it is agreed that "giving part of property to children" is the means, and "dissolving the marriage relationship between the two people" is the purpose. In addition, this view also holds that after the two people successfully dissolve the marriage relationship, the provision of "giving property to children" cannot be revoked separately.^[2] In a case of the First Intermediate People's Court of Chongqing, the judge of the first instance held that the provision of "giving property to children" in the divorce agreement should be characterized as "gift for the purpose of dissolving the marriage relationship". This view is the most clearly defined as the provision of "gift for the purpose", and that in the divorce agreement, there are not only provisions of common property division, child support, but also divorce damages, divorce financial assistance Divorce economic compensation and other contents. These provisions are established for the purpose of dissolving the marriage relationship. Now that the identity relationship has been dissolved, the parties must not be allowed to reverse a series of terms agreed upon at that time. In the second instance of this case, the judge not only supported the reasons for the judgment made by the court of first instance, but also pointed out that because the divorce act of dissolution of marriage has been registered in the marriage registration authority, this action has the effect of publicity and public trust. If the property provision is revoked, it will lead to mutual contradiction between the two parties, so the parties are not allowed to retract or even revoke the provision. This is a prominent and obvious problem among all the reasons supporting the "purpose gift theory". If according to the above interpretation, divorce is the purpose of the act, if the arrangement of child support, divorce damage compensation, divorce financial assistance, divorce financial compensation and so on is interpreted as the reason for the act in the divorce agreement, it will be contrary to the nature of the development of things. It should be clear that the reason for the dissolution of marriage between husband and wife is the real breakdown of the relationship between husband and wife, rather than the provision of "giving property to children". Logically, there is a clear order between the dissolution of marriage and the provision of "giving property to children", and it must be the identity relationship before the property relationship. The dissolution of marriage will inevitably lead to the arrangement of child rearing, property division, divorce damages, relief, assistance and other issues. So in the first instance, the judge believed that "the purpose of the gift is to dissolve the marriage relationship" is not accurate. The interpretation of the "giving property to children" clause as "gift for purpose" does not conform to the common sense of life and lacks logical support.

2.3. The deficiency of "the theory of moral obligation"

Another point of view is that the "giving property" clause in the divorce agreement belongs to the parents' obligation to support their children and other related collateral obligations. These obligations are closely related and have the nature of moral obligations. This moral factor forms the basis of the gift contract.^[3] As for the content of the divorce agreement, "the moral nature of the divorce agreement

is embodied in the obligation of upbringing" and "the moral nature is mainly embodied in the affection of the divorced parents to their children".^[4] At the same time, some judgments interpreted the custody obligation of divorced parents to their children as "moral obligation" stipulated in Article 660 of the Civil Code, starting from the fact that such "gifts" have the attribute of identity relationship. "Donations of the nature of moral obligation include but are not limited to moral obligations such as helping and thanksgiving based on kind-hearted feelings such as friendship and kinship". Under such interpretations, the parents' agreement on part of the common property in the divorce agreement is understood as the moral obligation of the children to provide better living conditions, economic conditions and other moral obligations. Therefore, this clause can be applied to the provisions of the Contract Part of the Civil Code limiting the right of arbitrary revocation. How to understand the nature of gift of moral obligation is very important for whether the norms of gift of moral obligation can be applied. Mr. Shi Shangkuan's standard characterization of the moral obligation in the gift contract: "If there is no obligation to support, but the relatives are still supported, or because of human joint and several responsibilities, it should be interpreted as a gift of moral nature, such as gifts such as remuneration or gifts between each other, which will be necessary in etiquette and customs, and should also be interpreted as the performance of obligations."^[5] The moral obligation mentioned here is obviously different from the obligation stipulated by the law. The obligation stipulated by the law is mandatory and must be performed without negotiation. The moral obligation here refers to the requirements of a higher moral level. The law stipulates the minimum obligation part, while the moral state of individuals who are different from ethics is not within the scope of legal norms. This is the key to distinguish between the obligations prescribed by law and moral obligations, reflecting the difference between legal obligations and moral obligations.

In combination with the above analysis of moral and legal obligations, in the "Yu case", if the content of the provision of "giving property to children" is recognized as a one-time arrangement of legal obligations such as raising children, compensation for divorce damages, financial compensation for divorce, and financial assistance for divorce, then this provision will not be applicable to the relevant provisions of moral gifts. On the other hand, if the content of the "giving property to children" clause exceeds the legal obligation, such as the parents want to provide better living conditions and security for children through the provision of giving property, then whether the property giving behavior beyond the scope of the legal obligation can be characterized as a moral obligation gift, we need to go back to Mr. Shi Shangkuan's standard definition of "moral obligation", according to Mr. Shi's view, The simple emotion between parents and children is not equal to the moral obligation, which is stronger than the individual's natural emotion. Parents give their children property in the divorce agreement in order to improve the quality of life of their children. This motivation can be understood as "good emotion" to a certain extent, which is different from the degree expressed by Mr. Shi Shangkuan when he said that they have no obligation to support and also support them. The former is to a lesser extent than the latter, so according to Mr. Shi Shangkuan's definition of "moral obligation". Even if the content of the "giving property to children" clause in the divorce agreement exceeds the scope of the legal obligation. The excess part of the property arrangement cannot be regarded as a moral gift to children, and the relevant provisions of the contract part of the Civil Code on the gift contract cannot be applied.

2.4. Deficiency of "conditional gift theory"

Finally, whether the "giving property to children" clause in the divorce agreement can be understood as a conditional gift, according to the typical meaning pointed out by the Supreme Court when it issued the "Yu XX case", it can be seen that the Supreme Court wants to express that by analyzing the integrity of the "giving property to children" clause in the divorce agreement, it can guide the judge to distinguish the issue of the property giving clause in the divorce agreement from the ordinary gift in the divorce case. In addition, it conveys that this clause is an integral part of the divorce agreement. Although it is a property act, it is the premise and result of each other with other property acts and identity acts in the divorce agreement. There are two perspectives for understanding here. One is to express that the clause is valuable and directly different from gratuitous gift; Another perspective is that since this clause and other clauses are mutually conditional, can it be interpreted as a conditional gift clause? In judicial practice, some judges have determined that such clauses have consideration and do not belong to gratuitous donation clauses according to the mutual conditional nature between such clauses and other clauses in the agreement; However, in the case of divorce, the parties agreed in the divorce agreement that the property should be owned by the children. The beneficiaries here are the children of both parties. As children, it is not necessary to pay any consideration for this clause. Therefore, according to this point, because the feelings between parents and children cannot be used as

consideration, this kind of clause still meets the core requirement of gift, that is, gratuitous. Therefore, the conditionality attached to a conditional gift cannot be understood as the consideration paid by the donee. On this issue, Professor Lu Qing's point of view is that the typical meaning of the case pointed out by the Supreme Court should be understood from the perspective of conditional gift, but also pointed out the irrationality of the clause as a conditional gift. In the actual divorce agreement, the parties will not indicate which clause is the condition of the other clause when they dissolve the marriage relationship. The conditionality of the "giving property to children" clause and other clauses in the divorce agreement is determined by the nature of the agreement itself, not by whom. If the parties do not specify which clause is the attached condition in the divorce agreement and force a clause to be interpreted as a condition, there is a risk of over-drafting. The current Civil Code does not directly provide for conditional contracts, but Article 185 of the General Provisions provides for conditional civil legal acts, that is, its superior concept. The condition is that the uncertain, legal and possible events in the future will not be included in the factual composition of the establishment of legal acts. Whether the conditional legal act is effective or not depends on the fact of the condition. If the parties have no clear agreement on this, if the terms in the agreement are understood as mutually conditional, the effectiveness of the terms will also affect each other. This also reflects that such a forced interpretation will lead to the failure to apply the corresponding norms, and the conflict between the effectiveness of the terms cannot be resolved. However, on the other hand, it is clear that a party's burden in the divorce agreement that does not specify its cause cannot be recognized as a causeless contract.^[6] As mentioned earlier, although the relevance of the contents of each clause in the divorce agreement actually exists, it is often not explicitly agreed by the parties to be reflected in the content statement, The "integrity" emphasized by the Supreme Court in a typical sense is the affirmation of the interrelatedness between the clauses disclosed in the judgment of the case. In the general theory of civil legal act, setting conditions is to restrict the legal act itself.^[7] The property act in the divorce agreement is attached to the basic status act of the marriage relationship. Before the status act takes effect, if the terms in the divorce agreement are interpreted as mutually conditional, then the legal act "giving property to children" clause as the attached condition is in an uncertain state of validity before the other terms take effect, which is inconsistent with the fact. Therefore, although there are links between the terms in the divorce agreement. However, it cannot be simply recognized as "conditional", but it should respect the facts and recognize the relevance between the clauses. There is a clear difference between this relevance and "conditional", and the degree of conditionality is further than the relevance. But this does not mean that the property provision can be viewed in a split way, and the relevance does not necessarily apply to conditional legal acts. The relevance of each clause in the divorce agreement cannot be forcibly interpreted as conditional.

3. The qualitative reconstruction of the provision of "giving property to children"

In the process of determining the nature of the provision of "giving property to children", no matter which special form of gift contract, there are more or less unsolvable problems. The divorce agreement contains identity behavior and property behavior, and the property behavior and identity behavior are intertwined and interconnected. Although the children do not need to pay consideration for accepting the property. However, based on emotional and ethical factors. Even if it is clear that emotion cannot be regarded as the consideration in the property law. It cannot be considered that the property giving act is equal to the gratuitous nature of ordinary gifts. Therefore, it is impossible to give a good answer by simply relying on the contract or the marriage and family code. Although Article 464 of the Civil Code specifies that the identity act is not regulated in the marriage and family law, According to the nature of its behavior, the provisions of the Contract Part can be applied, but this only clarifies that the identity behavior can refer to the provisions of the Contract Part, and does not make specific applicable norms. The author believes that the most important thing in such cases is to recognize that children are different from the donees in the general sense. Children are family members and have equal status. The value attribute of children in the family should ensure that children avoid being in a very passive position like the donee in the general gift.^[8] Therefore, the nature and effectiveness of the "giving children property" clause in the divorce agreement should not be discussed in the norms of the gift contract.

3.1. The interpretation of contract for the benefit of the third party in external relations

In judicial practice, there are many ways to judge the "giving property to children" clause in the divorce agreement, one of which is to jump out of the nature of "gift contract" and try to interpret it as

"contract for the benefit of a third party". The supporting reason for this view is that "giving property to children" in the divorce agreement is actually an agreement between parents, that is, making a promise to the children, and the content of the promise is to perform the obligation of delivering property to the children. From this point of view, the agreement in the divorce agreement that the joint property or the personal property of one party of the husband and wife is owned by the children should be recognized as the promise of both parties or one party to pay for the children's property, which belongs to the scope of the contract for the benefit of the third party.^[9]

As for the contract for the benefit of the third party, before the Civil Code came into force, there were still many different views in the academic circles of our country. Before the Civil Code, the General Principles of the Civil Law did not clearly stipulate this. The term "giving property to children" in the divorce agreement is characterized as a contract for the benefit of a third party. If the agreement stipulates that one party of the husband and wife will give personal property to the children, this situation is well understood. However, for the more common case of "in a certain case" mentioned above, the husband and wife agreed in the divorce agreement that the joint property of the husband and wife is owned by the children. The following interpretation will be made under the framework of the benefit of the third party. That is, in the divorce agreement, the husband and wife set a contract for the benefit of a third person with the beneficiary as the child for each other, which will lead to the consensus of the husband and wife on the disposition of common property as the husband and wife set obligations to the third person for each other. So, whether there is any suspicion of excessive imitation, and for the property jointly owned by the husband and wife, the disposal of the property jointly owned by the husband and wife according to Article 301 of the Civil Code requires the consent of all the co-owners, but the above interpretation is obviously not in conformity with the provisions. The above are some scholars' concerns about characterizing the "giving property to children" clause in the divorce agreement as a contract for the benefit of a third party in the dimension of parents and children.

With regard to the above concerns, compared with the various views on the nature shown in this article, under the nature of the contract for the benefit of a third party, the purpose of this clause, namely, to protect the interests of children, is very comprehensive and reasonable. The construction of the contract for the benefit of the third party can more clearly reveal that the "gift" parties in the divorce agreement are the divorced couple, and the children are not involved in the signing of the agreement. If one or both of the husband and wife later fail to perform the terms of the agreement, the child, as the beneficiary designated in the agreement, can sue the defaulting party to protect their own interests. Under this standard, the legal relationship between husband and wife, parents and children in the divorce agreement is more reasonable. As for the disposition rules of common property, we can change our thinking. When the husband and wife sign a divorce agreement, they reach a consensus on the whole agreement level. Since it is the agreement at the level of the whole divorce agreement, the disposition of the common property is actually made by both parties. Because the co-owner of the common property is only the husband and wife, and the agreement to dispose of the property is included in the agreement of the whole divorce agreement, the disposition of the common property cannot be considered as unauthorized disposition.

Therefore, the provision of "giving property to children" in the divorce agreement is regarded as a contract for the benefit of a third party in the dimension of parents and children, which is more reasonable and normative after the Civil Code comes into force. However, in the current theoretical research, there is no way to explain the specific composition of the consideration relationship between parents and children, and this qualitative analysis only explains the legal relationship between parents and children under the clause, which is the external relationship of the clause, while the explanation cannot well explain the relationship between the "giving property to children" clause and other clauses in the divorce agreement.

3.2. The Interpretation Approach of Divorce Property Liquidation Agreement in Internal Relations

The interpretation scheme of the contract for the benefit of the third party only explains the internal relationship between the clause and the parents and children, but the relationship between the clause and other clauses in the divorce agreement is not clearly explained. Consider such issues. Go back to the essence of things and clarify the core functions of the relevant provisions of "giving property to children" in the divorce agreement. In the divorce agreement, it not only involves the dissolution of the marital relationship between the husband and the wife, but also involves the arrangement of the parents to raise the children after the dissolution of the marital relationship at the time of divorce, as well as a series of issues between the husband and the wife, such as divorce relief, common property division, common debt sharing, and divorce damage compensation.^[10] In fact, the above contents are the

personal and property arrangements for the dissolution of marital status. If we understand this kind of divorce agreement qualitatively in terms of the continuing contract,^[11] we can separate the part of the property arrangement in the divorce agreement according to the path of the liquidation relationship theory, which is the consequence of the termination of the continuing contract, and separate the agreement of the part of the property as the "divorce property liquidation agreement", and then put it into the overall liquidation relationship after the dissolution of the marital relationship for consideration. On this basis, the integrity of the divorce agreement can be considered.

To build the theoretical framework of the "divorce property liquidation agreement" qualitatively, it is very important to clarify the concept of "liquidation relationship" in theory. The theory of "liquidation relationship" is mainly to solve the defects of the theory of retroactively leading to the termination of the contract after the dissolution of the contract relationship. In this theory, the termination of the contract does not lead to the termination of the contract, but rather converts the debt relationship occurred during the performance of the contract into a "liquidation relationship", that is, the part that has been performed needs to be returned and discounted. And the "liquidation relationship" also includes liquidated damages, damages or deposits. It is for this reason that some scholars have proposed that the settlement and liquidation clause stipulated in Article 567 of the Civil Code takes the termination of the contract as an example, and this clause can be discussed together in the "termination effect".

Compared with the dissolution of general contracts, the biggest difference between the dissolution of marriage is that the liquidation relationship of the latter is more complex. In terms of content, it is not only related to property relations, but also the marriage community itself has a higher purpose of forming a family and reproducing offspring independently of property. The arrangement of the consequences of dissolution of marriage relations should not only include the arrangement of the husband and wife's common property and debt, but also include the issue of raising children, post-divorce relief, and divorce damage compensation. The above overall considerations should be taken into consideration. This reflects the requirements of the marriage law for divorce, that is, "children and property issues have been properly dealt with".

In the view of some scholars, for the property liquidation relationship after divorce, according to the provisions of the Marriage and Family Code of the Civil Code, in the case that the husband and wife agreed to separate property system, during the duration of the marriage relationship, the husband and wife paid more or even all of the housework, care for the children and the elderly, and help the other party work outside the home, and have the right to ask the party who paid less to compensate for this, This is divorce compensation. Another is that divorce is because one of the husband and wife has legal fault, and the non-fault party has the right to request the fault party to compensate for the divorce damage. Finally, when divorce occurs, one of the spouses has difficulties in life, and can agree that the other party will provide appropriate help. These provisions seem to indicate that the divorce property liquidation relationship only includes the above legal situations. In fact, from the situation clearly stipulated in these laws, the property liquidation relationship after the dissolution of marriage is very complex and diverse, and the marriage and family code clearly mentions that the parties can freely agree in the divorce agreement. This is also very reasonable and effective for making up for the drawbacks of the relief system in China's marriage law.^[12] For example, the theorists and practitioners pointed out that the divorce relief compensation stipulated in the marriage and family law is limited to the separate property system, while in reality, most couples are under the common property system. When they divorce, only relying on the division of common property is not enough to correct the imbalance between the interests of the couple; In addition, when applying for divorce assistance, the Marriage and Family Code only stipulates that the party who has difficulties in life at the time of divorce enjoys this right, but some more reasonable foreign general rules - the obligation of husband and wife to support after divorce have not been adopted. This is the lack of protection provided by existing laws. In the process of compensation for divorce damages, there are some deficiencies in the subject of compensation, the scope of compensation, the determination of fault, and the distribution of the burden of proof.^[13] For the above reasons, the parties are allowed to negotiate and agree on the disposal of other property in the way of autonomy of the will in addition to their legal obligations. It is of great practical significance and practical need to even agree on the obligations of support between husband and wife after divorce and expand the scope of divorce damages.

The above content explains the significance of different clauses in the divorce agreement and the integrity formed for this reason under the qualitative nature of the liquidation relationship. It is also necessary to explain why the clause "giving property to children" should also be included in the liquidation relationship. The arrangement for the handling of children's support should, of course, be

included in the divorce liquidation relationship. There are many reasons why parents make the arrangement of giving property to their children in the divorce agreement at the time of divorce. The most direct one is that it may involve making a one-time arrangement for child support, but this one-time arrangement is often not clearly expressed. For example, at the time of divorce, the husband and wife agreed on the provision of "giving property to children" in the divorce agreement. Although this agreement is different from the specific monthly fixed payment method agreed in the agreement according to the age of the child, it is also in essence to fulfill the obligation of support. The obligation to support is not only to pay the maintenance fee and education fee every month, but also to "parents support the growth of their children and provide them with certain material conditions for their life and study". Although the common practice for the performance of the obligation to support is to agree in the agreement to pay a certain amount of money every month in a fixed way as the children's living expenses, education expenses, etc. However, when the divorce agreement does not clearly stipulate this, and the couple agreed to give certain property to their children in the divorce agreement, it can be considered that this is a one-time arrangement made by the parents in the divorce agreement for the children's maintenance. That is, the parents express the provisions to perform the maintenance obligations in the divorce agreement. This clause cannot be called "gift" in terms of expression. In fact, it means that the parents are performing their legal obligations, and there is no meaning of gift. It means that the divorced parents, from the perspective of ensuring the future life needs of their children, specifically arrange the way of performing their future obligations of support. The content of this arrangement is the relationship of divorce property liquidation.

What needs further discussion is that not all parents involve the obligation to support their children when setting the provision of "giving property to their children", especially when both parties have clearly agreed on the payment of expenses for the performance of the obligation to support their children, such as living, education, etc. in the divorce agreement, the act of giving property to their children cannot continue to be recognized as within the scope of the performance of the obligation to support their children. In practice, the most typical situation is that the parents agreed in the agreement that the property should be owned by the children. At this time, the couple did not consider the simple issue of child support, because the issue of child support has also been clearly stipulated in the agreement at this time. At this time, it is more to consider the harm caused by divorce to the children, and it is the parents to make up for their guilt for the children. Hope to make arrangements for children's future family and career in advance and reduce their inner burden on their children by providing them with economic security and convenience such as residence, or even to avoid the loss of family property as one party reconstructs a family, or to exclude specific property from the scope of legal inheritance in the case of multiple children. There are also some parents who may think that the division of this part of property is too troublesome, so in order to avoid unnecessary trouble, they agree that it should be owned by their children^[14] For the above reasons, one possible regulatory scheme is to analyze the case by case, but it seems too far-fetched, precisely because such property arrangements made in the divorce agreement often have comprehensive consideration of ethical, emotional, economic and other factors,^[15] which makes the act different from the general sense of gift. Considering these complex factors, we need to return to the premise of "divorce" and make a comprehensive judgment in combination with other property and personal arrangements in the agreement. Therefore, it is more reasonable to recognize the provision of "giving property to children" agreed in the divorce agreement as part of the whole divorce property liquidation agreement, belonging to the divorce property liquidation relationship.

To sum up, the property arrangement made by the husband and wife in the divorce agreement that does not belong to the division of common property is often expressed as a gift, but in the determination of legal relationship, this is not the case. In this regard, the expression of the parties should not be rigidly bound, and should be determined by integrating the overall arrangement of the parties in the divorce liquidation relationship. Back in the "Yu case", when the husband and wife reached an agreement that the property should be owned by their children, they also agreed that Gao should bear 45000 yuan of the joint debt. Not only are the two closely related, but also with other property clauses in the agreement. Therefore, the so-called "gift" in this case is not a gift clause, but a part of the divorce property liquidation agreement.

4. Conclusion

The nature of the "giving property to children" clause in the divorce agreement should be determined from two levels of relationship, that is, the level between husband and wife and the level between parents and children. It is not accurate to express the "giving property to children" clause as a

gift relationship. Of course, the part of it that belongs to the legal definition cannot be recognized as a gift; As for the category of agreed obligations, it cannot be simply identified as a gift because it does not have consideration. The identity of children in the "giving property to children" clause is special, because the identity of children is often reflected in the comprehensive consideration of ethical, emotional and economic factors. The dimension between husband and wife can be identified as the divorce property liquidation agreement by referring to the liquidation relationship theory after the dissolution of the contract; As for the dimension of parents and children, it is more appropriate to identify them as contracts for the benefit of third parties, so that the provisions of paragraph 2 of Article 522 of the Civil Code can be applied.

References

- [1] Xue Wei. *Study of the "gift of children's property" clause in divorce agreements* [J]. *Legality Vision*, 2022(30):35-37.
- [2] Wang Liming. *Contract Law* [M] Beijing: Renmin University of China Press, 2015, 2-55.
- [3] Lei Chunhong. *Study on the clause of "gift of children's property" agreed by the divorcing parties* [J]. *Research on Rule of Law*, 2022, 144(06):80-91.
- [4] Huang Wei. *Interpretation of Marriage and Family Code of the Civil Code of the People's Republic of China* [M] Beijing: Law Press, 2020, 66-68.
- [5] Xia Yinlan. *Commentary on Chinese Civil Code* [M] Beijing: Renmin University of China Press, 2020, 71-74.
- [6] Peng Wanlin, *Civil Law* [M] Beijing: China University of Political Science and Law Press, 2011, 2-65.
- [7] Yu Yanman. *On the Origin of Kinship Law* [M] Beijing: Law Press, 2007, 69-70.
- [8] Yuan, C. *On the agreed transfer of property ownership between husband and wife and its difference from gift* [J]. *Journal of North China University of Water Resources and Electric Power (Social Science Edition)*, 2012, 28(05):125-128.
- [9] Wang Geya. *The institutional choice and value pursuit of divorce property liquidation* [J]. *Legal Forum*, 2014, 29(04):24-33.
- [10] Zhang Wensheng. *The path of interpretation of the effect of the property-giving clause in divorce agreements: the Civil Code as the background of interpretation* [J]. *Journal of Anhui Vocational College of Police Officers*, 2022, 21(05):11-16.
- [11] Zhang Huagui. *Research on the law of marital property relations* [M]. Beijing: Mass Publishing House, 2017, 51-55.
- [12] Shen Chen. *The validity of intra-marital agreement under the perspective of the Civil Code* [J]. *Law Review*, 2021, 39(06):181-193.
- [13] Xiong Yumei. *The validity of divorce property division agreement: a perspective of the lawsuit of real estate execution objection* [J]. *Journal of Jiangxi University of Finance and Economics*, 2020, 128(02):128-136.
- [14] Lu Qing. *Research on the "gift of children's property" clause in divorce agreement* [J]. *Chinese Journal of Law*, 2018, 40(01):87-105.
- [15] Zhang Rong. *On the legal effect of marriage personal agreement* [J]. *Journal of Xidian University (Social Science Edition)*, 2021, 31(01):72-79