

Research on the Legal Validity of Property Surrender Commitment

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Abstract: In recent years, as marital and familial disputes have increased, the Property Surrender Commitment (PSC) has emerged as a common approach to resolving property division issues in divorce proceedings. However, significant divergences persist in both theoretical discourse and judicial practice regarding its legal validity. The PSC constitutes a legal act possessing both proprietary and identity-based characteristics, de facto representing a specialized bilateral contract incorporating familial status elements. Concerning its enforceability, three primary doctrinal perspectives prevail: the Nullity Doctrine, the Natural Obligation Doctrine, and the Validity Doctrine. This article endorses the Validity Doctrine, maintaining that a PSC should be deemed legally effective in principle, provided it satisfies the general validity requirements for civil juristic acts. Concurrently, due to its inherent connection to personal status, the enforceability of such commitments is subject to limitations imposed by relevant status-based legal principles. Furthermore, compliance with formal requirements necessitates execution in written form to ensure clarity and traceability of the parties' expressed intent.

Keywords: Property Surrender Commitment; Legal Transaction; Marital-Family Ethics; Autonomy of the Will

1. Definition and analysis of the nature of the concept of property surrender commitment

1.1 Definition of the concept of property surrender commitment

The term "Property Surrender Commitment (PSC)" constitutes an extralegal designation within the domain of matrimonial law. Literally construed, it denotes the voluntary relinquishment of all or substantially all marital assets by one or both spouses during the marriage or divorce proceedings. Existing statutes and regulations lack explicit conceptual definition of this arrangement, which remains a prevalent appellation in academic and judicial practice. After systematizing and analyzing substantial relevant case precedents, we may define a PSC as a mutual undertaking entered into by spouses either prenuptially or during the marriage, wherein the commitment to surrender marital property operates as the stipulated consequence for breaching agreed obligations. This mechanism serves to deter profligate conduct by either party while preserving marital affection and domestic stability, founded upon a consensual basis with equal standing between the parties.

1.2 Analysis of the nature of the property surrender commitment

Under the taxonomy of juristic acts based on the number of parties and the interrelation of their declarations, such acts may be classified as unilateral juristic acts, bilateral juristic acts, and collective resolutions[1]. Superficially, a Property Surrender Commitment (PSC) resembles a unilateral civil juristic act, as it ostensibly requires only one party's declaration. This characterization, however, disregards the statutory prerequisite for enforceability: the commencement of divorce proceedings. In essence, such commitments constitute conditional civil juristic acts—a status incompatible with unilateral acts which, under civil law doctrines, generally preclude conditional or temporal limitations. More fundamentally, while ostensibly issued unilaterally, a PSC serves as the documentary embodiment of mutually agreed terms during bilateral negotiations, encapsulating partial consensus in the formation of the legal act. The unilateral act theory further fails to resolve the paradox that such commitments lack immediate proprietary effect during matrimony. Disposition of marital property inherently implicates joint interests; absent spousal consensus or statutory grounds for intra-marital partition, alienation of co-owned assets remains legally untenable. Conversely, characterizing a PSC as a bilateral juristic act proves equally problematic due to the absence of its core structural element: a consensus ad idem. The quintessential features of bilateral contracts—reciprocal negotiation parity, mutuality of declarations, and substantive

certainty—are demonstrably deficient in such commitments. Crucially, the formality requirements inherent to bilateral contracts are routinely absent in unilaterally framed PSCs.

Thus, a PSC typically manifests as a unilateral undertaking whereby one spouse relinquishes all or specified community property interests under defined contingencies, without contemporaneous reciprocal declarations by the other party. This asymmetrical form ostensibly negates mutuality of obligation, approximating unilateral juristic acts. Upon rigorous analysis, however, a PSC emerges as a specialized status-infused bilateral contract necessitating mutual volition and negotiation. The relinquishing party's surrender of property interests ordinarily presupposes counterpart concessions—whether explicit or implied—in the broader divorce settlement framework. This functional reciprocity substantiates the PSC's essential character as a variant of bilateral contract.

2. Differences in decisions and theoretical disputes on the determination of the legal validity of property surrender commitment

2.1 Differences in decisions on property surrender commitment

In recent years, contentious disputes regarding the enforceability of Property Surrender Commitments (PSCs) have proliferated across Chinese jurisdictions. Substantial divergences persist in judicial practice concerning the validity determination of such instruments. Jurisdictions upholding validity primarily ground their rulings on dual premises: (1) non-violation of mandatory statutory provisions, and (2) compatibility with public policy and morality, thereby honoring the parties' autonomous private ordering of property rights. Conversely, jurisdictions invalidating PSCs predominantly base their decisions on either the extra-legal nature of marital sentiment (deeming it beyond judicial purview) or perceived contraventions of matrimonial morality and fundamental public order principles.

Illustratively, in *Zhao v. Zhang* (Property Ownership Confirmation Dispute) — Case 3 of the 10 Model Cases Promoting Socialist Core Values (2023) released by the Shanghai High People's Court concerning repudiation of a 'Property Surrender Commitment' (PSC) in consensual divorce proceedings, the court articulated that validity determination of such divorce agreements requires assessment of: (1) parties' contractual capacity at execution; (2) genuineness of intent; and (3) absence of illegality or public policy violations. Where both spouses possess requisite capacity for divorce agreements, voluntarily endorse the terms through signature, and the substance contravenes no mandatory provisions, the instrument shall be deemed legally valid and binding upon the parties, thereby precluding arbitrary rescission. Conversely, in *Yang v. Liu* (Divorce Dispute) — Case 3 of the Supreme People's Court's 10 Model Matrimonial Disputes (Shandong Jurisdiction), the apex court invalidated a conditional clause stipulating that 'initiation of divorce proceedings renders this instrument void'. Such provision was held null and void as it impermissibly restricted divorce rights — a violation of statutory law and fundamental public policy (*ordre public*).

The diametrically opposed judicial stances on Property Surrender Commitments (PSCs) across jurisdictions underscore the profound contentiousness surrounding their validity. Affirmative rulings validate such commitments by invoking private autonomy principles, whereas negative judgments deem them legally non-justiciable due to excessive embedded personal and emotional elements that fall beyond contractual governance. Both approaches—whether affirming autonomy-based validity or negating enforceability on grounds of spousal voluntariness or familial ethics—reflect judicial restraint in avoiding substantive evaluation of marital relations. However, when courts circumvent validity disputes by applying Article 1091 of the Civil Code to award compensation to the innocent party, they nevertheless engage in factual assessment of comparative fault. Paradoxically, judicial discretion expands rather than contracts in such scenarios: damages are quantified by disregarding the parties' commitments and exercising discretionary determination—a practice incongruent with the courts' asserted principle that 'law must refrain from excessive intervention in affective-moral domains.' This jurisprudential dissonance reveals opportunities for enhancing doctrinal coherence and granularity in reasoning. Since avoidance of spousal relationship evaluation proves unfeasible, it would be judicially expedient to develop responsive and adaptively calibrated approaches.

2.2 Theoretical controversy over the validity of property surrender commitment

Scholarly discourse remains profoundly divided regarding the validity of Property Surrender Commitments (PSCs), with doctrinal contention predominantly centered on three core issues: whether imposing excessive proprietary liability infringes upon personality interests; whether the transactional

nature of such commitments violates fundamental public policy (ordre public) and matrimonial ethics; or whether legal intervention in affective domains is warranted at all. This has crystallized into three principal doctrinal positions: the Nullity Doctrine, the Natural Obligation Doctrine, and the Validity Doctrine.

Both proponents and opponents of Property Surrender Commitments (PSCs) invoke 'preservation of familial ethics or public policy' to substantiate their positions—a line of reasoning that remains substantively hollow and fails to provide coherent logic. Fundamentally, such commitments (whether unilateral or bilateral) aim to protect marital relationships and uphold family values; they cannot reasonably be construed as undermining social morality or subverting matrimonial institutions. If betrothal gifts (monetary consideration for marriage) are deemed consistent with public policy, then PSCs (financial settlements for divorce) cannot plausibly violate societal norms. Compared to the arguably coercive implications of betrothal payments ('bride-price' transactions), PSCs impose significantly lesser restrictions on marital autonomy. Regarding alleged violations of human dignity, scholars advocating the Nullity Doctrine contend that total asset forfeiture deprives individuals of material foundations for subsistence and personal autonomy, thereby infringing personality rights. This view, in my assessment, reverses causal logic. Freedom of contract constitutes the paramount expression of autonomous choice: as persons with full civil capacity, individuals possess the inherent right to determine whether to contract, with whom to contract, and on what terms—a principle axiomatic under natural law theory[2]. Contractual autonomy itself embodies human dignity and freedom. Were the law to negate such autonomy under the guise of protecting personality interests, it would in fact perpetrate the very rights violation it purports to prevent.

Proponents of the Natural Obligation Doctrine characterize Property Surrender Commitments (PSCs) as status-infused amicable acts primarily concerning proprietary interests within the affective sphere of spousal relationships[3]. They maintain that PSCs—being inherently imbued with emotional significance and tied to familial status—fall within the domain of moral and affective norms rather than legal compulsion, contending that fulfillment derives meaning solely from voluntary performance[4]. This position, in my assessment, proves logically unsustainable. If contractual validity were denied merely because commitments involve moral-affective dimensions, one could not explain why the law recognizes agreements governing child custody matters—which equally inhabit this sphere—nor reconcile statutory interventions including: residual clauses for matrimonial damages (Article 1091, Civil Code); catch-all provisions for determining irretrievable marital breakdown (Article 1079); and principles favoring faultless parties in divorce property division (Article 1087). These concrete institutional arrangements demonstrate the law's explicit regulatory engagement with spousal affections. Moreover, matrimonial disputes invariably implicate personal and emotional elements. To preclude application of the Contract Book provisions (Book III, Civil Code) solely on such grounds would render Article 464(2)—which expressly governs status-related agreements by reference to contract rules—nugatory. Furthermore, the inherent conceptual ambiguity of natural obligations warrants judicious deployment in any legal system[5].

3. Considerations of the effectiveness of 2.2property surrender commitment

The validity of Property Surrender Commitments (PSCs) shall presumptively be recognized, with invalidation or rescission constituting exceptional outcomes. Characterizing PSCs as bilateral civil juristic acts—or contractual instruments—incorporating both status-based and proprietary attributes necessitates satisfaction of all validity requirements for civil juristic acts. This encompasses both general validity prerequisites and special validity conditions. Concurrently, given their inherent connection to personal status, the enforceability of such commitments remains subject to the distinctive efficacy rules governing status-based legal regimes.

3.1 Qualification of legal subjects to enter into commitments

The executing party of a Property Surrender Commitment (PSC) must necessarily possess full civil capacity. Such commitments inherently constitute an absolute disposition of substantial property rights, involving the voluntary relinquishment of all or virtually all assets upon dissolution of marriage. This necessitates the actor's possession of sufficient cognitive ability and rational judgment to comprehend the legal consequences entailed. Persons with full civil capacity can independently assess the profound implications of property division on subsistence, debt assumption, and future livelihood, thereby rendering valid declarations of intent based on genuine volition. Furthermore, the validity of a PSC is

fundamentally contingent upon the existence of a legally valid marital relationship between the parties. This commitment constitutes a *sui generis* arrangement predicated on specific status relations (i.e., spousal ties) governing the partition of marital community property. Its legal efficacy remains intrinsically derivative of and dependent upon the validity of the underlying matrimonial bond.

3.2 Need for soundness of intent

Within the specific context of Property Surrender Commitments (PSCs), defective declarations of intent arise irrespective of whether stemming from impulsive actions during emotional distress, 'sham divorces' contrived to evade debts, or commitments induced through violent threats, prolonged psychological coercion, fraud, or exploitation of the counterparty's exigent circumstances. Given that PSCs seldom involve material misunderstanding, examination concentrates on intentional discrepancies: Mental reservation (*reservatio mentalis*) occurs when the promisor covertly intends to retain property rights; pursuant to objective interpretation principles and protection of the counterparty's reliance interests, such commitments are presumptively valid though ultimate enforceability requires evidentiary substantiation. Jestful declarations exist where non-serious intent is present with expectation of non-reliance; where the counterparty recognizes the jest, no valid declaration materializes, whereas unrecognized declarations remain voidable for material mistake, with practical enforcement being rare due to statutory limitation periods. Sham agreements (*simulatio*) involve collusive intent for nullity under Civil Code Article 146, rendering the agreement absolutely void; concealed transactions harming third-party interests permit such parties to seek rescission of the property division arrangement, triggering statutory reallocation, with marital dissolution remaining irrevocable and recourse claims arising for jointly assumed liabilities. Coerced declarations encompassing fraud and duress generally render commitments voidable: fraud manifests through concealed assets or fabricated debts inducing erroneous consent to PSCs, enabling the defrauded party to rescind and claim division of hidden assets; duress comprises both physical compulsion and psychological coercion (*vis compulsiva*), the latter being voidable and potentially concurrently constituting gross disparity warranting rescission. It warrants emphasis that notwithstanding the specialized nature of family law, defective PSCs remain governed by general civil law voidability principles rather than specialized rules applicable to wills or employment contracts.

3.3 Content restrictions

From a validity perspective, the substantive content of a Property Surrender Commitment (PSC) must neither contravene mandatory or prohibitory norms under statutory law and administrative regulations, nor abuse permissive or discretionary provisions to circumvent legal constraints, while simultaneously complying with state policy imperatives. For instance, where spouses collusively execute a PSC to evade joint liabilities and prejudice third-party rights, such commitment may be deemed void *ab initio* due to substantive illegality—in addition to being subject to rescission by affected third parties. Furthermore, mutually agreed PSCs must not violate fundamental principles of matrimonial law, including provisions safeguarding the lawful interests of women and children, nor impose impermissible restrictions on statutory rights such as parental access or custody.[6] Should a PSC employ proprietary penalties to restrict or effectively deprive marital freedom, it violates not only public policy (*ordre public*) but also infringes upon human dignity.

Examined through the public policy lens, PSCs must conform to both legal prescriptions and societal order and morality[7]. As authentic bilateral declarations of intent, their validity assessment requires multifactorial analysis: such commitments cannot operate to circumvent statutory obligations or undermine essential social ethics and public interests. Illustratively, asset relinquishment arrangements that completely deprive a party of financial capacity to fulfill maintenance duties not only contravene universally recognized familial responsibilities but also unlawfully shift support burdens onto the public fisc, warranting invalidation. While the law permits disposition of proprietary interests, such autonomy remains circumscribed by non-derogable legal boundaries—namely, agreements must not prejudice fundamental societal interests or third-party rights protected by law. Any transgression of these thresholds will render the PSC legally unenforceable as contrary to public policy.

3.4 Formal elements

Pursuant to Article 1065 of the Civil Code stipulating that 'spouses may agree that property acquired during marriage and pre-marital property shall be separately owned, partially co-owned, or communally

owned. Such agreements shall be made in writing, 'a Property Surrender Commitment (PSC) constitutes a species of matrimonial property arrangement equally subject to these provisions. Consequently, PSCs must satisfy the statutory formality requirement of execution in writing. Oral commitments to this effect are *prima facie* devoid of legal validity.

3.5 Special Validity Condition – Contingency upon Divorce

As a conditional civil juristic act, the validity determination of a Property Surrender Commitment (PSC) hinges upon fulfillment of its stipulated condition. Reference is made to Article 69(1) of the Supreme People's Court's Judicial Interpretation I on the Marriage and Family Part of the Civil Code (hereinafter "Interpretation I"), which provides: 'Property and debt settlement agreements conditional upon divorce by mutual consent or court-mediated divorce shall be deemed ineffective if either party repudiates during divorce litigation when the divorce fails to materialize. The people's court shall adjudicate pursuant to Articles 1087 and 1089 of the Civil Code based on actual circumstances.' Thus, the proprietary disposition under a PSC takes effect conditional upon voluntary divorce. Upon fulfillment of this condition, the commitment to relinquish all property becomes valid. Here, voluntary divorce constitutes a condition subsequent to the reciprocal performance of the property agreement—not an obligation to divorce *per se*. Upon satisfaction of this condition, the PSC attains immediate validity. While some scholars contend that conditioning juristic acts upon status relationships like divorce violates public morality (*contra bonos mores*) and should be void, this author maintains that the conditional mechanism in PSCs pertains strictly to proprietary dispositio. In such cases, consistent with Article 69 of Interpretation I, the commitment becomes enforceable upon fulfillment of the voluntary divorce condition.

4. Conclusion

The validity of Property Surrender Commitments (PSCs) remains subject to sharply polarized doctrinal positions, with no directly applicable statutory provisions currently governing such instruments. Confronted by a surge of PSC-related property division disputes inundating courts, judicial resolution is urgently required. Jurisdictions diverge methodologically: some courts analyze validity through constituent elements of juristic acts, others assess enforceability under contract law frameworks, while additional tribunals evaluate compliance with fundamental legal principles. Law's ultimate mission resides in application, and adjudication constitutes the definitive pathway for resolving interest conflicts—yet establishing universal validity for PSCs remains presently untenable. This author contends that in PSC adjudication, where procedural legitimacy obtains, the paramount consideration is outcome equity. Matrimonial statutory constructs—fault-based damages (Art. 1091), post-divorce financial assistance (Art. 1090), and economic compensation (Art. 1088)—collectively embody institutional safeguards prioritizing protection of vulnerable parties, victims, and those contributing disproportionately to familial welfare. Given the absence of definitive validity standards for PSCs and inconsistent judicial determinations nationwide—where neither validation nor invalidation persuasively resolves disputes—courts must adhere to the cardinal principle of case-specific equity determination. This necessitates prudential calibration between strict legal adjudication and substantive interest balancing: considering both applicable rules and parties' actual contributions to the marital partnership, with particular emphasis on protecting lawful interests of non-faulting and disadvantaged parties. Such an approach stabilizes contractual efficacy while concurrently reinforcing matrimonial stability.

At the formal level, such commitments must unequivocally satisfy the general constitutive elements of civil juristic acts. This necessitates sequential examination of: (1) party capacity; (2) genuineness of intent; and (3) substantive legality. Non-compliance with any element renders the commitment void *ab initio*, triggering direct application of general matrimonial provisions. Where validity is established through compliance with these prerequisites, enforceability determinations shall reference the judicial reduction mechanism for stipulated damages under the Civil Code. The adjustment methodology may incorporate interest-balancing theory as a gap-filling instrument—operationally involving extrapolation of legislative value judgments from extant law to measure conflicting interests in *casu*, thereby achieving contextually appropriate adjudication while minimally compromising legal certainty. Regarding underlying interests in PSCs, this author proposes judicial discretion guided by factors analogous to Article 8 of Interpretation II on the Marriage and Family Part governing property division: cohabitation duration, joint child-rearing, marital fault, and comparative familial contributions. Concurrently, assessment against the 'good family customs' doctrine should evaluate fulfillment of spousal fiduciary duties, child support obligations, and elder care ethics. This approach thereby preserves contractual

autonomy while concurrently fulfilling matrimonial substantive equity imperatives.

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