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Peculiarities of the determination of value of goods as at the date in the past within the framework of a commodity expertise

When investigating and hearing criminal proceedings, civil and administrative cases in courts, there is a need for special information in the field of commodity science. Such information is obtained during commodity expertises. Analysis of the stages of forensic commodity expertise in the current legislation shows the presence of a significant number of problems at certain stages of study, which requires effective resolution in accordance with current regulatory and technical parameters and prospects for further development in Ukraine. As practice shows, forensic commodity expertises are often appointed, the subject of which is to determine the market value of objects on the date in the past. If the necessary documents are available, the difficulty of providing conclusions about the value of the objects of study is due to the lack of initial data on the market of such property. This is due to the fact that there are very few publicly available sources where you can find archival information on the price of a product at the date in the past, especially if it concerns specialized property, or property whose sale and purchase market is limited. That is why the article purpose is to highlight peculiarities of the determination of value of goods at the date of past within the framework of the commodity expertise.

At the present stage in Ukraine there are no meaningful studies and regulations on conducting the commodity expertise to determine the value of goods in the past, so this issue needs further study to create a unified and comprehensive approach while conducting the commodity expertises on the value of goods at the date of the past and development of a methodology that will be used in forensic expert practice during the conduct of commodity expertises, to ensure the systematization and methodological uniformity of the expert practice, reducing the complexity and time spent during expertises.

Thus, the formation and development of property valuation are possible only in market conditions with a clear definition of the role and place of the state in matters of pricing and legal regulation of entrepreneurial activity. In addition, it is necessary to develop ways to improve the effectiveness of research that could provide the necessary conditions to protect professional competence of a forensic expert for appealing expertise results in court.

Keywords: commodity expertise, estimation, market value, market, date of value determination, date in the past, information.

Formulation of Research Problem. The growing significance of the use of specific expertise in administrative, commercial, criminal and civil proceedings contributes to the expansion of provisions of the Commercial and Procedural Code of Ukraine, the Code of Administrative Proceedings of Ukraine, the Criminal Procedural Code of Ukraine and the Civil Procedural Code of Ukraine which govern them, in particular those that determine the procedure for appointment (involvement of a forensic expert) and conduct of forensic examinations. In Ukraine, the procedural legal foundation for forensic activity is the Commercial and Procedural Code of Ukraine, the Criminal Procedural Code of Ukraine the Civil Procedural Code of Ukraine and the Code of Administrative Proceedings of Ukraine. In accordance with the requirements of these codes, a forensic expert while court proceedings may be a person who possesses specific expertise. During investigation and court proceedings of criminal, civil and administrative cases, oftentimes there is a need to apply special knowledge in commodity science ¹.

Referring to the analysis of investigative practice, it is possible to draw a conclusion that most often forensic commodity expertises are appointed under Art. 185, 186, 187, 189, 190, 201 of the Criminal Code of Ukraine ² in the following cases:

- investigation of criminal proceedings on theft of state or personal property;
- theft;
- bribes;
- falsification of goods;
- separation of property;
- compensation for losses from property damage;
- goods damage;
- sale of defective goods.

¹ Шевченко О. В. Використання спеціальних товарознавчих знань під час досудового розслідування : дис. ... канд. юрид. наук. Київ, 2017. 317 р.

² Кримінальний кодекс України : Закон України від 05.04.2001 р. № 2341-III (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/2341-14> (date accessed: 24.03.2021).

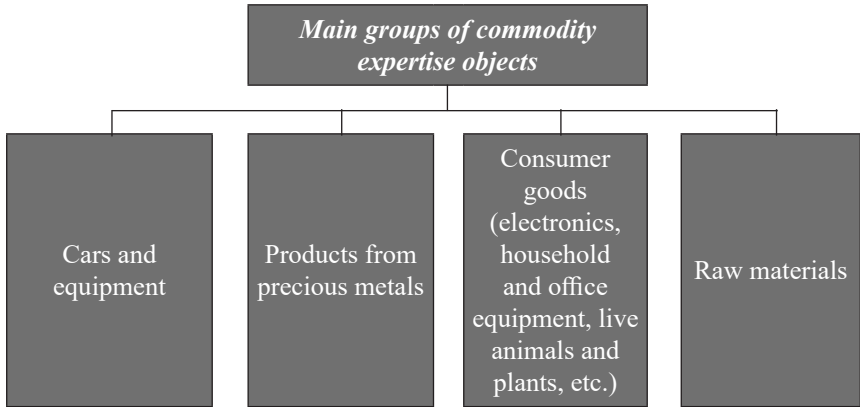


Fig. 1

Analysis of the stages of forensic commodity expertise in the current legislation demonstrates the existence of a significant number of issues at certain stages of a research, which necessitates efficient resolution in accordance with current regulatory and technical parameters and prospects for further development of forensic activity in Ukraine. The term: *estimation at the date in the past* is not specified in national standards. However, this does not prevent the use of this term in estimation practice. It is known from numerous training manuals that the date of conducting commodity expertise and the date of estimation may not coincide. Accordingly, estimation of property may be current or at a date in the past. Current legislation does not prohibit the determination of the value of the object of study at any of dates. As experience shows, today forensic commodity expertises are often appointed, which subject is to determine the market value of objects at a date far remote from the date of expertise, i.e. at a date in the past. It is difficult to analyze the past relying only on assumptions. The complexity level of the task for determining market value at a date in the past depends on many factors, including the type of assessed object; the period of time between the date of estimation and the date of expertise; the significance of changes that have taken place in the market during this period. It is quite challenging to carry out full market monitoring at a date in the past in the same amount of researches that are usually performed for current estimation. Regulations governing the process of property valuation do not contain requirements and recommendations for determining the value of object as of a date that differs significantly from the date of expertise. There are very few sources where you can find archival information on the value of a particular product at a date in the past, especially when it comes to specialized property or property which sale and purchase market is limited.

Conducting commodity expertises for research on consumer goods to determine their value at the past date is complicated by the lack of a single

methodological approach. At present in Ukraine there are no meaningful researches and legal regulations on performing commodity expertise to determine the value of goods to a date in the past, so this issue needs to be studied to create a unified and comprehensive approach to conducting commodity expertises to assess the value of goods at a date in the past.

Analysis of Essential Researches and Publications. Famous Ukrainian and foreign scientists: T. M. Artiukh, I. V. Hryhorenko ¹, V. V. Arkhypov ² and L. D. Revutskyi ³ dedicated their research papers to the study of peculiarities of goods estimation and determination of their value in market conditions. However, these researches do not fully disclose the issue of determining the value of goods at a date in the past.

The **Article Purpose** is to emphasize peculiarities of determining the value of goods at a date in the past while forensic commodity expertise.

Main Content Presentation. Estimation as a type of research in commodity expertise not only includes methods of various sciences, but also adds its own specific nature. This due to the fact that the nature of value requires corresponding ways of determination.

The National Standard № 1: *General Principles of Estimation of Property and Property Rights* (hereinafter referred to as *NS № 1*) defines fundamental principles of estimation reflecting socio-economic factors and basic patterns of property value formation. According to paragraph 4 of NS № 1, estimation is carried out in conformity with the basic principles of utility, supply and demand, substitution, expectation, marginal productivity, contribution, most efficient use⁴. These basic principles of estimation are formulated on the grounds of real practice and many years of professional experience of appraisals. Fundamental principles can be classified according to peculiarities of their logical link with certain market conditions and objectively available in the public consciousness stable ideas and stereotypes of thinking.

All basic principles are significant for estimation at a date in the past within a forensic commodity expertise: but this significance is not the same. Some of the principles are a priority. In particular, this is the principle of utility that most

¹ Артюх Т. М., Григоренко І. В. Теоретичні основи товарознавства [Електронний ресурс] : навч. посіб. Київ, 2014. 263 р.

² Архипов В. В. Экспертная оценка товаров (движимого имущества) : учеб. пособие. 2-е изд. Киев, 2016. 280 р.

³ Ревуцкий Л. Д. Виды товаров и особенности методов определения их стоимости и цен. *Бухгалтерский учет. Налоги. Аудит*. 29.06.2015. [Электронный ресурс]. URL: <https://www.audit-it.ru/articles/appraisal/a108/832140.html> (date accessed: 24.03.2021).

⁴ Про затвердження Національного стандарту № 1 «Загальні засади оцінки майна і майнових прав» : Постанова КМУ від 10.09.2003 р. № 1440 (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/1440-2003-%D0%BF> (date accessed: 24.03.2021).

fully reflects the essence of methodological estimation approaches being most often used in estimation at a date in the past.

In economic value theory, the value of a property is always assessed based on needs and purpose of interested people involved in market operations or using the property. Therefore, only those things that can be used have value. The process of evaluating a thing invariably involves determining the level of its usefulness, efficiency, appropriateness of use.

Performing a commodity expertise to determine the market value of a commodity consists of five stages: initial, separate study, evaluation of conducted research results, formulation of conclusions, documentation of results of conducted research.

At the initial stage of a previous research a forensic expert clarifies the purpose of research and estimates provided materials (regarding sufficiency to address set tasks, formulation of a general idea about objects of study, their features, development of hypotheses and planning of expert researches).

During a previous research, a forensic expert:

- gets acquainted with provided materials (order, judgement, petition, appeal, materials of criminal proceedings, civil, administrative, commercial case, etc.), establishes integrity of packaging, establishes the presence of objects of study according to the list in accompanying documents;
- illustrates packaging, objects of study;
- studies condition of research objects (their integrity, lack of changes, etc.);
- establishes sufficiency and quality of received materials, objects of study;
- studies the need to initiate petitions regarding provision of additional materials and other actions related to a forensic examination;
- determines the required set of research methods and the sequence of their application.

At the stage of separate study, a forensic expert conducts an integrated and complete study of properties and features of research objects, forms interim conclusion on suitability of objects for identification and establishment of group belonging.

In the course of a separate study, a forensic expert:

- studies features and properties of each of research objects;
- determines identified general (shape, size, kind, type, etc.) and individual (special) features (specific details of external structure, characteristic properties, etc.) of each of research objects;
- formulates an interim conclusion (on suitability for identification, establishment of group belonging, etc.) based on results of performed study.

At the stage of evaluating results of conducted research and formulating conclusions, the forensic expert:

- comprehensively evaluates results of expert research;
- scientifically substantiates the origin of identified features;
- draws conclusions.

At the stage of documentation of conducted expert research results, a forensic expert:

- makes up a conclusion of expert or expert research in compliance with the established sample;
- creates illustrative or supplementary material which adds to a compiled conclusion (attachments to a conclusion) ¹.

Let's stress that an important stage of forensic examination is conducting marketing research on the domestic market, which consists of the following consistent actions:

- the choice of information sources;
- determination of the existence of state regulated prices for this type of commodity;
- search for information on offer prices and sales prices of identical goods (and in their absence: of the same type);
- establishment of economic (commercial) terms of agreements at a particular market segment;
- determining the impact of economic, political, social and other factors at a particular market segment.

Economic entities use free and government regulated prices in their activities². Depending on the fact of setting government regulated prices, forensic experts choose an approach to carry out procedure of goods estimation. If government regulated prices are set, then estimation of goods is conducted in conformity with established prices. If government regulated prices are not set, the following conditions must be taken into account: whether there are contracts or offers regarding identical (homogeneous) goods at a corresponding market; whether it is possible to obtain needed price information by special requests.

The provisions of NS № 1 stipulate the concept of **market value** is *“the value at which it is possible to alienate the estimated object in the market of similar property at a date of estimation under the agreement concluded between*

¹ Про затвердження Інструкції з організації проведення та оформлення експертних проваджень у підрозділах Експертної служби Міністерства внутрішніх справ України : наказ МВС України від 17.07.2017 р. № 591. URL: <https://zakon.rada.gov.ua/laws/show/z1024-17> (date accessed: 24.03.2021).

² Про ціни і ціноутворення : Закон України від 21.06.2012 р. № 5007-VI (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/5007-17#Text> (date accessed: 24.03.2021).

a buyer and a seller, after appropriate marketing provided that each party acted knowingly, judiciously and without coercion”¹.

If the date of research differs from the date of value determination, there are restrictions:

- marketing is limited to publicly exposed information that was relevant at a date of estimation. It is obvious that the amount of information available for analysis is significantly less than the amount of information available to market participants at the date of agreement conclusion;
- lack of objective ability to verify information about compared objects;
- implement a complete monitoring of market at the past date, i.e. call or use the Internet to obtain full information is impossible and ineffective.

The mentioned restrictions at a date of value determination lead to the objective impossibility to fully comply with criteria underlying the *market value* concept. Therefore, it is advisable for forensic experts to define the concept of *value* in accordance with paragraph 2 of NS № 1, where: “*value is the value equivalent of the estimated object expressed in a likely sum of money*”².

The fundamental array of price information required for estimation of value of goods and property can be found on the Internet. A great amount of this information is regularly updated without saving (archiving) previous data. Thus, when determining the value of goods at a date in the past, a commodity expert may not find necessary data. Also, publicly exposed price information may not be provided for certain categories of goods. For example, information about sites of a manufacturer and sellers is available, but it doesn't include a published price list. Any other price information is also not available. Usually such sites explicitly state that the price is “contract” and “contact this phone”.

If after conducting a marketing research of the property market by a forensic expert it was established that archival data on the sale price of the offer similar to the object of property research are missing, then, to conduct an objective estimation it is advisable to send information requests to enterprises (institutions and organizations that produce or are official dealers of selling objects, which according to their characteristics can be considered identical to objects of estimation or similar to them).

Based on ensuring the principle of adversarial nature of the process, inviolability of human rights and freedoms, respect for honor and dignity, presumption of innocence, the right to professional legal assistance and protection at any stage of court proceedings, procedural rules governing the use of specific expertise in criminal proceedings: forensic examination, in particular forensic commodity expertise have been formulated. In accordance with Part 1 of Art. 20 of the Law of Ukraine: *On Judicial Examination* dated on 25.02.1994

¹ Про затвердження Національного стандарту № 1 ... URL: <https://zakon.rada.gov.ua/laws/show/1440-2003-%D0%BF> (date accessed: 24.03.2021).

² Про затвердження Національного стандарту № 1 ... URL: <https://zakon.rada.gov.ua/laws/show/1440-2003-%D0%BF> (date accessed: 24.03.2021).

№ 4038a-XII: “Enterprises, institutions, organizations regardless of ownership are obliged to provide free information required for conducting forensic examinations to state specialized institutions” <...>¹. However, despite that fact, difficulties often arise at this stage of a forensic examination. In practice, not all addressees provide necessary price information: due to its absence or other reasons. The parameter of *probability* in calculations of the value of property is determined by sample of prices of offers for sale involved in the analysis (calculation). The larger the sample size, the more reliable and accurate calculation of market value will be. The amount of information significantly affects the final result of such forensic examination.

In the presence of technically necessary documents, the difficulty of providing conclusions about the value of research objects is due to the lack or insufficiency of initial data on the market of such property.

Failure to provide a forensic expert with sufficient initial data has two consequences:

- the possibility of providing a conclusion and its categoricalness;
- a significant increase in study duration.

In addition, according to NS № 1: “*Determination of the market value of the estimated object using a comparative approach is based on information about the sale (offer) of a similar property, which reliability does not make the appraiser doubt*”². Information used by a commodity expert must be impartial and exhaustive. It is the expert’s responsibility to verify information from publicly available sources. The degree of information verification depends on the volume and depth of research conditioned by forensic examination tasks.

It should be emphasized that the estimated value of market value of a particular product calculated by a forensic expert is an objective estimation of established property rights at a particular date. Market value is estimation based on market data. Probability, accuracy of calculation of goods value is determined by the sample size of offer prices for sale accepted for analysis (calculation).

In the absence or insufficiency of information on the sale price (offer) of a similar property, in a conclusion, a forensic expert shall indicate to what extent this affected reliability of a conclusion on the market value of the estimated object. This is required by NS № 1³.

In conclusion, let’s note that the analysis of data to a date in the past should be carefully approached since it depends on the final result of forensic examination/expert research. To estimate properly, it is crucial to use a significant amount of information and be able to optimize data. Obtained results directly depend

¹ Про судову експертизу : Закон України від 25.02.1994 р. № 4038-XII (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 24.03.2021).

² Про затвердження Національного стандарту № 1 ... URL: <https://zakon.rada.gov.ua/laws/show/1440-2003-%D0%BF> (date accessed: 24.03.2021).

³ Ibidem.

on the activity and stability of the market. In case when it is impossible to find sufficiently exhaustive information, and only a limited amount of information is available, the expert conclusion should include own estimation of the degree of the exhaustiveness of used interim and supplementary information.

Conclusions. The problem of determining the market value of goods at a date in the past requires further research. Currently, the urgent issue is to create a unified and comprehensive approach to conducting commodity expertise to estimate the value of goods as of the past date. It is important to develop a methodology for use in expert practice during commodity expertises. This methodology will ensure systematization and methodological regulation of forensic expert practice. And this, in turn, should help reduce labor intensity and time expenditure during forensic examinations. When developing such a methodology, particular attention should be paid to ways that improve the efficiency of researches which could ensure necessary conditions to protect the professional competence of a forensic expert while appealing results of a forensic examination in court.

The priority direction of commodity expertise development today is substantiation and advancement of practical methods of goods estimation. Thus, formation and development of property estimation is possible only in market conditions by clearly defining the role and place of the state in issues of pricing and legal regulation of entrepreneurial activity.

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В. С. Косован

**Особливості визначення вартості товарів
на дату в минулому в межах
судової товарознавчої експертизи**

Доволі часто призначають судові товарознавчі експертизи, предметом яких є визначення ринкової вартості об'єктів станом на дату в минулому. Складність проведення таких експертиз пов'язана з відсутністю вихідних даних про ринок подібного майна. Саме тому метою цієї статті є висвітлення особливостей визначення вартості товарів на дату в минулому в межах судової товарознавчої експертизи.

На сучасному етапі в Україні відсутні змістовні дослідження та нормативно-правові акти щодо проведення товарознавчої експертизи з питань визначення вартості товарів у минулому часі, тому це питання потребує подальшого вивчення.

Отже, пріоритетним напрямом розвитку товарознавчої експертизи сьогодні є обґрунтування й удосконалення практичних методів оцінювання товарів.

Ключові слова: *товарознавча експертиза, оцінка, ринкова вартість, ринок, дата визначення вартості, дата в минулому, інформація.*

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**Особенности определения стоимости товаров на дату в прошлом
в рамках судебной товароведческой экспертизы**

При расследовании и рассмотрении в судах уголовных производств, гражданских и административных дел возникает необходимость в специальной информации из области товароведения. Такую информацию получают при проведении судебных товароведческих экспертиз. Анализ этапов проведения судебной товароведческой экспертизы в условиях действующего законодательства говорит о наличии значительного количества проблем на определённых этапах исследования, что требует эффективного решения в соответствии с действующими нормативно-техническими параметрами и перспективами дальнейшего развития в Украине. Как показывает практика, довольно часто назначают судебные товароведческие экспертизы, предметом которых является определение рыночной стоимости объектов на дату, значительно отдалённую от даты проведения экспертизы, то есть на дату в прошлом. При наличии необходимых документов сложность предоставления выводов относительно стоимости объектов исследования связана с отсутствием исходных данных о рынке подобного имущества. Это объясняется тем, что крайне мало источников,

находящихся в открытом доступе, где можно найти архивную информацию о цене того или иного товара на дату в прошлом, особенно если это касается специализированного имущества или имущества, рынок купли-продажи которого ограничен. Именно поэтому целью данной статьи является освещение особенностей определения стоимости товаров на дату в прошлом при проведении судебной товароведческой экспертизы.

На современном этапе в Украине отсутствуют содержательные исследования и нормативно-правовые акты о проведении товароведческой экспертизы относительно определения стоимости товаров в прошедшем времени, поэтому данный вопрос требует дальнейшего изучения в направлении создания единого и всестороннего подхода при проведении товароведческой экспертизы по оценке стоимости товаров на дату в прошлом и разработки методики для применения в экспертной практике при проведении товароведческих экспертиз, для обеспечения систематизации и методического единообразия экспертной практики, сокращения трудоёмкости и затрат времени при проведении экспертиз.

Таким образом, становление и развитие оценки имущества возможно только в условиях рыночных отношений при чётком определении роли и места государства в вопросах ценообразования и правового регулирования предпринимательской деятельности. Кроме того, необходимо разработать способы повышения результативности исследований, которые могли бы обеспечить необходимые условия для защиты профессиональной компетентности эксперта по обжалованию результатов экспертизы в суде.

Ключевые слова: товароведческая экспертиза, оценка, рыночная стоимость, рынок, дата определения стоимости, дата в прошлом, информация.

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Contributor

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