

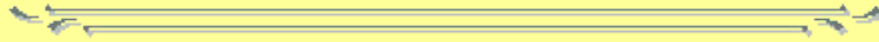


Law in Kazakhstan

Civil Law. General Part



Introduction



Sources:

- Constitution
- Civil Code
- Numerous laws (Law on JSC, Law on LLP and PAL, Law on consumer rights protection etc.)
- Others.

General Part

- Fundamental Principles of Civil Legislation
- Protection of Civil Rights
- Subjects of Civil Law
- Property right
- Objects of Civil Law
- Transactions
- Representation and Power of Attorney
- Law of Obligations.

Principles:

- Equality of the participants
- Inviolability of property
- Freedom of agreement
- Restitution for violated rights and their defense in the court
- Unrestricted circulation of goods, services and monetary resources in the entire territory of the RK.
 - Note: Restrictions are allowed only in accordance with the legislative acts, where it is necessary for ensuring security, protection of life and health of the people, protection of the natural environment and cultural valuables.

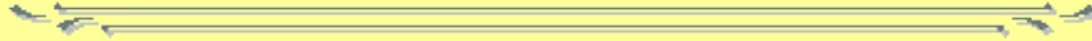
Protection of civil rights:

- restitution of *status quo*
- compensation of material damage (real damage + lost profit) and moral damage.

Subjects of civil relations:

- Natural persons
- Legal entities
- Administrative-territorial units
- State.

Natural persons



Natural persons:

- Citizens of Kazakhstan
- Foreign citizens
- Stateless persons.

Legal capacity

is one's capacity **to have** civil rights
and obligations *[art.13 CC]*

Legal capacity

- All citizens have equal **LC** *[art.13(1) CC]*
- **LC** begins from one's birth and ends with one's death. *[art.13(2) CC]*
- Content of **LC**: to own any property, inherit, choose place of residence, to have intellectual property etc. *[art.14 CC]*

Active capacity (deed capacity, dispositive legal capacity)

citizen's capacity by his own actions to obtain and to exercise his civil rights, **to create** for himself civil obligations and to fulfill them *[art.17 CC]*

Active capacity

- Full **AC** begins with attaining one's majority, 18 years. *[art.17(1) CC]*
- Marriage at 16 years old or emancipation – full **AC** at 16. *[art.17(2) CC]*

Full AC age reduction:

- **Marriage at the age of 16-18.** Organ of state registration (ZAGS) gives permission. Minor receives full AC from the moment of registration of marriage.
- **Emancipation at the age of 16-18.** Organ of Guardianship and Tutorship makes decision. Minor receives full AC from the moment when the decision was made.

Active capacity of minors...

... of 14 – 18 years old [*art.22 CC*]

- All bargains – with the consent of parents, adopters or tutors
- Dispose own income and objects of their intellectual property, make day-to-day bargains

Active capacity of minors...

...under 14 [*art. 23 CC*]

- For them all the bargains are made by parents, adopters and guardians
- Simple day-to-day bargains correspondent to their age

Limitation of active capacity

Why:

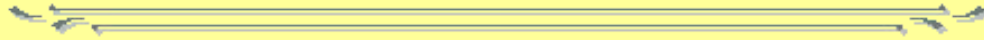
alcoholic or drug addiction which puts
one's family in difficult financial situation
[art.27 CC]

Ceasing of active capacity

Why:

mental decease due to which a person does not realize own actions [*art. 26 CC*]

Legal entities



Legal entity:

It is an organization which:

- has its separate property on the basis of property right, right of business authority or right of operational management;
 - is liable for its obligations with this property;
 - can in its own name acquire and exercise property and personal non-property rights and obligations;
 - can be a plaintiff and a defendant in the court;
 - has independent balance-sheet or budget.
-
- A legal entity has a seal with its name. (*art. 33 CC*)

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graph TD; LE[Legal entity] --> StateLE[State LE]; LE --> PrivateLE[Private LE]; StateLE --> Commercial[Commercial (Profit)]; StateLE --> NonCommercial[Non-Commercial (Non-profit)]; PrivateLE --> Commercial; PrivateLE --> NonCommercial;
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Legal entity

State LE

Private LE

Commercial
(Profit)

Non-
Commercial
(Non-profit)

Commercial organization

- Aimed on the receiving of profit
- The income is distributed between the participants
- Types of commercial organizations:
 - state enterprise
 - business partnership
 - joint stock company
 - production cooperative society (*art. 34 (1,2) CC*)

Non-commercial organization

- Does not have the receiving of profit as the main aim
- The income is not distributed between the participants
- Types of non-commercial organizations:
 - Institution
 - Public foundation
 - Non-commercial joint-stock company
 - Religious association
 - Consumer cooperative society
 - Social fund
 - Other types (*art. 34 (1,3) CC*)

Legal capacity of legal entity

- Begins from the moment of its creation (registration) or from the moment of the obtaining of a license, if the license is required for that activity.
- Finishes at the moment of the end of its liquidation or at the moment of expiry of the license, if the license was required for that activity (*art. 35 (1,2) CC*)

Business partnership:

- It is a commercial organization, the charter fund of which is divided into shares of the founders.
- The property of the business partnership, created on the basis of investments of the founders as well as the property that was produced or acquired by the business partnership during the period of its activity belongs to that business partnership on the basis of property right (*art. 58 (1) CC*)

Types of business partnerships

- **general partnership**

its participants (general partners), in the case of insufficiency of the property of the partnership, bear the joint liability for the obligations of the partnership with all their property (*art. 63 CC*)

- **kommandit partnership**

besides one or more general partners there are also one or more participants with limited liability; only general partners can manage the business activity of the partnership (*art.72 CC*)

- **limited liability partnership**

its partners bear the risk of losses associated with the activities of the partnership within the limits of the contributions made by themselves (*art.77 CC*)

- **partnership with additional liability**

its participants are liable for the obligations of the partnership with their investments to the charter fund and in the case those are insufficient – additionally with the property that belongs to them in the amount proportionate to the contributions made by them (*art.84 CC*)

Joint stock company

- It is a legal entity, which makes the emission of shares with the scope to attract the money for executing of its activity (*art.3 (1) of the Law of RK on JSC*)
- its participants (shareholders) bear the risk of losses associated with the activities of company within the limits of the shares that belong to them.

Property right



Property right

- The right to possess
- The right to use
- The right to dispose (*art.188 CC*)

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graph TD; A[Property right] --- B[Right to possess]; A --- C[Right to use]; A --- D[Right to dispose];
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Property right

Right to possess

Right to use

Right to dispose

Right of business authority

- It is a material **right of a state enterprise, which has received the property from the state** and which exercises the right to possess, to use and to dispose towards that property, as it is provided for by the legislation of the Republic of Kazakhstan.
(art.196 CC)

Right of business authority

Does not include the right to:

- sell or transmit the property to the other people
- exchange
- give in a long-term lease (over 3 years)
- give on the non-paid basis the right to use the property to the other people
- create branches of the state enterprise
- establish joint productions and joint companies together with private entrepreneurs, invest therein their production and monetary capital
- give credits to the private entrepreneurs with the interest lower than the one constituted by the National bank of the RK. (*art.200 CC*)

The right of operational management:

- It is a material **right of an institution**, state institution, financed by the owner, or of a budget enterprise, **which has received the property from the owner** and which exercises the right to use, to possess and to dispose of the property in accordance with the legislation of the Republic of Kazakhstan, with the aims of its activity, **with the tasks of the owner** and with the destination of this property.
(art.202 CC)

The right of operational management

- Does not include the right to determine the legal destiny of the property which the company had received on the basis of the balance-sheet. (*art. 206 CC*)

Grounds for acquisition of property right

- Primary Grounds
- Derivative Grounds

Primary Grounds

- Manufacture or creation of things;
- Fruits, products, and revenues received as a result of the use of property.
- Find, treasure
- Acquisitive prescription – a person or legal entity, who is not the owner of property but in good faith, openly, and uninterruptedly possesses immovable property as his own for fifteen years or other property for five years acquires the right of ownership in such property.

Derivative Grounds

- Contract of purchase/sale, barter, gift, or other transaction concerning the alienation of this property.
- Inheritance
- Reorganization of a juridical person the right of ownership in the property belonging to it passes to the juridical persons-legal successors of the reorganized juridical person.

Grounds for termination of property right

- Alienation by the owner of his property to other persons;
- Renunciation of the property right by the owner;
- Perishing or destruction of the property;
- Loss of the property right to property in other instances provided for by legislation.

Compulsory deprivation of property right

- Satisfaction of claims of creditor
- Compulsory alienation of property which by virtue of legislative acts can not belong to the particular person
- Requisition (in cases of emergency)
- Confiscation (by court decision as punishment)
- Withdrawal of a land plot;
- Purchase of improvidently maintained cultural and historical values.

Не конец

