

CIVIL LAW



Lecture 10

Right of ownership and other proprietary rights

- Right of ownership shall be a recognised and protected by legislative acts the right of a subject at its/his/her own discretion to possess, use and dispose of the property which belongs to it/him/her.
 - Right of ownership shall be transferred to another person with all its encumbrances at the moment of commitment of a transaction.
 - The owner shall have the rights to: (1) possess, (2) use and (3) dispose of his assets.
- 1) The right to possess shall represent the legally-enforced capacity to exercise the actual possession of assets.

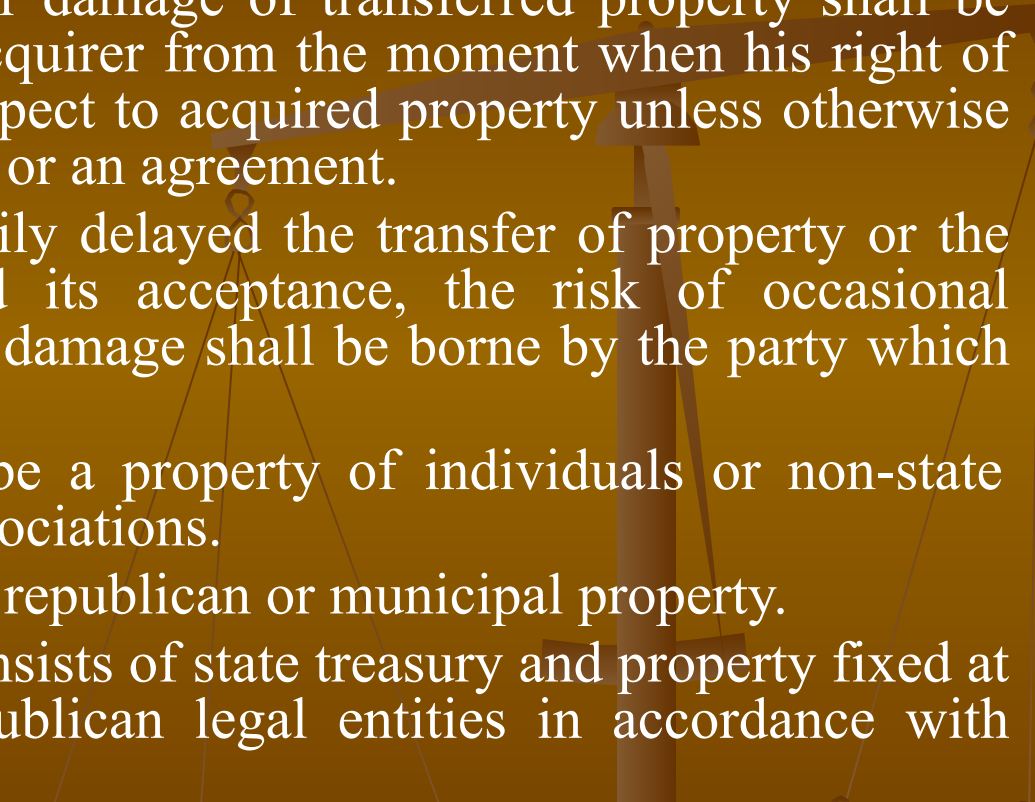
Right of ownership and other proprietary rights

- 2) The right to use shall represent the legally-enforced possibility to extract from the assets their useful natural properties and also to extract benefits out of it. A benefit may be in the form of income, gain, fruit and in any other forms.
- 3) The right to dispose shall represent the legally-enforced capacity to determine the legal destiny of property.
 - The owner shall have the right at his discretion to perform, with regard to the property which belongs to him, any actions including the alienation of the property into the freehold of any other persons, or to transfer to them, remaining the owner, his rights associated with possession, use and disposal of the property, to pledge the property and to encumber it by any other methods and dispose of it in any other way.

Right of ownership and other proprietary rights

- The exercise by the owner of his powers must not violate the rights and legally protected interests of any other persons and the state. The violation of the rights and legitimate interests may be expressed, aside from any other forms, in the abuse by the owner of his monopoly or any other dominant position.
- The owner must adopt measures which prevent harm to the health of citizens and to the environment, which may be inflicted in the exercise of his rights.
- Right of ownership is indefinite. Right of ownership can be terminated only on the grounds set forth in the RK Civil Code.
- In cases, on the terms and conditions and within the limits set out in the legislative acts the owner shall allow other persons to use his property.

Right of ownership and other proprietary rights

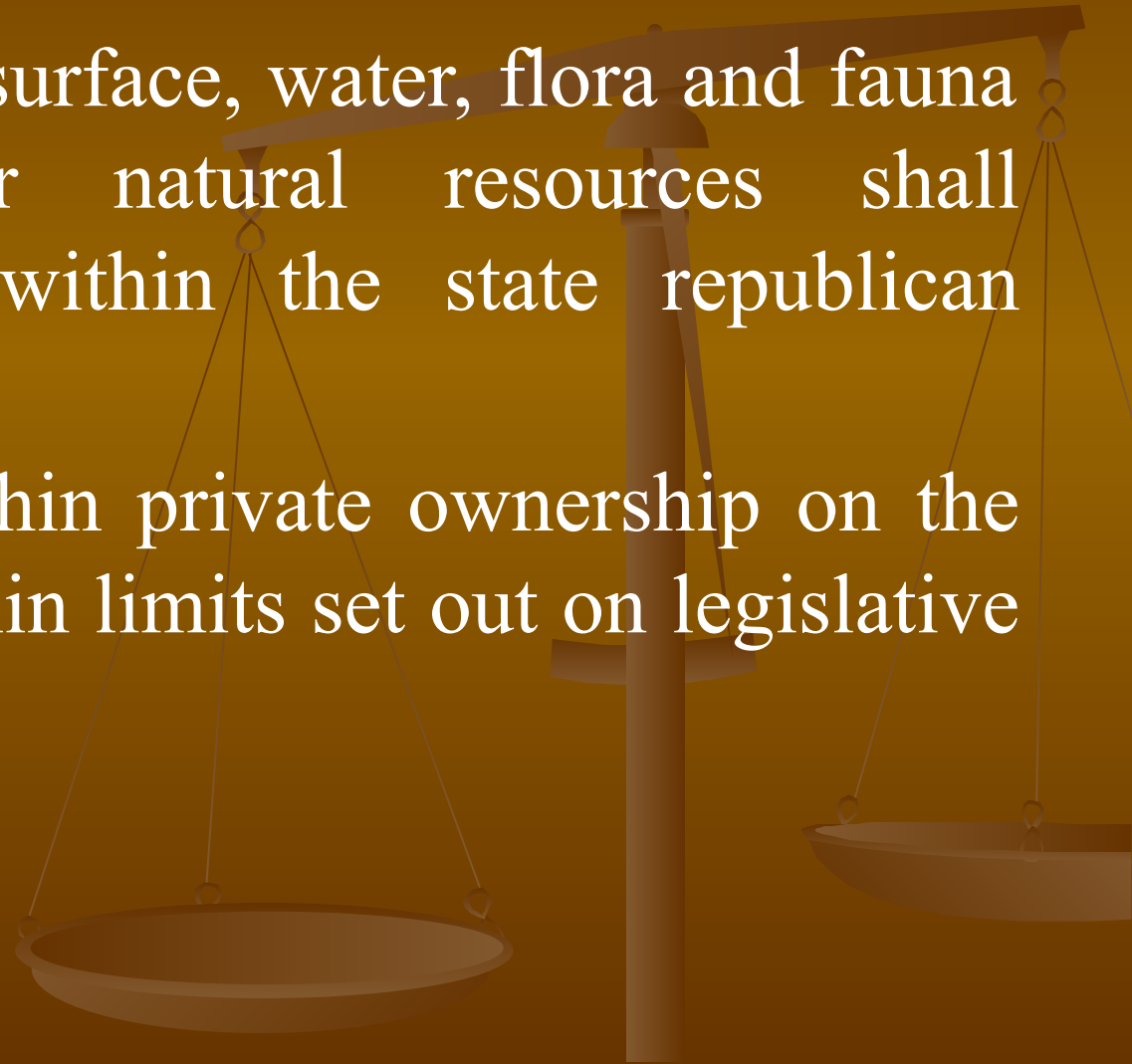
- Risk of accidental loss or damage of transferred property shall be also transferred to the acquirer from the moment when his right of ownership arises with respect to acquired property unless otherwise is provided for in by laws or an agreement.
 - Where the alienator guiltily delayed the transfer of property or the acquirer guiltily delayed its acceptance, the risk of occasional destruction or occasional damage shall be borne by the party which caused the delay.
 - Private property shall be a property of individuals or non-state legal entities and their associations.
 - State property shall be a republican or municipal property.
 - Republican property consists of state treasury and property fixed at the balance of state republican legal entities in accordance with legislative acts.
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Right of ownership and other proprietary rights

- The resources of the Republic's Budget, the gold reserve and the diamond stock, the items of exclusive state property and any other state assets which are not entrusted to the state legal entities, shall constitute the state treasury of the Republic of Kazakhstan.
- Municipal property consists of local treasury and property fixed at the balance of municipal legal entities in accordance with legislative acts.
- The resources of the local budget and any other communal properties which are not entrusted to the state-owned legal entities, shall constitute the local treasury. Communal property shall be divided under the levels of local state governorship into oblast (city of republican consideration, capital) and district (cities of oblast consideration).

Right of ownership and other proprietary rights

- The land, its subsurface, water, flora and fauna and any other natural resources shall exclusively be within the state republican ownership.
- Land can be within private ownership on the grounds and within limits set out on legislative acts.



Right of ownership and other proprietary rights

Proprietary rights shall include:

- Right to land use;
- Right to business authority (право хозяйственного ведения);
- Right to operational management (право оперативного управления);
- Other proprietary rights set forth in laws.

Transfer of right to own a property to other person shall not be a ground for cessation of other proprietary rights on this property unless otherwise is stipulated by legislative acts of RK.

Right to business authority (право хозяйственного ведения)

- The right to business authority shall be a corporeal right of state-owned enterprises which received their property from the State as the owner, and which exercise within the limits established by the RK Civil Code and any other legislative acts, the rights to possess, use and dispose of that property.
- The right to business authority over the assets which the owner decided to entrust to an existing state-owned enterprise, shall arise with that enterprise at the moment of the transfer of the assets to the independent balance-sheet of the enterprise, unless it is otherwise established by legislation or decision of the owner.

Right to business authority (право хозяйственного ведения)

- The fruit, products and income from the use of the assets which are under business authority, and also the assets which are acquired by the enterprise in accordance with agreements or on any other bases, shall be received into the business authority of the enterprise in accordance with the procedure established by legislative acts for the acquisition of the right to own.
- The right to business authority of any assets shall cease on the bases and in accordance with the procedure stipulated by legislation for the cessation of the right to own, and also in the cases of the legitimate reservation of the assets from enterprises under the decision of the owner.

Right to business authority (право хозяйственного ведения)

- The owner of the assets which are under business authority shall in accordance with legislative acts resolve the issues of creating an enterprise, determining the objectives and purposes of its activity, of its reorganisation and liquidation, and of supervision of use of the property belonging to the enterprise in compliance with its designation and of the safety of the assets.
- The owner shall have the right to receive part of net profits from the use of the assets which are under the business authority of the created by him enterprise.

Right to business authority (право хозяйственного ведения)

- A state-owned enterprise which carries out its activities under the right to business authority, unless otherwise provided for by legislative acts, shall not without written consent of the owner or of a state body authorised by the owner to do the following:
 - 1) to alienate or dispose in any other way, to lease for long term (more than three years), transfer for a temporary free of charge use the buildings, installations, equipment and any other basic assets of the enterprise which belong to it;
 - 2) to create branches, representation offices and subsidiaries, to establish in conjunction with private entrepreneurs enterprises and joint production facilities, to invest in them its productive and monetary capital;

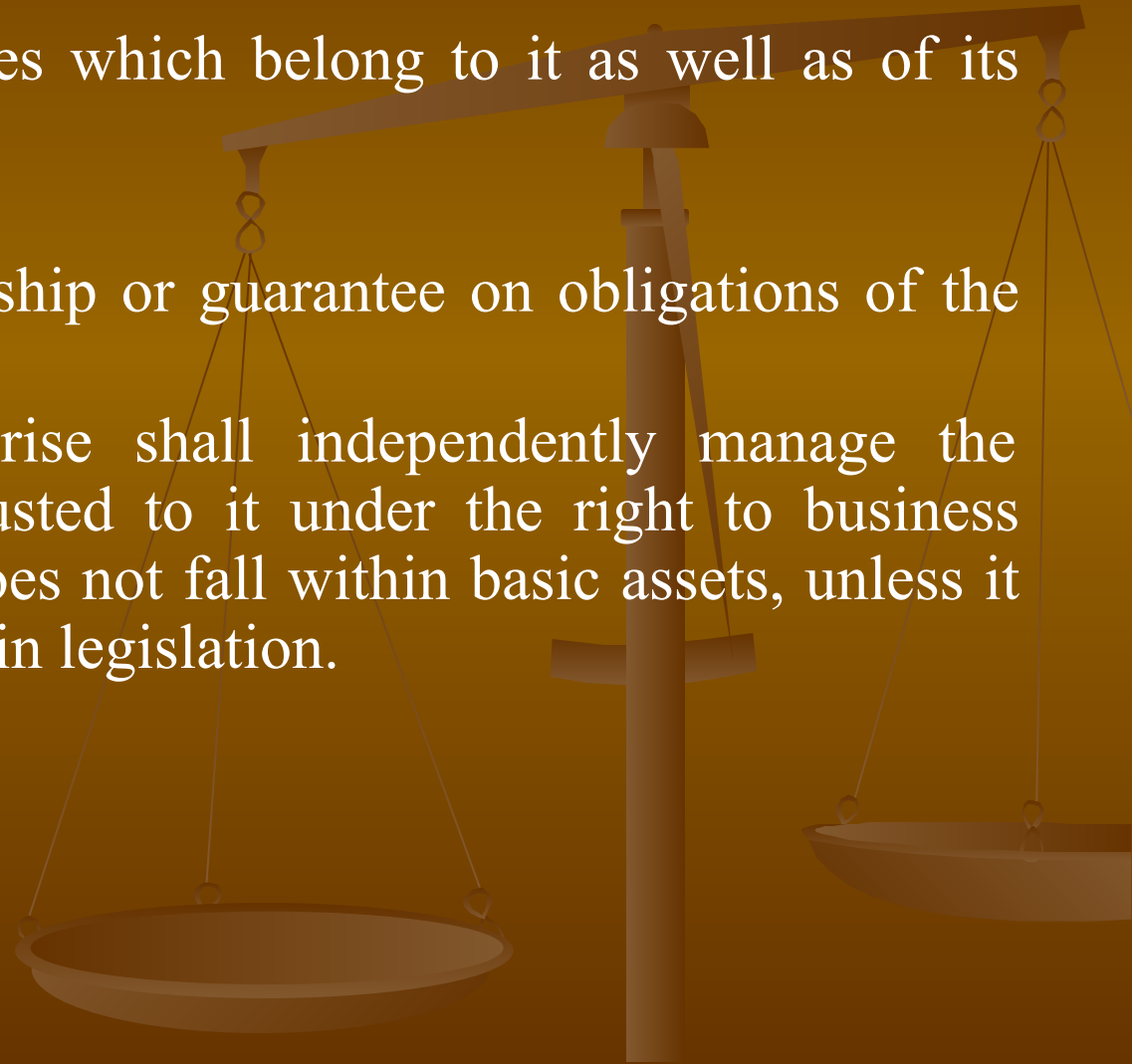
Right to business authority (право хозяйственного ведения)

3) to dispose of shares which belong to it as well as of its receivables;

4) to provide loans;

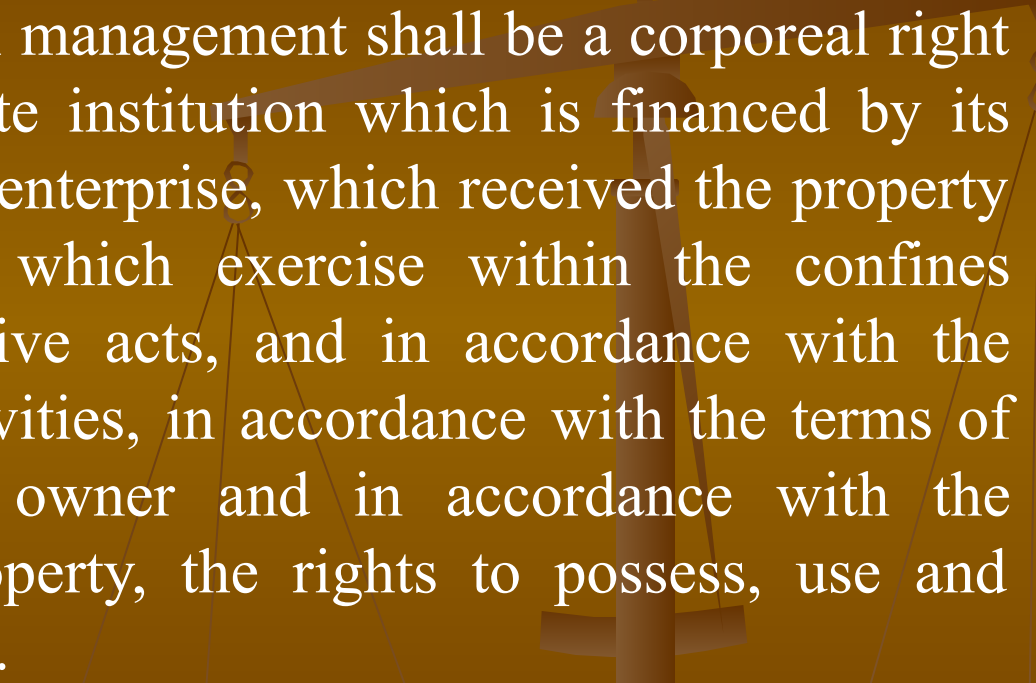
5) to grant the suretyship or guarantee on obligations of the third parties.

- A state-owned enterprise shall independently manage the assets which are entrusted to it under the right to business authority and which does not fall within basic assets, unless it is otherwise stipulated in legislation.



Right to operational management (право оперативного управления)

The right to operational management shall be a corporeal right of an institution, a state institution which is financed by its owner, and of a public enterprise, which received the property from the owner and which exercise within the confines established by legislative acts, and in accordance with the objectives of their activities, in accordance with the terms of reference set by the owner and in accordance with the designation of the property, the rights to possess, use and dispose of that property.



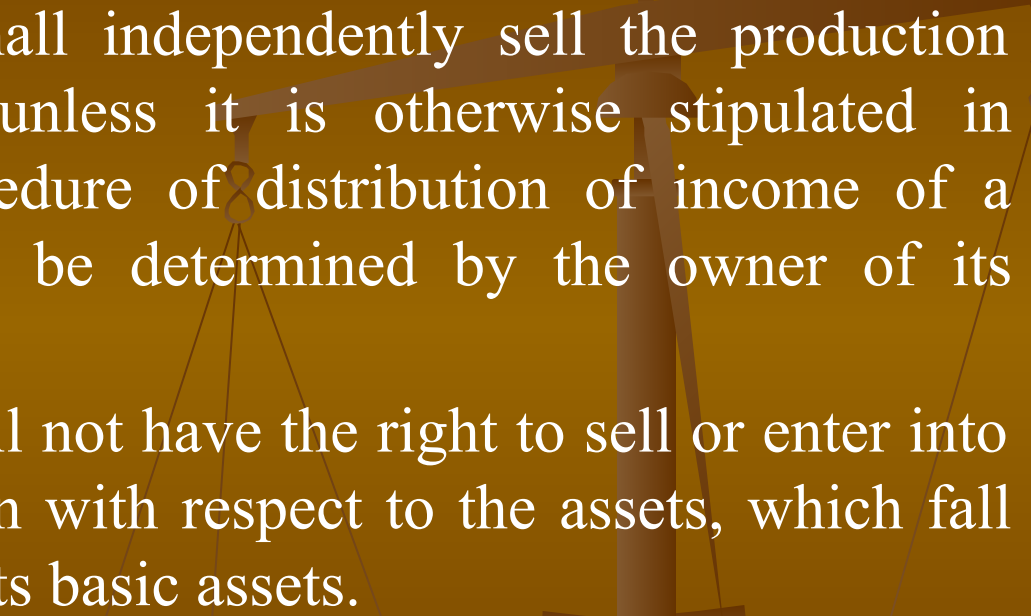
Right to operational management (право оперативного управления)

- The owner of the assets which are under operational management shall in accordance with legislative acts resolve the issues of creating an institution, state institution or a public enterprise, of determining the objectives and the aims of its activities, the owner shall have the right to determine the legal destiny of the institution, state institution or the public enterprise, and the contents of its activities.
- The owner shall exercise control of the efficient use and safety by the institution, the state institution or the public enterprise of the assets transferred to them by the owner.

Right to operational management (право оперативного управления)

- An institution and a state institution shall not independently have the right to alienate or in any other way dispose of the assets which are entrusted to it and of the assets which are acquired at the expense of the resources appropriated to it in accordance with the budget, unless it is otherwise stipulated by laws.
- A public enterprise shall have the right to alienate or in any other way of the assets entrusted to it only upon receipt of writtdispose en consent of the owner of those assets.

Right to operational management (право оперативного управления)

- A public enterprise shall independently sell the production manufactured by it, unless it is otherwise stipulated in legislation. The procedure of distribution of income of a public enterprise shall be determined by the owner of its assets.
 - A public enterprise shall not have the right to sell or enter into transactions of donation with respect to the assets, which fall within the category of its basic assets.
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Right to operational management (право оперативного управления)

- A public enterprise shall be liable under its liabilities within moneys which are at its balance.
 - If the public enterprise does not have enough money then the Government or relevant local executive body shall bear a subsidiary liability for its obligations.
 - If right of ownership on institution is transferred to another person, then this institution shall preserve its right to operational management on assets which belong to it.
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