

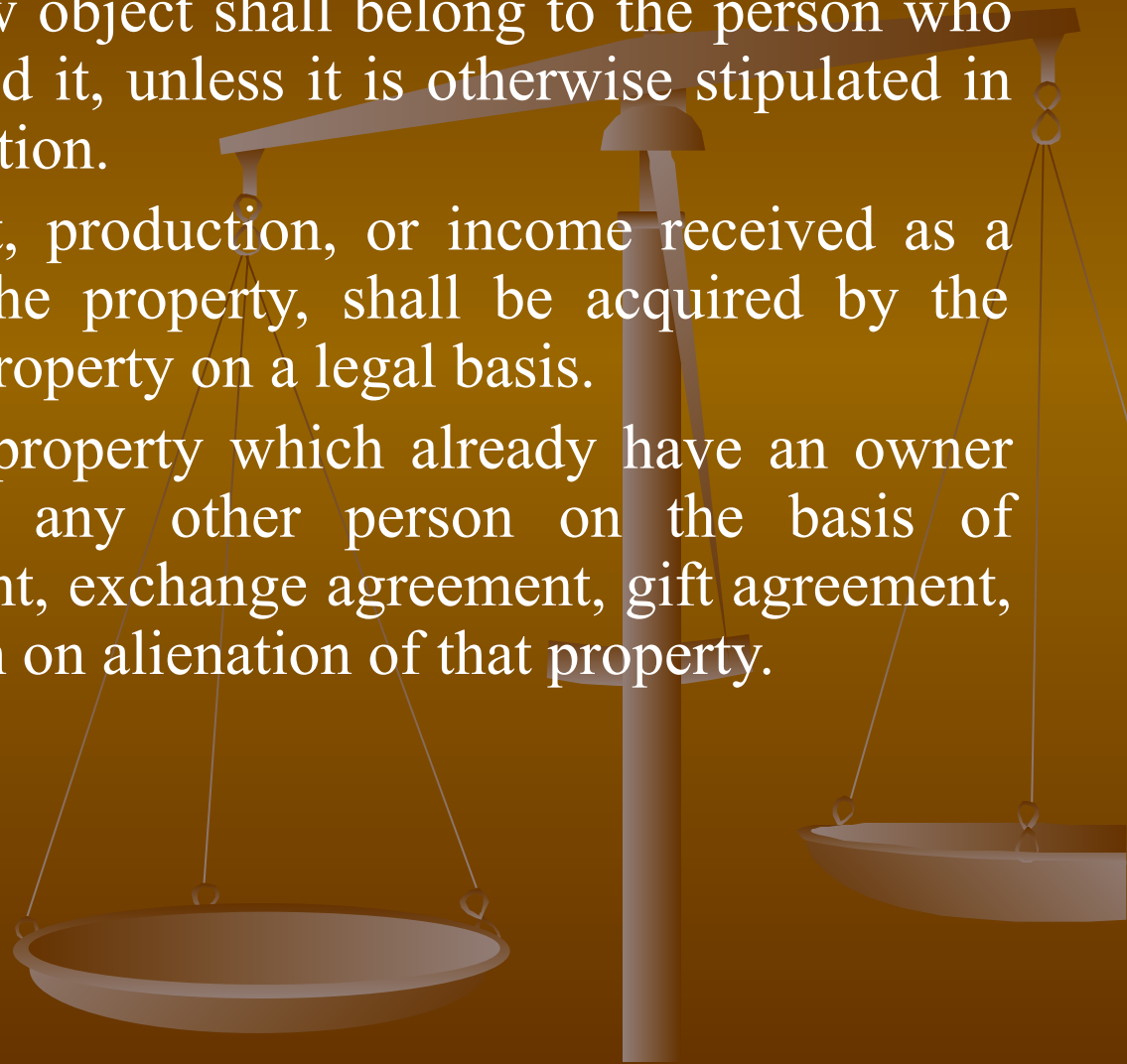
CIVIL LAW



Lecture 12

Acquisition of right of ownership and other proprietary rights

- The right to own a new object shall belong to the person who manufactured or created it, unless it is otherwise stipulated in an agreement or legislation.
- The right to own fruit, production, or income received as a result of the use of the property, shall be acquired by the person who used that property on a legal basis.
- The right to own the property which already have an owner may be acquired by any other person on the basis of sale-purchase agreement, exchange agreement, gift agreement, or any other transaction on alienation of that property.



Acquisition of right of ownership and other proprietary rights

- In the case of demise of a citizen, the right to own the assets which belong to him shall be transferred via inheritance to other persons in accordance with the will or law.
- In the case of reorganizing a legal entity, the right to own the assets which belong to it shall be transferred to the legal entities which are legal successors of the reorganised legal entity.
- The alienation of the property from an owner to any other person without the will of the owner shall not be permitted, except for the cases stipulated in the RK Code (ex.: imposition of levy under the obligations of the owner through the court).

Acquisition of right of ownership and other proprietary rights

- The right to own buildings under construction, installations or any other property complexes, and also any other newly-created immovable assets, shall arise from the moment of the completion of the creation of those assets.
- When legislative acts or an agreement stipulate the acceptance of the finished construction items, then the creation of the relevant property shall be considered to be accomplished from the moment of such acceptance.
- In the cases where immovable assets are subject to state registration, the right to own them shall arise from the moment of such registration.
- Prior to the completion of the creation of immovable assets, and in the relevant cases prior to its state registration, the rules shall be applied to that property concerning the right to own the materials and any other assets on the basis of which the immovable property is created.

Acquisition of right of ownership and other proprietary rights

- Unless otherwise stipulated in the agreement, the right to own a new movable asset manufactured by a person by way of re-processing (переработка) the materials which do not belong to him, shall be acquired by the owner of the materials.
- However, when the cost of re-processing substantially exceeds the cost of the materials, the right to own the new item shall be acquired by the person who, acting bona fide, performed the re-processing for himself.
- Unless it is otherwise stipulated in the agreement, the owner of the materials who acquired the right to own the item manufactured thereof, shall be obliged to compensate the cost of re-processing to the person who carried it out, and in the case of the acquisition of the right to own the new item by that person, the latter respectively must compensate to the owner of the materials their value.
- The owner of materials who lost them as a result of dishonest actions of the person who carried out the re-processing, shall have the right to claim the transfer of the new item into his ownership and the reimbursement of the losses inflicted upon him.

Acquisition of right of ownership and other proprietary rights

- The right of ownership shall arise with the acquirer of the property, in accordance with the agreement, from the moment of the conveyance of the item, unless it is otherwise stipulated in the legislative acts or agreement.
- Where an agreement to alienate assets is subject to state registration or notary certification, the right of ownership shall emerge with the acquirer from the moment of the registration or notary certification, and where both a notary certificate and the state registration of the agreement are necessary, then from the moment of its registration.

Acquisition of right of ownership and other proprietary rights

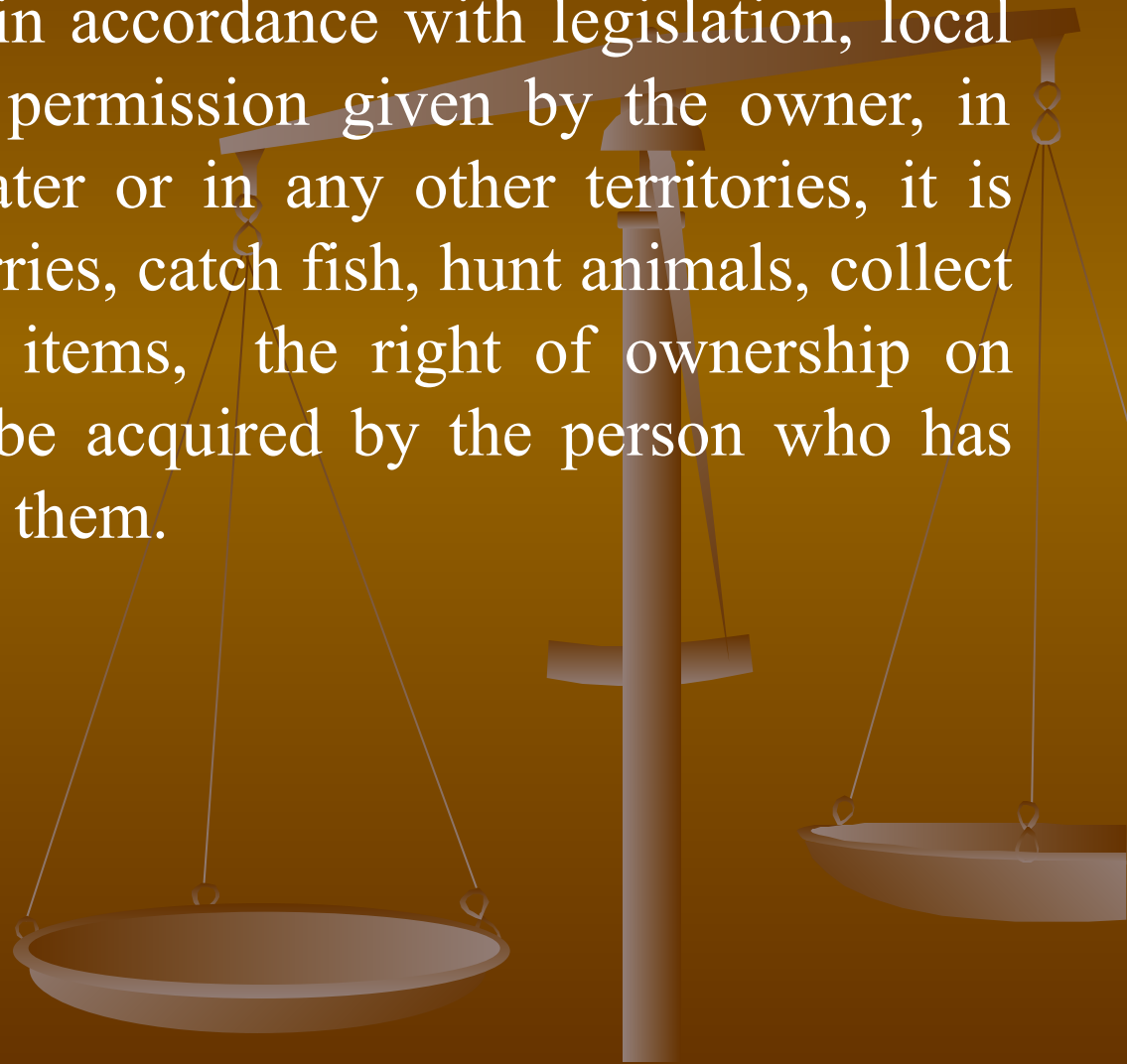
- A transmission shall mean handing over the objects to the acquirer, and equally the submission to a transport organisation for dispatching to the acquirer, and the submission to the post-office for the conveyance to the acquirer of the objects which are alienated without obligation of delivery, unless it is otherwise stipulated in the legislation or agreement.
- When at the moment of concluding an agreement on the alienation of an object it is already in the possession of the acquirer, the thing shall be recognised as transferred to him from that moment. The transfer of a bill of lading or any other document for title to the goods, shall be equated to the transfer of those goods/objects.

Acquisition of right of ownership and other proprietary rights

- A citizen or a legal entity who/which is not the owner of certain assets but who/which honestly, openly and continuously possess it as it is his/her/its own assets, for fifteen years – if it is an immovable property, or for not less than five years – if it is the rest property, shall acquire the right of ownership on those assets (acquisition by prescription – приобретательская давность).
- The right to own immovable and any other assets which are subject to state registration, shall arise with the person who acquired that property by virtue of acquisition by prescription, from the moment of such registration.

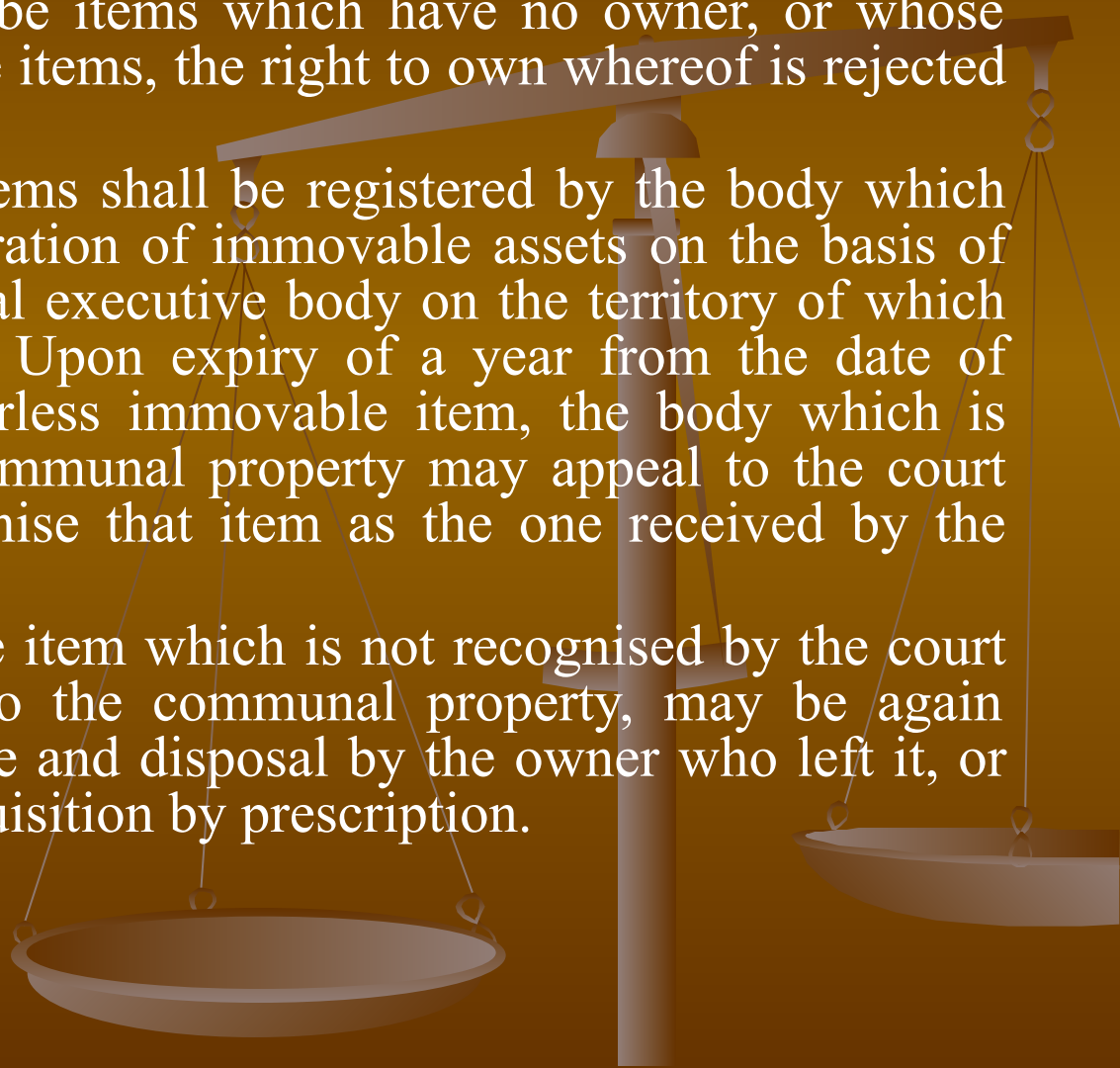
Acquisition of right of ownership and other proprietary rights

In a case where, in accordance with legislation, local tradition, or general permission given by the owner, in forests, bodies of water or in any other territories, it is allowed to collect berries, catch fish, hunt animals, collect or extract any other items, the right of ownership on relevant items shall be acquired by the person who has collected or extracted them.



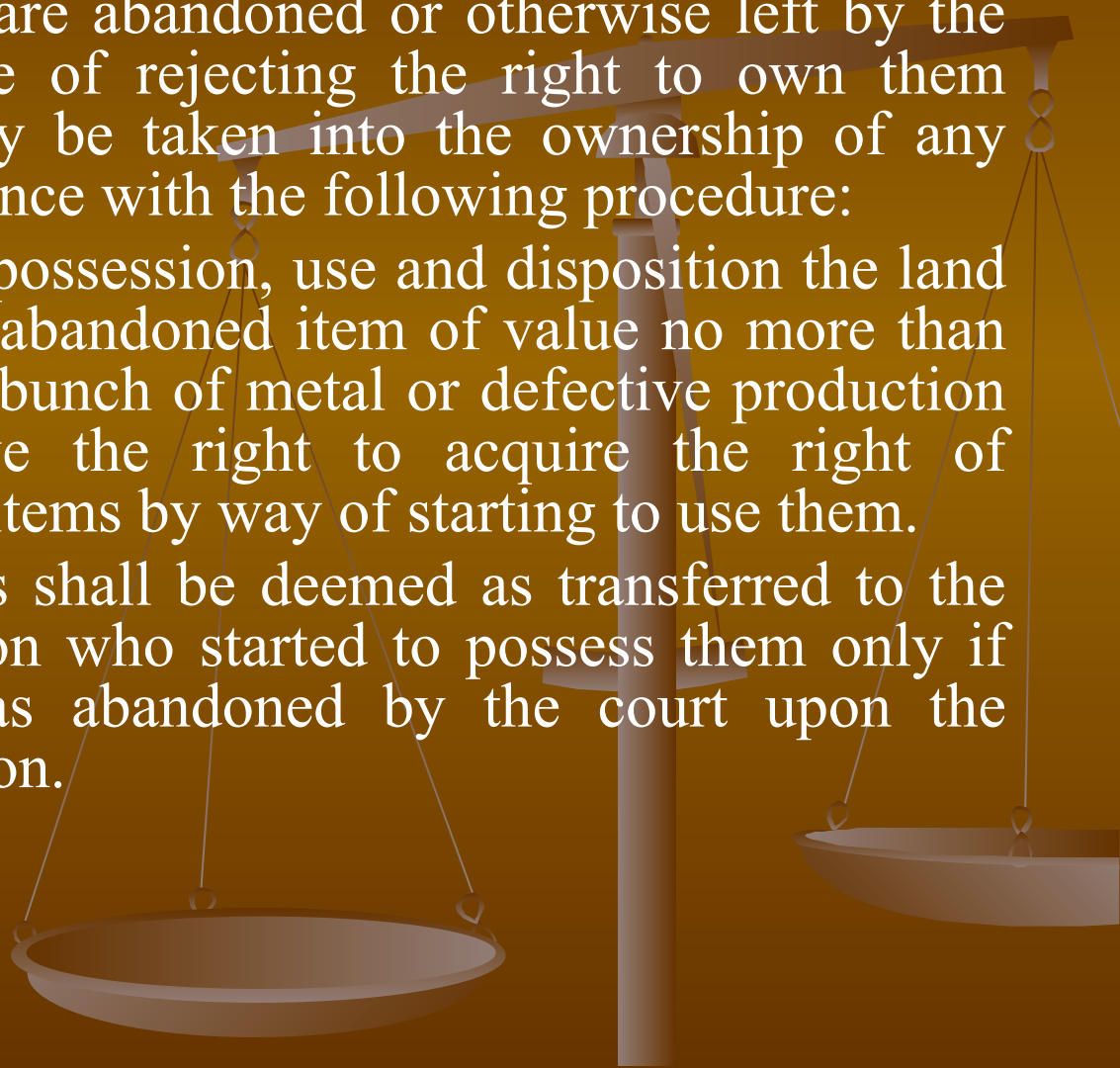
Acquisition of right of ownership and other proprietary rights

- Ownerless objects shall be items which have no owner, or whose owner is unknown, or the items, the right to own whereof is rejected by the owner.
- Ownerless immovable items shall be registered by the body which performs the state registration of immovable assets on the basis of an application of the local executive body on the territory of which the items are identified. Upon expiry of a year from the date of registration of the ownerless immovable item, the body which is authorised to manage communal property may appeal to the court with the claim to recognise that item as the one received by the communal property.
- An ownerless immovable item which is not recognised by the court decision as received into the communal property, may be again taken into possession, use and disposal by the owner who left it, or acquired through the acquisition by prescription.



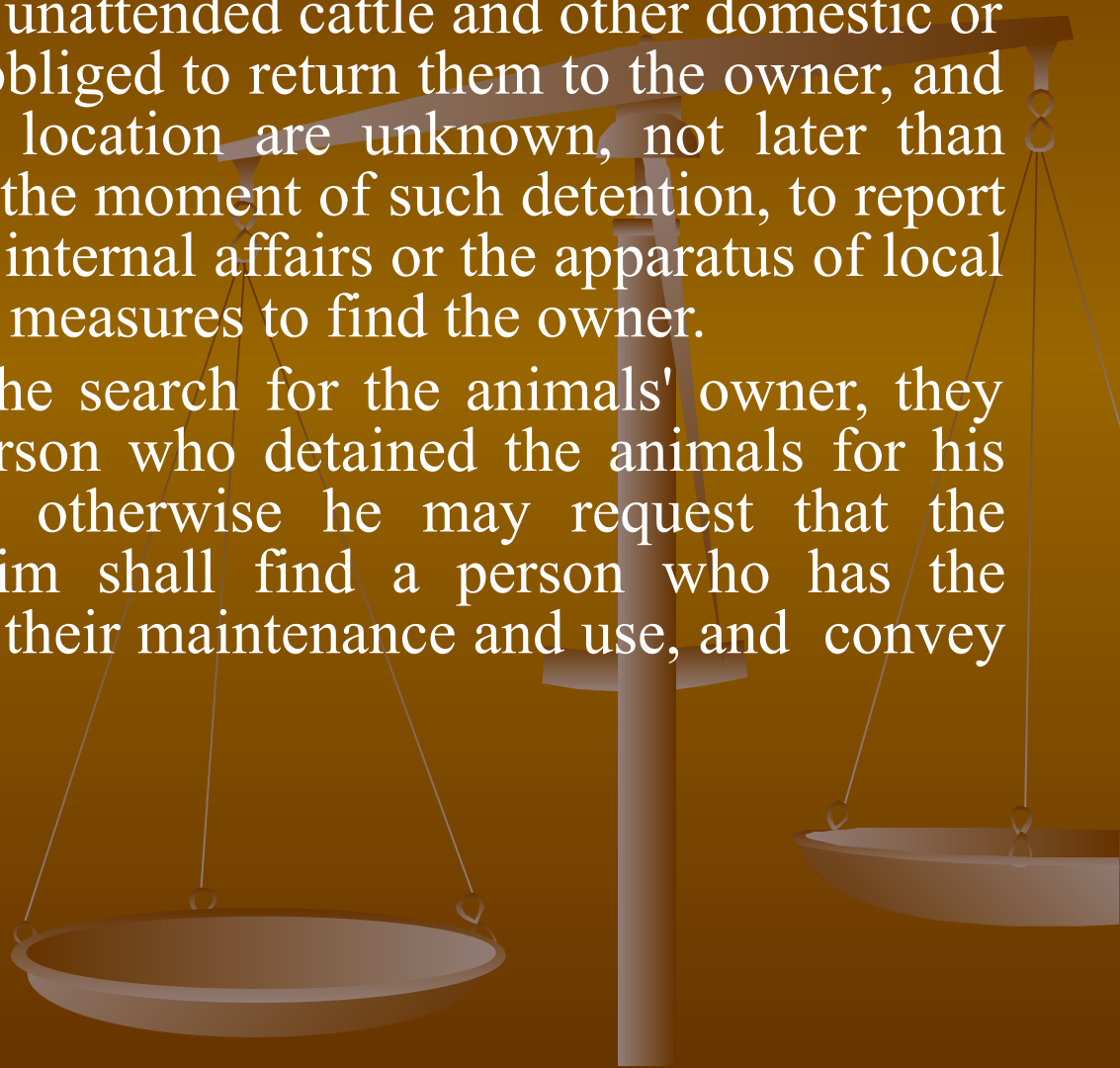
Acquisition of right of ownership and other proprietary rights

- Movable items which are abandoned or otherwise left by the owner for the purpose of rejecting the right to own them (abandoned items) may be taken into the ownership of any other person in accordance with the following procedure:
- Person who has in his possession, use and disposition the land plot, within which the abandoned item of value no more than 20 MCI or abandoned bunch of metal or defective production are located shall have the right to acquire the right of ownership for the said items by way of starting to use them.
- Other abandoned items shall be deemed as transferred to the ownership of the person who started to possess them only if they are recognized as abandoned by the court upon the application of that person.



Acquisition of right of ownership and other proprietary rights

- A person who detained unattended cattle and other domestic or tame animals shall be obliged to return them to the owner, and if the latter or latter's location are unknown, not later than within three days from the moment of such detention, to report on this to the bodies of internal affairs or the apparatus of local akim which shall adopt measures to find the owner.
- During the period of the search for the animals' owner, they may be left by the person who detained the animals for his maintenance and use, otherwise he may request that the apparatus of local akim shall find a person who has the required conditions for their maintenance and use, and convey to him the animals.



Acquisition of right of ownership and other proprietary rights

- The person who detained animals and the person to whom they are transferred for maintenance and use shall be responsible for the death and damage to the animals only through their fault and only within the value of those animals.
- If within six months from the moment of a report on the detention of working and large cattle, and two months – of any other domestic animals, their owner is not identified and does not declare his title for them, the right to own those animals shall be transferred to the person who kept and used them.
- In case of the refusal of that person to receive title for those animals, they shall become communal property and shall be used in accordance with the procedure determined by the relevant local executive body.

Acquisition of right of ownership and other proprietary rights

- In case of return of the animals to the owner, the person who detained the animals and the person who kept and used them shall have the right to receive from the owner a compensation for the expenses associated with the maintenance of the animals minus the benefits derived from their use.
- The person who detained unattended or stray cattle, and any other domestic or tame animals, shall have the right to claim from their owner the payment of a reward for finding his animals in the amount of 30% of the value of the animals.
- In the event that the former owner of the animals arrive after transfer the title for them to another person, the owner shall have the right, if there will be circumstances showing an attachment of the animals to the original owner, or cruel or any other improper treatment of them by the new owner, to require their return to him under the terms and conditions agreed between them, and if they fail to come to certain agreement, then - through the court.

Acquisition of right of ownership and other proprietary rights

- A treasure trove, i.e. hidden in the earth or otherwise concealed money or any other valuables, the owner of which may not be identified or, by virtue of legislation lost the right to it, shall become the property, in equal shares, of the owner of the land plot or the owner of the immovable asset in which the treasure trove was hidden and of the person who found the trove, unless the agreement between them provides otherwise.
- In a case of the finding of a treasure trove by a person who conducts excavations or research for valuables without the consent of the user of the land plot or the owner of the immovable property where the trove is hidden, the trove shall be subject to transfer to that owner.
- In the case of finding a trove which contains items of historical or cultural value, they shall be subject to the transfer for the ownership of the Republic of Kazakhstan. In that instance, the user of the land plot or the owner of the immovable property in which such a trove has been found, and the person who found the trove, shall have the right to receive a reward in the amount of fifty per cent of the value of that trove.

