

# Family Law





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## **Family Law is regulated by:**

- Constitution of Kazakhstan
- Law of the RK # 321-I as of December 17 1998 “About marriage and family” with amendments and additions as of May 15, 2007



# The Constitution of RK

## Paragraph 2

- Art 18
  1. Each person has rights on inviolability of private life, private and family secret, protection of dignity and honor.
- Art 27
  1. Marriage and family, maternity, paternity and childhood are under the defense of state.
  2. Children care, raising them are the natural right and obligation of parents.
  3. Children who reached the age of 18 and are capable of working have to take care about incapable of working parents.



# Dispatch of President 2007

- since January, 1 2008 the state child benefit is 34740 KZT.

The monthly allowances for child care before he reaches 1 year.

They are:

- For the birth of first child - 5800 KZT,
- For the birth of second child – 6400 KZT,
- For the birth of third child – 6900 KZT,
- For the birth of fourth (and more) child – 7500 KZT.
- Extra need for funds on families support is 9.5 mil KZT.



# Principles of marriage and family legislature

1. Voluntary of marriage union
2. Equality of spouses rights
3. Unacceptability of arbitrary interference to family affairs
4. Solution of in-family problems on mutual agreement
5. Priority of children upbringing
6. Priority of protection of rights of underage and disabled family members
7. Provision of free realization of family members rights
8. Stimulation of healthy lifestyle of all family members



# Marriage registration

- Marriage – equal in rights union between man and woman concluded with the agreement of both parties for purpose of family creation which causes property and private relations between spouses.
- Conditions of marriage registration:
  1. Mutual voluntary concord between man and woman
  2. Attainment of marriage age



# Marriage registration

It is prohibited to registrar marriage between:

- Persons if one of them is already married
- Direct relatives
- Brothers and sisters who have common parent
- Adopters and adopted
- Persons if one of them is insane






# Marriage ceasing

- Due to the death of one of the spouses
- If one or both of spouses send the application to the registry office



# **Marriage is regarded invalid**

- If the marriage is fictitious
- If the marriage was signed under the force
- If one of the parties has concealed the fact that he/she has a serious disease which can affect the health of other family members



# Private rights and obligations of spouses

The equality of spouses in the family:

1. Equal rights – equal obligations
2. Freedom in choosing profession, line and place of residence
3. The matters of motherhood, fatherhood, upbringing and education of children and other family matters should be solved by common agreement of spouses
4. The relationships in the family are based on mutual aid and respect



# Property rights and obligations of spouses

Individual Property of each of spouses:

- 1) Property obtained before wedlock
- 2) Different types of donations
- 3) Belongings for individual use (clothes, shoes etc)



# Property rights and obligations of spouses

- Joint ownership of the spouses is the ownership which was earned during the period of wedlock (marriage)
- Joint ownership of the spouses :
  - Income of the spouses
  - Cash benefits
  - Pension
  - Other monetary payments
  - Movable & immovable property acquired by both spouses
  - Securities
  - Deposits
  - Share in capital
  - Other property obtained during the wedlock



# Marriage contract

- **The conclusion of the marriage contract**
  - Can be concluded before the state registration
  - at any time during marriage
- **The maintenance of the marriage contract**

The marriage contract spouses have the right to change the mode of the general joint property established by the law to establish a mode of the joint, share or separate property on all property of spouses, on its separate kinds or on property of each of spouses



# Marriage contract

- **The marriage contract cannot:**
  1. **Limit law capacity or capacity**
  2. **Right to the reference in court**
  3. **To adjust personal non-property attitudes between spouses**
  4. **The rights and duties of spouses concerning children**



# **Marriage contract**

- **Change and cancellation of the marriage contract**
  - **The marriage contract can be changed or will terminate at any time under the agreement of spouses**
    - Unilateral refusal of execution of the marriage contract is not supposed
  - **On demand of one of spouses the marriage contract can be changed or will terminate under the decision of court**
  - **marriage contract stops from the moment of the termination of marriage**
- **A recognition of the marriage contract void**
  - **The marriage contract can be nullified court in full or in part on the bases stipulated by the Civil code of Republic Kazakhstan for invalidity of transactions**





# Rights of a child

Every child has

- the right to live and brought up in the family, as far as possible
- the right to know their parents
- the right to be cared for
- the right to share in their residence, except where this is contrary to its interests
- the right to education of their parents, ensuring its interests, the full development, respect for his human dignity.




## **Rights of a child**

- The right of the child to express their views
- The right of the child to name and surname
- The right of the child's nationality



# **Rights and obligations of parents**

**Article 60.** Equality of rights and responsibilities of parents



# Rights and obligations of parents

The rights and duties of parents in the upbringing and education of children

1. Parents must take care of the health of their children.
2. Parents have the right and duty to bring up their children.
3. Parents must ensure children receive secondary education.



# Confinement and deprivation of parent's rights

- Deprivation of parent's rights results in:
  - Loss of any rights and benefits based on the relationship with children
  - Loss of any pensions and compensations for children (article 69.1,2)
- Parent's rights may also be confined
  - In this case, a child is taken away from the family, but the rights of parents are not cancelled. (article 71)



## **Cases when parent's rights deprivation is applied**

- Failure to fulfill parent's duties
- Refuse to take child from maternity house after his/her birth
- Abuse of parent's rights
- Cruel attitude towards children
- Proven abuse of alcohol, drugs, etc.
- Also, crime commitment against children or wife/husband may result in parent' rights deprivation (article 67)



## **Important aspects in parent's rights deprivation**

- Parent's rights may be restored if the behavior of a parent(s) has significantly improved. (article 70)
- If a threat to a child's life exists, he or she may be taken out of family by court with consequent parent's rights confinement or deprivation. (article 75)



## **Ideology program 2030**

- We should strengthen the institute of marriage and family.
- We should solve the problem of single mothers.
- Each year 200,000 abortions are done in our country. - prohibit or not?