**Lecture notes on the Theory of Private International Law**

**Lecture 1. The legal nature of private international law. The specifics of the codification of the norms of private international law in the Kazakh legislation.**

The purpose of the lecture:

1. The concept and types of private legal relations, understanding their difference from public legal relations;

2. to study the relationship of the MCHP with other branches of law (public international law, civil law, civil procedure law, arbitration law, marriage and family law) ;

3. to study the specifics of coding the norms of the Ministry of Emergency Situations in the Kazakh legislation.

The main terms of the lecture:

Private law relations, codification, conflict of laws.

The main questions of the lecture:

1. the subject and method of regulation of the MCHP;

2. the concept and methods of resolving conflicts of laws;

3. The norms of private international law in the Kazakh legislation.

Private international law is one of the specific branches of law, since it solves the conflict of laws problem that has arisen, based on the legislation of several states.

The specificity of private international law lies in the fact that, while maintaining the distinction between these States, with the help of so-called conflict of laws rules, it is possible to determine which State's law applies in appropriate cases.

The purpose of private international law is the legal regulation of business relations between firms and organizations in different countries.

The subject of regulation of private international law is various civil law relations arising in international life.

Legislation of a purely internal nature, judicial and arbitration (arbitration) practice occupy an important place in the MCHP.

Private international law is a system of unified (unified) private law and conflict of laws rules of the state governing private legal relations complicated by a foreign element.

MChS are similar to other branches of law, in particular, to civil law. The MCHP system consists of two parts. In the general section: the provisions related to the principles and main initiatives of the Ministry of Emergency Situations are combined. These include such provisions as the functioning of conflict of laws rules, issues of limiting the application of foreign law, the ratio of external and internal legislation, the establishment of a special legal regime for foreign citizens and legal entities.

A special section of the Ministry of Emergency Situations consists of the main institutions: the civil status of citizens, the characteristics of states as entering into special legal relations, property rights, transactions, contracts, obligations arising from harm, norms related to intellectual property, hereditary, marital, and labor relations. The issue of international arbitration is highlighted in the IFRS system.

A conflict of laws issue is the question of which country's legislation should be applied in a particular legal area. Conflict of laws issues arise between participants in civil relations. In the content of such problems, the question of which right to apply is solved, i.e. the question of which right to apply is solved.

These problems can be solved using certain conflict of laws rules. "Collision" (from the Latin word "collisio") means conflict or contradiction. The conflict of laws indicates the need for a choice of Law between different states.

There are two reasons for a conflict of law:

- the presence of a foreign element in a private legal relationship;

- the specifics of the content of the law of different states, depending on the relationship.

The purpose of the conflict of laws provision is to resolve conflicts between two or more legal systems in competition and subordinate relations with a foreign element to a certain legal order. But the conflict of laws rule cannot solve the problem on its own in essence, it only refers to the material rule providing for the corresponding obligation.

Substantive and conflict-of-laws regulation in the Ministry of Emergency Situations is considered in two aspects.

1. A conflict of laws rule in combination with an internal substantive rule serves as an example of the behavior of participants in civil turnover.

2. The ISS is based on international treaties and customs, on internal laws that include substantive legal norms as an integral part.

The following types of differentiation of conflict of laws rules have been adopted:

1. National and international legal norms aimed at achieving international stability

2. Conflict of laws norms are divided into dispositive, imperative and affective. The imperative is abstinence, solving these tasks, and non-admission. Dispositive-reflects the will of both parties when concluding an international agreement

3. Conflict of laws rules are basic and additional. The peculiarity of such norms is that they are established in a legal contractual relationship.

A complex and simply conflicting type of norm has several connections and expressions.

Domestic legislation is one of the main sources of emergency situations in Kazakhstan. First of all, the Constitution of the Republic of Kazakhstan of 1995 should be noted. Article 8 is important, which states that "The Republic of Kazakhstan respects the norms and principles of international experience, pursues a policy of good-neighborly relations and partnership between States, peacefully resolves international competition, refuses to use the first armed force."

M. M. Boguslovsky analyzed in detail the law-making of individual states in the field of emergency situations. In particular, Austria, China, Hungary, Poland, Romania, Turkey, Switzerland, and Yugoslavia have adopted special laws in this area, while in other countries the relevant norms are provided for by various legislative acts.

**Lecture 2. The history of IOM doctrines and their impact on the development of IPL.**

The purpose of the lecture:

1 consolidation of the material on the formation of the doctrine of the Ministry of Emergency Situations and its features.

2. study of the territorial origin and emergence of the doctrine of the Ministry of Emergency Situations

3. identification of new trends in the development of the doctrine of the Ministry of Emergency Situations in the twentieth century.

The main terms of the lecture:

Doctrine, Dutch theory of statutes of the XVII century. French doctrine of the XVIII century. The Code of Napoleon

The main questions of the lecture:

1. The formation of the doctrine of the Ministry of Emergency Situations;

2. The impact of the MCHP doctrines on the development of the MCHP;

3. Roman law and the germs of the MCHP

The doctrine of private international law is a system of certain views and concepts that speak about the purpose of the essence of this right in certain historical conditions.

It can be said that modern private international law began with the treaty of Aldrig, glosses of Acursia, Prince Oleg and the Greeks, which contained a provision on how the property of Russians who served in Greece was inherited (911 BC).

The history of private international law is the history of law arising in connection with the international civil process, international civil exchange and differences in private law. The need for conflict law became apparent in connection with the economic rise of the northern and central cities of Italy in the XIII–XV centuries.E., with the advent of industrial centers, the formation of urban communities, each of which followed its own custom, called a statute. The conflict of statutes forced lawyers to look for ways to solve them and look for the main authority at that time - the sources of Roman law. Comments are glosses of the form to the best of the source of the judgment text. Glossation of the texts of the sources of Roman law was included in the curricula of the School of the XII century BC (reading the Digest). The teacher read aloud and guided the language of the manuscript, and the students usually watched it with rented, handwritten copies and took notes. The term "lecture" was applied to this lesson, meaning reading. The text was so complicated that it had to be interpreted. Thus, after reading the text, the teacher necessarily explained it – glossed it, i.e. explained the word in words. Students recorded lectures written between lines of text, and soon the glosses gained a much more serious reputation than the Digests themselves.

Around 1250, the Gloss of the Ordinariate of Occlusion became a generally accepted work on general and conflict of laws.

Postglossers, or as they are also called commentators after ocus, but they comment on both texts and existing glosses.

One of the institutions that developed at that time was the public order warning, which emphasized the territory of the "local" public order. However, in the teachings of glossators and postglossators, the concept of "public order" has not yet been highlighted, but it was argued that all laws and regulations should apply only in a certain territory. Thus, in order to fully respect the interests of society and the state, as well as to ensure that the foundations of the legal system and moral norms were not violated, the Roman State strictly prohibited the application of foreign laws on its territory.

In the XVI-XVII centuries, in the teachings of famous Dutch statutaries, Vutov developed such an institution of private international law as mutual understanding between father and son. However, in his first introduction, he was called comitas gentium (international courtesy). This period in Holland was due to the strict territorial nature of local customs. However, Woutar argued that international courtesy is necessary in the relations of States, as well as in the relations of individuals. Thus, the Dutch lawyers stressed that each state has the right to independently determine how much it gives effect to the laws of another state on its territory.

**Lecture 3. Features of MCHP regulation methods**

The purpose of the lecture:

1 to identify the fundamental differences between the various methods of regulation in the Ministry of Emergency Situations, their advantages and disadvantages

2. Conflict of laws and substantive legal methods of regulation in the Ministry of Emergency Situations.

3. Features of the conflict-of-laws method of regulation.

The main terms of the lecture are:

Conflict of laws, norms of internal law, imperative, dispositive regulation

The main questions of the lecture:

1. interpretation of the conflict of laws rule and the problem of qualification

2. the concept, structure and features of the conflict of laws rule;

3. The fundamental differences between the various methods of regulation in the Ministry of Emergency Situations.

 The conflict of laws rule is a complex rule applied in private international law. Let's consider the structure of the conflict of laws rule. The first part of it is the scope of the conflict of laws rule, which determines in which legal relationship the conflict of laws rule is applied. For example: property law, family law.

The second part of the conflict-of-laws rule is called the conflict-of-laws bundle (principle, statement formula). A bundle is an indication of the law or legal system applied in the relevant relations, i.e. indicates the need to apply the law of which country.

There are the following types of bundles that are found in conflict of laws rules:

Lex loci contractus is a conflict of laws bundle that occurs when you need to determine which country the contract was concluded in. According to this link, in which state the contract is signed, the law of that state applies.

1) Lex societatis is a bundle related to the nationality of an employed person. If a legal entity is registered in one country, works in another state, and its main body works in a third state, then it is necessary to determine its nationality.

Lex voluntatis is a binding agreement, the right to choose the legislation of one state at will. The parties must clearly indicate in the contract which State applies the law or which convention.

Lex venditoris-provides for the application of the law of the state in which the seller resides on the bundle. This combination is typical for foreign economic transactions.

Lex rei sitae-this conflict of laws principle is used in the field of property. This provision helps to determine the ownership of a particular thing in one State. The legislation of Kazakhstan defines the right of ownership of property in the state in which it is located. But if the property is considered as an inheritance, then it is regulated by the legislation of the testator's last place of residence.

Lex loci delictii commissioni is a conflict of laws related to the legislation of the place where the offense was committed. That is, the court considers the case according to the legislation of the state in which the harm was caused.

Lex fori is a judicial law, that is, in which state the dispute is being considered, the law of that state applies. In accordance with this principle, regardless of the foreign element in the relationship, he applies the legislation of his country.

Lex personalis is a rule related to personality. He himself is considered in two forms:

1) Lex patriae-the law related to citizenship;

2) Lex domicilii is a law related to the place of permanent residence of a person.

Lex loci selebrationis is a bundle used in family law, that is, in which state the marriage was concluded, the law of that state applies.

According to the method of regulation, conflict of laws rules can be imperative, dispositive, and alternative. Mandatory provisions are prescriptions concerning the application of law, which cannot be definitively changed by the parties to civil relations. Dispositive provisions-fixing the general order of choice of law, provide the parties with the opportunity to change it in a different order. Dispositive provisions are usually expressed in the rights of the parties, unless otherwise provided by the agreement of the parties, etc. Alternative rules are norms having in their content several provisions provided for by the scope of the rules providing for the choice of the law applicable to a private legal relationship. Alternative rules are a relatively recent phenomenon in private international law.

Depending on the nature of the conflict of laws provision: General (main) and subsidiary (additional) are divided into two groups. The general rule is the main rule when choosing the applicable law, which has an advantage in application.

A subsidiary rule is a rule for choosing one or more rights related to the basic rule, which applies in cases where the basic rule is not applied for certain reasons. The issue of unification of the rights of the CIS member states is of particular importance for the Republic of Kazakhstan. This is a situation that solves the problem of private international law. Currently, the approximate Civil Code, presented as a legislative act for the CIS countries, adopted on May 13, 1995, allows solving this problem. In addition, the law allows you to simplify the issue of choice.

**Lecture 4. MCHP and public international law**

The purpose of the lecture:

1 be able to carry out the MES and Public International Law in relation to the definition of a specific restriction, especially as an integral part of the MES

2. Establishing the relationship between public international law and the Ministry of Emergency Situations.

3. Problems of interrelation of norms of international law and the Ministry of Emergency Situations.

The main terms of the lecture are:

Public international law, private law, absolute immunity, limited immunity, extraterritoriality.

The main questions of the lecture:

1. The relationship between public international law and the Ministry of Emergency Situations;

2. International law and the principles of the MCHP;

3. Problems of interrelation of norms of international law and the Ministry of Emergency Situations.

Public international law and private international law are closely interrelated. Public international law is an independent legal system. The norms of international public and private international law are aimed at creating legal conditions for the comprehensive development of international cooperation in various fields. Private international law is a set of rules governing private legal relations of an international nature.

The distinction between public international and private international law can be made on the following grounds:

\* according to the content of regulated relations, public relations regulated by public international law are of an interstate nature. Their distinctive feature is the special quality inherent in their main subject (state)- sovereignty. Private international law regulates relations in the non-political sphere between foreign individuals and legal entities, between individuals and legal entities and a foreign state;

• by subjects of relations - the main subjects of public international law are States, and the main subjects of private international law are individuals and legal entities;

\* The sources of public international law are international treaties, international legal customs, acts of international organizations and acts of international conferences, and the sources of private international law are the domestic legislation of each State, international treaties, international legal customs and judicial precedents;

\* Private international law consists of two different rules: substantive (directly establishing rights and obligations) and conflict of laws (relating to the national law of a particular State • ;

\* Dispute resolution procedure -disputes in public international law are resolved at the state level (interstate disputes) or in specialized human rights protection bodies (disputes concerning human rights violations

Private international law, unlike public international law and national legal systems, does not form a special legal system. The legal norms governing international non-State independent relations, which are the object of private international law, are found both in the national law of various States and in international public law.

The separation of private international law from public international law is not absolute. The close connection between private international law and public international law is due to the fact that in private international law we are not talking about interstate relations, but about relations taking place in international life. Consequently, a number of basic principles of public international law are crucial for private international law.

**Lecture 5. Features of the formation and coding of the norms of the Ministry of Emergency Situations**

The purpose of the lecture:

1. The legal nature of the conflict of laws rule.

2. Codification of conflict of laws rules in the legislation of the Republic of Kazakhstan

3. Unification of conflict of laws rules in international treaties.

The main terms of the lecture:

Unification, harmonization, codification, implementation

The main questions of the lecture:

1. The concept and functions of the conflict of laws norm.;

2. Intertemporal, interpersonal, interlocal norms;

3. The issue of attribution of conflict of laws rules to private (material) or public (procedural)

One of the most important trends in the development of society at the beginning of the 21st century is the deepening of comprehensive integration at the universal and regional levels. The globalization of international economic relations of states, the internationalization of the economy as a production process, the need to eliminate barriers to the free movement of goods, services, capital and labor in the modern world necessitate the formation of uniform norms (rules) to regulate these relations. Such norms are of particular importance in the field of international commercial turnover, since the globalized market requires the creation of a unified legal regime for international commercial transactions. The cooperation of States in the formation of a common legal policy has a long history and is carried out both at the national and international levels. In the 21st century, such a process acquires an institutional character, determined by a wide range of international organizations of an intergovernmental and non-governmental nature. The main purpose of such organizations in the field of MCHP is to create uniform parameters for the legal regulation of international private relations within individual industries and institutions of MCHP. The previous stage of the implementation of uniform norms in national legislation is its codification. In a legal sense, codification is the most perfect form of systematization of legislation, which involves not only the integration of legal norms into a single normative text, but also their cardinal processing, structuring and updating. The codification of the WFP has a special specificity due to its contradictory and heterogeneous subject characteristics.

The first decade of the 21st century is the most interesting period for studying the phenomenon of the codification of the MCHP: in many countries of the world, autonomous comprehensive laws on private international law and international civil procedure have been adopted, as well as the first codes of the MCHP in the history of law. One of the most extensive and detailed codifications is the Belgian MPP Code – 140 articles. Its adoption is certainly an important event in the development of Belgian private law. Among the Western European countries belonging to the continental law system, Belgium became the second country to adopt an autonomous comprehensive law on MPP (the first such act was the Italian Law of 1995 "on the reform of the Italian system of private international law"). The decisions of the Belgian legislator are identical to those of the Italian legislator. Moreover, it is immediately a direct example of the 2004 Code. (Like the Italian law of 1995) - the Swiss law on the Ministry of Emergency Situations (1987), which to this day remains the largest in the world (Article 201) and the most complex law on the Ministry of Emergency Situations, the optimal model of legal regulation in this area. With the adoption of the Belgian Code of the Ministry of Emergency Situations in 2004, the trend towards the formation of an autonomous national codification of the Ministry of Emergency Situations in the countries of the Romano-German legal system came into full force. This is evidenced by the laws adopted in recent years on Romania (2009), Poland (2011), and the Czech Republic (2012). The following conclusions have been reliably proven in the Russian science of MCHP

In the process of encoding MPP of the XXI century, the following specific types of codification can be distinguished:

"stepwise" codification is a type of codification during which private lawmaking, i.e. the formulation of separate IFRS norms and partial codification of its individual institutions, ends with the adoption of a new consolidated act of a systemic nature (Romania);

consolidating codification is a type of codification (as a rule, this is the second stage of "step-by-step" codification), carried out by combining individual institutions and a number of normative legal acts on MNE issues into a single coordinated form of an act with the introduction of certain novelties into the source legal material (Poland, Czech Republic);

blank codification is a type of codification based on the priority of an international unified act regulating certain cross-border private legal relations with direct reference to it. A special acceptance of the blank codification is the transfer to a certain international treaty (the Netherlands) in case of its ratification – compliance with the article (section) of the law reserved for the future norm.

**Lecture 6. Issues of application of the norms of the Ministry of Emergency Situations**

The purpose of the lecture:

1 The concept and classification of the conditions of application of the conflict of laws rule.

2. Conditions for the application of conflict of laws rules and conditions for the application of foreign law

3. The concept and types of qualification conflict.

The main terms of the lecture:

Qualification of legal concepts. Qualification lege fori, lege causae and autonomous qualification.

The main issues of the lecture:

1. definition of the content of foreign law..;

2. the role of the court (arbitration), other bodies, experts and parties to the dispute in determining the content of foreign law.

3. A preliminary (indirect) conflict of laws issue and ways to resolve it in private international law.

Let's consider the conflict of laws norms of international private law of the Republic of Kazakhstan of a general nature. It should be noted that in the legal regulation of certain types of legal relations of an international private law nature (in certain institutions), conflict rules are applied, which can be called special, since they complement or regulate the operation of the general conflict rules of the Ministry of Emergency Situations.

In accordance with article 1084 of the Civil Code of the Republic of Kazakhstan, the law to be applied to civil relations involving foreign citizens or foreign legal entities or complicated by another foreign element is determined on the basis of this Code, other legislative acts, international treaties ratified by the Republic of Kazakhstan, and recognized international customs.

Paragraph 2 of this article applies the law closely related to civil law relations complicated by a foreign element, if in accordance with paragraph 1 of this article it is impossible to determine the applicable law.

Rules of distribution in accordance with paragraph 3 of this article. The Civil Code of the Republic of Kazakhstan VII On the definition of the Law to be Applied by the Court is applied by other bodies with the authority to decide on the law to be properly applied.

The norms of Article 1078 of the Civil Code of the Republic of Kazakhstan are generally aimed at recognizing and, to a certain extent, ensuring the ability of a subject of any national legal system to be guided by its national law. This is ensured and allowed to the extent that it corresponds to his interests, the foundations of the legal system in which international private legal relations are carried out, and the interests of another participant in such legal relations.

We are talking about different levels of legal impact: These are the norms of the Civil Code of the Republic of Kazakhstan itself and the norms of other legislative acts, in some cases they are conflict of laws norms of international treaties of the Republic of Kazakhstan.

The conflict of laws rules themselves consist of two parts. The structure of the conflict-of-laws rule is related to the specifics of the conflict-of-laws method of regulation. The system of conflict of laws rules makes it possible to solve the question of which legal relations should be regulated by the law of a particular State, extending to the institutions of private international law.

"From a legal and technical point of view, conflict of laws norms are the most complex norms applied in private international law, which requires consideration of certain rules for establishing the content of conflict of laws norms" [1].

The structure of the conflict of laws rule differs from the structure of other legal norms. In addition, the traditional elements of a legal norm - hypothesis and disposition - can also be considered as part of conflict of laws rules. It is always possible to determine which specific rule of regulation applies to certain legal relations of an international legal nature, as well as to establish the conditions for the operation of substantive norms of law based on the prescriptions of the conflict norm.

The conflict norm is related to the material norm. In our opinion, the conflict norm, together with the material norm, is a complex regulator of international private legal relations. The specific parts of the conflict rule do not completely coincide with the elements of customary law.

Conflict norms are not chaotic and the number of possible references to the law of a particular State is not unlimited. Throughout the entire period of the development of private law, certain criteria for the application of foreign law have been developed.

In general, all States adhere to the same rules of reference to foreign law. This will significantly reduce conflicts of legal systems. It is important that the regulation of private legal relations with a foreign element does not cause rejection and rejection, for example, in the law of the Republic of Kazakhstan, if possible in a different legal system (whether it is the internal law of another state or Private International law).

The solution of this problem is largely facilitated by the presence of common roots and traditions of Romano-German law, the development of which is largely used in modern private international law of many States. When applying the conflict-of-laws method of regulating private international law, the affiliation of law to another family also does not cause significant problems.

There are always mechanisms that allow foreign law to interact and are applicable only to the extent permitted, together with the law of the State with which international private legal relations are carried out in accordance with the law of that State. The most important of them is the maintenance of public order in the State for private international law.

Over the centuries, criteria for the application of the law have been developed, related to the application of the law in accordance with the person's place of residence, the place of conclusion of the contract, the location of the thing, etc.

**Lecture 7. The legal status of individuals in the Ministry of Emergency Situations. Problems of theory and practice.**

The purpose of the lecture:

1 legal capacity and legal capacity of individuals in private international law.

2. Regimes applicable to foreign persons.

3. National regime, regime for creating more favorable conditions, preferential treatment, non-discriminatory regime, regimes of formal and material mutual understanding.

The main terms of the lecture are:

National regime, the regime of creating the most favorable conditions, preferential treatment, non-discriminatory treatment

The main questions of the lecture:

1. Exemption from the national treatment of foreigners in the legislation of the Republic of Kazakhstan in the field of private law.

2. conflict situations related to the personal status of a person

3. The personal law of the individual and the main conflict of laws that define it.

Foreigners in the Republic of Kazakhstan are persons who are not citizens of the Republic of Kazakhstan and do not have evidence as citizens of other states.

The basis of the legal status of foreigners is prescribed in the Constitution of the Republic of Kazakhstan: "foreigners and stateless persons enjoy rights and freedoms in the republic, while they must obey the tasks assigned to citizens, unless otherwise provided by the Constitution, laws and international treaties."

The legal status of foreigners is determined by the Decree of the President of the Republic of Kazakhstan "On the legal status of foreigners in the Republic of Kazakhstan", adopted on June 19, 1995.

In accordance with this decree, the basic principles of the legal status of foreign citizens in the Republic of Kazakhstan are: first, the principle of national treatment. The following conditions are provided for the legal status of foreign citizens in the Republic of Kazakhstan: "universal military duty does not apply to foreign citizens and stateless persons permanently residing or temporarily staying in the territory of the Republic of Kazakhstan. This duty is imposed only on citizens of Kazakhstan in accordance with the force of the Constitution of the Republic of Kazakhstan. Foreigners can serve in the Armed Forces of Kazakhstan only on their own. Foreign citizens cannot participate and be elected in elections in representative and other electoral bodies, state bodies and positions in Kazakhstan. At the same time, he has no right to participate in the republican referendum""

Secondly, the principle of equality before the law, regardless of origin, property and social status, race, nationality, gender, language, beliefs, place of residence. Bans on mixed marriages between different races and nationalities in some countries have no legal force in the Republic of Kazakhstan. The constitutional principle of equality of women and men is fully applicable to foreigners.

Thirdly, the principle of foreign citizens using their rights and freedoms.

Fourth, the principle of the application by foreign citizens of their rights and freedoms related to the performance of duties created by the Legislative Assembly of the Republic of Kazakhstan. The Charter provides for the division of all foreign citizens into 2 main categories: permanent and temporary residents in the Republic of Kazakhstan.

Permanent residents in the Republic of Kazakhstan are foreign citizens who have received the consent of the internal affairs body for permanent residence. And foreign citizens who are in Kazakhstan in other subordinate situations are considered to be temporarily residing in the Republic of Kazakhstan. The permanent residence of a person in any country is based on the establishment of a fact, his legal status. This includes issues such as employment, social security, the rights of foreign citizens in relations at the place of residence, education and health care.

**Lecture 8. The legal status of the state in the Ministry of Emergency Situations.**

The purpose of the lecture:

1. understanding the features of legal regulation of legal relations.

2. Classification of public and private legal relations.

3. To study the concept and elements of state immunity.

The main terms of the lecture:

The theory of absolute immunity. Theory of functional immunity. De jure imperii and de jure gestionis

The main questions of the lecture:

1. The contents of the 2004 New York Convention on Jurisdictional Immunities of States and Their Property.

2. The content of the Washington Convention of 1965 on the Procedure for Resolving Investment Disputes between States and Foreign Persons

3. Independent legal personality of state legal entities.

Limitation of the immunity of foreign States by the Civil Procedure Code of the Republic of Kazakhstan.

Types of legal relations involving the State as another subject of private international law:

Firstly, relations arising both between States regulated by international law and between international organizations and the state (economic, scientific and technical cooperation, credit, etc.);

Secondly, legal relations in which the state acts only as one party, on the other hand, foreign legal entities participate in these relations and individual citizens. Features of legal relations with the participation of the state:

- The state is a special subject of civil relations. He is not a legal entity, since the status of persons is determined by himself in his laws;

- The domestic legislation of this State applies to contracts concluded with the State between foreign individuals and legal entities;

- On the basis of its sovereignty, the state has immunity, so transactions with it become an exceptional risk;

- The state participates in civil relations on an equal basis with other participants.

The rapid development of international relations, especially foreign economic ones, leads to the active participation of the state in various legal relations with another state, international organizations, legal entities and foreign citizens. This legal relationship is bilateral. Firstly, the state participates as a subject of governing relations, that is, these relations are public law, and secondly, the state participates as a subject of private law relations. An example of state relations in the second group is the founding agreement between the Republic of Kazakhstan on the joint venture Tengizchevroil with the American Chevron co-corporation dated May 18, 1992. Indeed, the state enters into many relationships, but despite this, the state becomes a single entity, not participating in any legal relations on behalf of both sides. Therefore, considering the State on behalf of a legal entity and equating it with other legal entities means contradicting the principle of State sovereignty.

The principle of sovereignty underlies the immunity of the State. In the world legal literature and practice, state immunity is divided into absolute and functional. Absolute immunity is inherent in all sovereign States and applies to all relations of that State.

There are several types of state immunity. First of all, it is the immunity of subordination to lawful action. This immunity consists in the following: a sovereign State carries out its activities in accordance with domestic laws and norms of international law, without obeying the laws of another State.

In international law, State immunity refers to the disobedience of a State and its legislative bodies to another State. In this case, State immunity includes judicial immunity, Provisional Security immunity, and executive immunity.

Judicial immunity is the disobedience of a State to the courts of another country, that is, the inability to appeal to a foreign state in court, and if there is such a complaint, it should not be considered.

Along with the immunities of the State and its organs, the legal literature usually considers the property immunity of the state as a separate type of immunity. The property of the State enjoys inviolability, i.e. it cannot be forcibly abandoned, confiscated and the like without the consent of the owner; it cannot be forcibly abandoned on someone else's territory.

XX century. in foreign legal literature and practice, an approach has been formed aimed at setting limits to the principle of state immunity.According to this theory, "functional immunity" - immunity does not apply to such transactions if a foreign State, participating in civil relations, concludes foreign trade transactions and commits other similar actions using its vessels for commercial purposes. In this case, coercive measures may be applied to the State. Thus, this theory puts sovereign states at the level of a simple legal entity. The actions of foreign States are considered in such courts as the actions of a legal entity.

State foreign trade organizations, within the limits of their internal decree, have the right to make transactions with foreign firms on their own behalf in a foreign territory, as in the territory of Kazakhstan.

**Lecture 9. The legal status of legal entities in the Ministry of Emergency Situations. Problems of theory and practice.**

The purpose of the lecture:

1 legal capacity of legal entities in private international law.

2. exemption from the national regime in respect of foreign legal entities, including those registered in offshore zones, in the legislation of the Republic of Kazakhstan in the field of private law. Limitation of the "internal" and "external" legal relations of a legal entity.

3. The relationship between the concepts of "statute", "law" and "nationality" of a legal entity.

The main terms of the lecture:

Definition and theories of Lex societatis. Theory of incorporation, siége social, center for use and control.

The main questions of the lecture:

1. The theory of control in international treaties.

2. The scope of the law of a legal entity. Problems of legal capacity of a legal entity that are not regulated by law.

3. The problem of "international legal entities" in private international law. Cross-border insolvency.

Subjects of private international law include individuals and legal entities, as well as the State, which, as a rule, are foreigners to each other.

A legal entity is an organization that owns its own property, is responsible in accordance with its duties, has civil rights and has its duties, acts on its behalf in court and arbitration.

Legal entities have general and special legal capacity. By legal capacity, a legal entity has the right to acquire civil rights and perform its duties, except for the necessary rights and obligations that are natural properties of a person. A legal entity with legal capacity has the right to enter into legal relations necessary only to achieve the goals specified in the law or the law.

The legal status of foreign legal entities in Kazakhstan is determined both by the provisions of Kazakh legislation and international treaties of the Republic of Kazakhstan. In accordance with the Civil Code of the Republic of Kazakhstan, the civil legal capacity of foreign legal entities is determined by their personal law, which is the law of the country in which the legal entity was established. Based on the individual law of a legal entity, the following is determined.

- The status of the organization as a legal entity;

- The organizational and legal form of a legal entity ; ;

- Requirements for the name of a legal entity;

- Issues of creation, reorganization and liquidation, as well as succession of a legal entity;

- The content of the legal capacity of a legal entity;

- The procedure for the acquisition of civil rights by a legal entity and the imposition of obligations;

- Internal relations of a legal entity;

- The ability of legal entities to meet their obligations.

Foreign firms, banks and organizations can open their representative offices by obtaining special permission from the relevant authorities.The representative office carries out its activities on behalf of and on behalf of the organization established by it in accordance with the legislation of the Republic of Kazakhstan. Subjects of different countries can use different forms of activity. For example, you can name a contractual form in which the relations of the parties are defined in agreements on industrial or scientific and technical cooperation, a consortium. A company mixed with these entities, a joint venture, etc. They can be created in legal entities. Common features for these facilities are joint management of the achievement of one goal, joint increase in risks and costs.

**Lecture 10. Property rights of GP and MCHP**

The purpose of the lecture:

1 conflict of laws issues of property rights.

2. the concept of a substantive statute, its relation to compulsory and marital status.

3. the scope of application of the law of the country where the thing is located.

The main terms of the lecture:

Lex rei sitae issues of unregulated property rights. The principle of Mobilia personam sequuntur.

The main questions of the lecture:

1. as a result of the emergence and termination of proprietary rights under the transaction, the expiration of the term of ownership and on other grounds

2. Peculiarities of conflict of laws regulation of real rights to immovable property and property included in the State Register

3. the problem of legal qualification of the moment of transfer of ownership and the risk of accidental loss (damage) of the goods. The extraterritorial impact of nationalization laws.

 Property law belongs to the category fully provided for by Roman law.

Property law refers to the dominance of a particular person over personal belongings at his disposal. Usually, a person's attitude to a thing is different, firstly, he is the owner of the thing, secondly, its owner, and thirdly, he can transfer ownership of someone else's thing. Their ratio is determined in the law by their characteristic features.

The right of ownership of a thing is considered in the system of national law in three types:

1. Ownership;

2. the right to use;

3. the right to dispose of;

Property law and private international law

The right of ownership is defined in the form of a right under which the free possession, use and disposal of the subject's property belonging to him is recognized and recognized by law. Such a definition of ownership is given in paragraph 1 of Article 188 of the Civil Code of the Republic of Kazakhstan. In other words, the legislator defines the right of ownership as a set of three basic rights of the owner. This article further reveals their content: the right of ownership is disclosed in the form of the possibility of legally securing the actual ownership of property. The right of use has the form of an opportunity to lawfully ensure that the property receives its useful natural properties, as well as benefits from it (profit can be in the form of income, gain, revenue, additional revenue, etc.), the right of disposal is in the form of legal security for the legitimate fate of the property (see paragraph 2 of Article 188 of the Civil Code of the Republic of Kazakhstan).

We believe that the true concept of property rights does not fully disclose the legal relations of ownership in society. According to the legislator, a simple enumeration of individual legal powers that create the concept of property rights does not create a clear and precise idea of it for a person. It can include such moments:

1) It is impossible to list all the legitimacy and legitimate possibilities of the owner of the property. The possibilities in the law include, for example, in addition to those listed, laws on the modification, use and destruction of things, exclusion of a third party, acquisition and transfer of rights related to a thing to another person, etc. In other words, it is not enough in the law to specify only three rights of the owner, and thus describe with their help all property rights in general;

2) if we consider the right of ownership not to be independent and integral, but only a set of rights enshrined in the law by the owner, then in the sense given by the legislator, it ceases to be an independent law. For example, let the owner rent out his property. Then the right to own the thing becomes invalid. But in this regard, the owner remains the right of ownership of the thing that he leased, and this agreement does not grant the rights to the lessee of the property. There are many such examples. Among them, there are even cases of transfer of three rights, for example, the right of economic management (Article 196 of the Civil Code of the Republic of Kazakhstan). In this case, the right to dispose of property is purposeful, limited in nature. I.e., the right of ownership is not transferred, we are talking about using another proprietary right on this basis.

The above definition of ownership highlights another feature — the right of ownership, which means that the owner has the right to prevent the legal impact of a third party on the thing, if such a right is not provided for by law or the right of another person (persons). The authors of the draft note that the reference in the definition does not exclude a fundamental feature of law. On the contrary, it harmoniously complements and conceptualizes property law as a whole, since law is a measure of restriction of freedom, therefore, the concept of restriction lies in the very concept of law: the type of ownership right, which means that the nature of the restriction must be expressed in it.

The consideration of property rights as "complete domination over property", according to the authors of the project, is the essence of property rights. At the same time, it is emphasized that the supremacy of the owner is not just in the form of a law, but in the form of a law. In this way, the owner differs from the simple possession and retention of property in his possession, since a simple owner has the opportunity to dispose of property only at his discretion, the owner can dispose of it legally. In this case, the legal dominance of the owner will be complete and principled. It is a completely positive fact, i.e. e. the owner disposes of the property at his discretion; in particular, the owner of the yagni excludes any actions of an outsider with the thing belonging to him. The will of the owner depends on the nature of the thing and within the limits established by law. "In article 16, the legal capacity, which does not have a patrimonial (i.e. proprietary) character, is limited by the legal force of the contract in this case by the right of ownership, and not by the owner, and this does not apply.

Subjective ownership

In the legislation of different countries, one can see the diversity of definitions of the right of subjective property.

Let's highlight the main features, which include the concept of subjective property rights:

1. Such a concept should be of a general, universal nature. It should not be based on the totality of the owner's rights, three or more. The right of the owner is the content of the subjective right of ownership and is actually allocated by virtue of the legal status of a particular subject of law. Therefore, it must be considered separately from the question of the concept of ownership. In this definition, it is necessary to emphasize and distinguish the absolute nature of property rights, while, in our opinion, it has a dual character:

a) based on the law, as an opportunity for the owner to restrict all third parties from the economic disposal of property belonging to him;

b) as the unlimited nature of this right in time, i.e. infinity. In other words, this right continues to apply in the presence of any thing. But this duality of ownership should not be indicated in the certificate itself as an instruction or in its own form.

3. it is necessary to indicate the real nature of the ownership right, i.e. it must clearly reflect the independent belonging of a certain thing to any subject. In other words, the right of ownership always establishes a legal connection between a particular subject of law and a thing belonging to him. Illegal interference in such relations between the subject of law and the subject can be considered as an offense and bear not only civil law, but also criminal or administrative responsibility, i.e. legal responsibility according to the norms of public law. In addition, if an object is not a thing, but a different type of property (property rights, the result of creative activity and other objects), we cannot correctly assert the extension of the rules on ownership to other objects.

4. the economic use of property related to the right of ownership; the law should be based on the principle of allowing all who are not expressly prohibited. The limitation of the right of ownership must be expressed in law or established in the form of the rights of other subjects of law. It should be noted that freedom from any restrictions should be provided without limiting the right of ownership. This is the final prescription, their presence and violation must be established on a case-by-case basis.

5. The right to a thing must belong to a specific person, a subject of law. This is the essence of the legal relationship of ownership in general. To comply with this principle, civil law has created several legal structures, primarily the structure of a legal entity. This structure allows you to get the greatest profit by using property (as a set of things) in economic turnover, but risking the loss (loss) of only the property that was converted.

In scientific doctrines, foreign trade is understood as contracts in which at least one party is a foreign citizen or a foreign legal entity and is associated with the transportation or import of goods across the border. From this definition, we can see the characteristic features of foreign trade. They:

1) one of the parties is a foreign person and must be located in another State.

2) the subject of the transaction is transactions related to foreign trade. For example: delivery of goods, rental of property, transportation of goods, etc.

From the content of Article 1113 of the Civil Code of the Republic of Kazakhstan, we can see the types of foreign economic transactions. These are: a purchase and sale agreement, a gift agreement, a property lease agreement, a contract for the gratuitous use of property, a contract of contract, a transportation agreement, a freight forwarding agreement, a loan or other loan agreement, an assignment agreement, a commission agreement, a storage agreement, an insurance agreement, a pledge agreement, license agreements on the use of exclusive rights. These conditions may mean a foreign economic transaction if the parties with whom they conclude the transaction are located in two states. It cannot be said that the above types of foreign economic transactions are real, their number may vary.

Now, as for the features of the ability to distinguish foreign economic transactions from domestic ones, they are as follows:

1.commercial enterprises of the parties must be located in two states.

2.they must have two legal systems.

3.in case of movement of goods from one state to another in connection with the purchase and sale agreement, they must necessarily cross the border.

4.in the event of a dispute between the parties, the parties themselves decide in which country, by what procedure and in what language they can be considered under the agreement.

**Lecture 11. Contractual obligations of the Ministry of Emergency Situations**

The purpose of the lecture:

1 the concept of a foreign economic transaction.

2. characteristics of the concept of a foreign economic transaction.

3. the agreement of a foreign economic transaction.

The main terms of the lecture:

The concept of autonomy of the will of the parties, its internal content and significance in concluding contracts. The application of the principle of "the law of the place of conclusion of the contract". The time of the transaction in different countries.

The main questions of the lecture:

1. The form of contracts.

2. The form of the transaction used in law. Its contents.

3. application of the law in relation to the form of foreign trade transactions involving legal entities and citizens of the Republic of Kazakhstan.

In scientific doctrines, foreign trade is understood as contracts in which at least one party is a foreign citizen or a foreign legal entity and is associated with the transportation or import of goods across the border. From this definition, we can see the characteristic features of foreign trade. They:

1) one of the parties is a foreign person and must be located in another State.

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From the content of Article 1113 of the Civil Code of the Republic of Kazakhstan, we can see the types of foreign economic transactions. These are: a purchase and sale agreement, a gift agreement, a property lease agreement, a contract for the gratuitous use of property, a contract of contract, a transportation agreement, a freight forwarding agreement, a loan or other loan agreement, an assignment agreement, a commission agreement, a storage agreement, an insurance agreement, a pledge agreement, license agreements on the use of exclusive rights. These conditions may mean a foreign economic transaction if the parties with whom they conclude the transaction are located in two states. It cannot be said that the above types of foreign economic transactions are real, their number may vary.

Now, as for the peculiarities of the difference between foreign economic transactions and domestic ones, they are as follows:

1. Commercial enterprises of the parties must necessarily be located in two states.

2. They must have two legal systems.

3. in case of transfer of goods from one state to another in connection with the contract of sale, they must necessarily cross the border.

4. In the event of a dispute between the parties, the parties themselves decide in which country, according to which procedure and in which language they can be considered under the agreement.

Conflict of laws rules of a foreign economic transaction and measures to eliminate them

Unlike substantive legal norms that define and directly regulate the rights and obligations of subjects of private international law, the conflict of laws rule indicates which State's law should be applied in connection with this relationship.

Article 1112 of the Civil Code of the Republic of Kazakhstan indicates that the rights and obligations of the parties in a foreign economic transaction are subject to the law of the country chosen by the agreement of the parties.

The definition of the law to which the rights and obligations of the parties related to a foreign economic transaction are subject is based on the principle of freedom of the parties in the legislation of the Republic of Kazakhstan (Ie voluntatis). The law of the former Soviet Union also provided for this principle, but it was spelled out differently: "the rights and obligations of the parties related to a foreign economic transaction are determined by the law of the one with whom the contract was concluded, unless the parties have agreed."

And the Law of the Republic of Kazakhstan clarifies and supplements this, that is, it says that the party has the right to choose the law applicable to its concluded transactions on the basis of mutual agreement between themselves during or after the conclusion of the contract. But according to the law of the Republic of Kazakhstan, the parties are not allowed to choose the applicable rights to certain types of contracts, i.e. mandatory norms are fixed. This is provided for in paragraphs 2 and 3 of Article 1113 of the Civil Code of the Republic of Kazakhstan.

If earlier the parties chose which country would enjoy the rights by concluding a joint activity agreement on the creation of a "joint industry", then in the current conditions such freedom is limited.

If the statement concluded by the parties does not contain an agreement on which State applies their law, the provisions of Article 1113 of the Civil Code of the Republic of Kazakhstan apply to it.

By virtue of the 15 types of contract specified in Article 1113 of the Civil Code, along with 15 different types of contracts, civil legislation prescribes rules related to production partnerships, construction and other capital structures. In accordance with it, unless otherwise specified in the agreement of the parties, in this case the right to the land that carried out such an activity or the right to the land for which the result was concluded under the contract applies.

In the absence of an agreement between the parties on the law to be applied, the law of the country where the place of residence or place of activity of the parties performing the execution, which are crucial for the content of such an agreement, applies.

Thus, the Civil Code adopted in 1995 contains conflict of laws rules related to the application of land legislation fixed in relation to other transactions, taking into account the type and degree of development of new international agreements. In accordance with clause 5 of Article 1113 of the Civil Code of the Russian Federation, the right of the place of such acceptance is taken into account due to the disagreement of the parties regarding the acceptance of performance under the contract.

When concluding a contract, in practice, i.e. in the contract itself, the State or country with which the contract is concluded is indicated. If such a State or country is not specified, then it can be determined on the merits of the contract. Thus, the law of the country with which the contract is concluded may be applied to the contract, unless otherwise provided between the parties.

Another way to resolve conflict-of-laws issues is typical contracting. It is often used between large exporters and importers and between their associations and associations.

Conflict of laws rules of foreign economic transactions in the law of England, Germany, the USA and France

When approving a binding statute for a commercial contract, the fundamental issue of the courts of England, Germany, the USA and France is the principle of freedom of the parties, which is widely used in doctrines. According to it, the parties are free to choose the law applicable to their contractual obligations.

The doctrine allows the parties to apply the general rules of the rights of individual peoples when concluding a contract. Not knowing the real freedom of the parties from the content of the concluded contract and the circumstances arising from it, the courts of France, England, Germany and the United States decide on the alleged freedom of the parties or what right a fair and reasonable person chooses in these cases. In the new English jurisprudence, denying the alleged freedom of the parties, they prefer to be guided by "what right a fair and just person would choose in this case."

Courts of different countries, when choosing the necessary legal system from a variety of legal systems applicable to disputed obligations, in many cases choose the same legal system, in which legal system the same disputed obligation applies. Recently, in practice and in theory, they have been guided not only by one criterion based on the definition of a mandatory statute, but also by the application of a set of criteria, without giving priority in any case.

When establishing a binding statute, in most cases, the place of conclusion or implementation of the contract is taken as the basis and they are considered permanent. However, if the legal system chosen by the parties is not specified in the contract, then the land law under which the contract is executed applies to it. This criterion leads to great difficulties in solving conflict problems. This is especially related to the purchase and sale agreement and is fraught with great difficulties in solving conflict-of-laws problems of synallagmatic contracts.

The English courts and in Germany allow the validity of the contract by its binding status, i.e. if the contract is recognized as valid, its actions are regulated by law. Therefore, it is not applicable if, for example, both parties are satisfied not according to the norms of English law, but according to other norms of foreign law. The following example: if a contract concluded between English and French firms is concluded in accordance with English law and is not limited in English substantive law, but in accordance with French law, the British court does not recognize it as illegal.

**Lecture 12 Non-contractual obligations in the Ministry of Emergency Situations**

The purpose of the lecture:

1. Conflict of laws issues of delicate obligations.

2. The concept of the status of a tort obligation, its content.

3. The legal principle of the place of harm. Its reflection in the legislation of different countries.

The main terms of the lecture:

Multilateral agreements: The Paris Convention on Liability against Third Parties in the Field of Nuclear Energy in 1960, on Liability of Owners of Nuclear Ships in 1962.

The main questions of the lecture:

1. The form of the transaction applied in the law of the Vienna Agreement on Civil Liability for Nuclear Damage in 1963.

2. causing harm in the Republic of Kazakhstan.

3. determination by the legislation of the Republic of Kazakhstan of the rights and obligations of the parties under obligations arising as a result of causing harm in the territory of the Republic of Kazakhstan.

Obligations outside the contract-not on the basis of an agreement between the parties, but in connection with the occurrence of facts provided for by law, namely:

harm by one entity to another;

acquisition or accumulation of property at the expense of another person's funds without sufficient grounds (unfair enrichment);

tapsyrmasyz of conducting other business;

In fact, the law introduced these rules in order to eliminate injustice and compensate for its loss.

Obligations arising as a result of causing harm are the civil liability of the victim (creditor), aimed at eliminating the consequences of the offense and restoring the condition of the victim's property, with the right to demand recovery of the damage in full.

Obligations arising from non-block relationships include obligations arising from causing harm - they are usually called tort obligations, since they arise not from a contract, but from illegal actions.

The content of the tort obligation is to oblige the victim to violate at the expense of the violator violating his absolute rights from illegal actions;

there is a legal form of compensation for harm, compensation for harm caused to life and health, compensation for moral harm.

Violation of safety rules in the operation of modern vehicles, which leads to a significant increase in accidents of various types by transporting people from one country to another, in turn, leads to torts with a foreign element.

In Kazakhstan, a foreign citizen may be harmed, for example, as a result of a traffic accident of a Kazakhstani or foreign driver, a collision of ships registered in different states in the seas.

In many countries, obligations resulting from harm are resolved based on one of the oldest principles of private international law - the law of the place where the offense was committed. (lex loci delicti commissi).The laws of Austria, Hungary, Germany, Greece, Italy, Poland and the Scandinavian countries, as well as international treaties, for example, the Bustamante Code of 1928, enshrine the right to choose the place of tort as the leading conflict of laws rule.

A reflection of modern views was the joint application of the law on the place of commission of an offense and other conflict of laws rules relating to civil law, the place of residence of the parties, the place of registration of the vehicle.

The English doctrine is the principle of "dual jurisdiction", Austria, Yugoslavia, Switzerland – the place of harm and the personal law of the participants in the relationship, the law on the nationality of the participants - Italy, Greece, Belgium, Germany, Russia, Algeria, or Domicile (permanent residence), the law on the origin of harm - Hungary. If there is a tort on the vehicle, then the right to the flag. (Hungary).

In Spain, it is a tough place only for spoilage.

In the Netherlands, the law of the place of harm is applied, but the parties can choose the current law and order.

In Switzerland, it is the right to choose the parties to the rule of law.

According to German law, the law of the party who committed the illegal act applies, and she is obliged to compensate for the damage.

Thus, when resolving a conflict of laws issue related to tort obligations, a choice is made between two main directions:

the application of the law of the country that caused the harm,

the application of the law of the country of the victim.

Traditionally, the law of the place where the harm occurred applies, but the application of this principle in accordance with the legislation of a number of countries is adjusted by the possibility of applying the law of the affected country if it provides good opportunities for compensation for harm.

Obligations arising from unilateral transactions (public promise of remuneration, activities in the interests of an outsider without instructions, and others) are subject to the law of the place of transaction. The place of a unilateral transaction is determined by the law of the Republic of Kazakhstan.

According to the Civil Code of the Republic of Kazakhstan:

The rights and obligations under obligations arising as a result of harm are determined by the law of the country in which the action or other circumstance that served as the basis for the claim for compensation for harm took place. The rights and obligations under obligations arising from harm caused abroad are determined by the law of that State if the parties are citizens or legal entities of the same State. Foreign law does not apply if the action or other circumstance that served as the basis for the claim for damages is not illegal under the legislative acts of the Republic of Kazakhstan.

Consumer's claims for compensation for damage caused in connection with the purchase of goods or the provision of services, at the consumer's choice:

1) the rights of the country of residence where the consumer resides;

2) the law of the country at the place of residence or location of the manufacturer or the person providing the service;

3) the country in which the consumer purchased or serviced the product.

Obligations arising from unjustified enrichment are subject to the law of the country in which the enrichment occurred. If the unjustified enrichment is caused by the absence of the basis on which the property was acquired or retained, the applicable law is determined by the law of the country in which this basis was acquired. The concept of unjustified enrichment is defined by the law of the Republic of Kazakhstan.

**Lecture 13. Family relations in the Ministry of Emergency Situations.**

The purpose of the lecture:

1. family relations in the Ministry of Emergency Situations 2. analysis of conflict of laws issues in the field of family law; 3. features of the economic structure, as well as national, domestic, religious features

The main terms of the lecture: Recognition in the Republic of Kazakhstan of marriages between foreigners concluded abroad. The recognition of the marriage as invalid. The dissolution of marriage. The dissolution of marriage with foreigners in the Republic of Kazakhstan..

The main questions of the lecture:

1. marriage of citizens of Kazakhstan with foreigners and foreigners in the Republic of Kazakhstan; 2. obstacles to marriage. Conditions of marriage in accordance with the multilateral Convention on Legal Assistance of the CIS countries of January 22, 1993 consular marriage; 3. Legislation of the Republic of Kazakhstan in relation to consular marriages. Conditions for the recognition of a consular marriage by the authorities of the Republic of Kazakhstan.

Among the norms governing family and marital relations in private international law are the International Convention on the Protection of the Rights of Children and International Adoption of May 29, 1993, the Universal Declaration of Human Rights, the International Covenant on the Protection of Economic, Social and Cultural Rights, the Minsk Convention on Legal Relations and Legal Assistance in Civil Matters, family and criminal cases of January 1, 1993, the Convention on the Recovery of Alimony Abroad of September 5, 1962, ratified by the Law of the Republic of Kazakhstan of December 30, 1999, The 1993 Convention on Cooperation in the Protection of Children and the Adoption of Children in the Country of Childhood, the International Convention on Consent to Marriage, Age of Marriage and Registration of Marriage of 1966, as well as the Optional Protocol to the Covenant on Civil and Political Rights of 1966, the international Declaration, international conventions on child abduction and citizenship. Kazakhstan recognizes many such conventions and is a member of international organizations in this area.

Before resolving conflict of laws issues, it is necessary to pay attention to what rules our legislation uses in connection with these marital and family relations. Firstly, it should be assumed that according to the Constitution of the Republic of Kazakhstan, men and women have equal rights. Family law in a number of States is characterized by male leadership; in a number of States, there are still unequal legal conditions for women and men in the family. In various conditions of this separate family legislation, it is of great importance to resolve conflict of laws issues when a citizen of two states marries. Conflict of laws rules in family relations in Western countries have a variety. Marital legal capacity, i.e. the age of marriage, the absence of obstacles to marriage-all this is determined in various states by the spouses' own laws. Upon termination of a marriage between spouses with different nationalities, a number of States have a law on the citizenship of a man. A marriage concluded in one State in compliance with the requirements of the law of that country may not be recognized in another State, which in private international law is also called "limping marriages" ("limping marriages"). The property relations of spouses in marriage in a number of States are determined by the personal law of a man.

Marriage and termination of marriage

The legal registration of marriage is registration with the civil registration authorities in accordance with the legislation of Kazakhstan and the legislation on marriage and family in private international law. Only a marriage registered in a certain order has legal force.

According to the laws governing family and marital relations in private international law, in order to conclude a marriage, it is necessary to comply with the conditions provided for by law.

1. marriage of citizens of Kazakhstan with foreign citizens in the Republic of Kazakhstan. The marriages of our citizens with foreign citizens, as well as their marriages between foreign citizens, are subject to the legislation of the Republic of Kazakhstan. In other words, the conflict-of-laws principle of "marriage law" or "Iex iositionis" is used. The marriage is concluded in the form provided for by our legislation, that is, it is registered with the civil registry offices in compliance with the approved rules for the registration of this marriage.

An agreement on marriage in the Republic of Kazakhstan is concluded with the persons themselves entering into marriage. The material conditions of marriage of foreigners are also determined not by their national legislation, but by our legislation. Thus, in accordance with Kazakhstan's marriage and family legislation, bilateral agreements, reaching the age of 18 and other requirements are required for marriage.

Article 11 of the Law "on Marriage and Family" states that "if one of the persons is registered in another marriage, then he cannot remarry," i.e. if a foreigner allows polygamy by his law, then he cannot marry in our republic. A foreign citizen cannot request marriage registration with us, even if his own law allows two marriages.

If a foreigner expresses his intention to marry in our republic, he is obliged to bring a certificate from the relevant authority of his state confirming that he is not married to anyone in his state. In practice, such certificates are usually issued by the embassy or consulate of the relevant State in the Republic of Kazakhstan.

Restrictions of other States unknown to our law (racial, religious, lack of parental consent, etc.) are not grounds for refusal to register a marriage in our country. This is also due to the marriages of foreigners registered in the Republic of Kazakhstan.

When registering marriages of our citizens with foreign citizens, in some cases, the legislation of the foreigner entering into marriage should also be guided, since, obviously, in this case, the recognition of marriage as invalid does not occur in another state. The following example can be given: if, according to the legislation of the country of the person entering into marriage, he has not received consent, the marriage may become invalid in that country. In such cases, our civil registry offices must determine whether those entering into marriage have his consent to such a marriage. If there is no such consent, the foreigner is given time to obtain such consent in consultation with the contracting parties. If the body does not bring the necessary consent at this set time, but the people entering into marriage require marriage registration, the marriage registration authority is obliged to register the marriage without consent in the absence of such consent. Although such a marriage is recognized under our legislation, this marriage is not recognized in the relevant foreign country. This, in turn, may lead to a restriction of the rights of a citizen of our state during a visit to the state of his marital person.

Consular marriages. Our legislation recognizes consular marriages in the territory of the Republic of Kazakhstan, that is, marriages concluded in foreign diplomatic missions and embassies. Marriages concluded between foreign citizens in embassies and representative offices in the territory of the Republic of Kazakhstan are recognized as valid only on the basis of bilateral recognition. To do this, it is necessary that the country sending the embassy has an appropriate agreement with the Republic of Kazakhstan. In addition, there are a number of other requirements for the validity of such marriages: a) the existence of a bilateral agreement, i.e. recognition of marriage in such consulates in a foreign country; b) the presence of two persons entering into marriage, citizens of States that sent the same embassy and consulate.

Marriage of citizens of the Republic of Kazakhstan with foreigners in another state. Citizens of the Republic of Kazakhstan can marry foreigners both on our territory and on the territory of another state. Such marriages must comply with the form of marriage established by the requirements of the legislation of the State entering into this marriage.

In accordance with the provision of the Law of the Republic of Kazakhstan "on marriage and family", a marriage can be recognized as legitimate if the marriage is registered outside the territory of the Republic of Kazakhstan in the form approved by the legislation of the relevant state, and it does not contradict the requirements of the legislation of the Republic of Kazakhstan related to the registration of marriage. If, when registering the marriage of a citizen of the Republic of Kazakhstan and a foreign citizen in the local authorities of the relevant state, a paper confirming the right of our citizen to marry a foreign citizen is required, then such a certificate can be issued by the Embassy of the Republic of Kazakhstan in the relevant states. Approval of marriage between citizens of the Republic of Kazakhstan in a foreign country. Marriage between citizens of the Republic of Kazakhstan residing outside the Republic of Kazakhstan is carried out at the embassies of the Republic of Kazakhstan in the relevant state. Marriage registration is considered to be the only act of civil status. In the consulates of the Republic of Kazakhstan, when marrying on the territory of a foreign state, they must fully follow the laws of our state, since both citizens are citizens of our republic.

The right of the consulate to conclude such marriages is determined by our legislation. This means that: a) a marriage registered at our embassy or representative office is recognized in the same force as the registration of marriage in the civil registry offices; b) when registering a marriage by a consul, he is obliged to comply with the material requirements approved by our legislation. Recognition in the Republic of Kazakhstan of the marriage of foreigners concluded abroad. As for the marriages of foreigners outside the territory of our state, they are recognized in our state. Thus, a marriage concluded abroad is legal if it complies with the requirements of that State. Accordingly, if a marriage between foreigners is performed in compliance with the requirements of their personal legislation and the requirements of the place of marriage, it is unconditionally recognized in our republic.

The recognition of the marriage as invalid. A marriage concluded in the Republic of Kazakhstan between a foreigner and our citizen may be declared invalid in accordance with the provisions of our legislation, since the place of marriage is of great importance. In some cases, fictitious marriages are also found. This is done in order to circumvent the requirements of our legislation. For example, in order to circumvent the rules of entry and exit to the Republic of Kazakhstan.

Legal relations between spouses and between parents and a child

The legislation of our state is subject to application to property and personal relations between spouses residing in the territory of the Republic of Kazakhstan. The equality between men and women enshrined in the Constitution regulates many relations between spouses: a woman has the right to keep her premarital surname after marriage, she retains citizenship, is free to choose a profession and field of activity, fully retains her property relations and retains a share in common ownership of property acquired after marriage, etc. At the request of our law, the management of the common household is carried out on the basis of mutual consent of the spouses. According to our law, spouses are also voluntary in choosing their place of residence. Spouses are obliged to provide each other with financial assistance. If one of the spouses becomes incapacitated, then according to our legislation, the other of them is obliged to provide him with financial assistance. In the current law and legislation regulating family and marital relations in private international law, two ways of choosing a gender are proposed. At the conclusion of marriage, either spouse can leave their premarital surname. At the same time, spouses have the right to choose only one common thing at their discretion.

The law of some countries, including those in the CIS, allows spouses to have both genders, i.e. create conditions for including the spouse's surname in their origin.

The law provides for both the legal property regime of the spouses and the contractual regime of the property of the spouses, fixed by the marriage contract As a whole, special provisions on this issue may be contained in special agreements on legal assistance. For example, in accordance with agreements concluded with Hungary, Bulgaria and Poland, if the spouses, being citizens of one State, reside in the territory of another State, then the law of their State of residence applies in the relationship. Such agreements also regulate the relations of such citizens when residing in individual States. If a citizen of the Republic of Kazakhstan lives in Russia and his spouse lives in Poland, then marital relations between them are resolved in accordance with their citizenship.

But, in addition, those who are married cannot be in the same citizenship. For example, if a citizen residing in the Republic of Kazakhstan is a citizen of the Republic of Kazakhstan, and his spouse, being a citizen of Russia, lives in the Russian Federation, then this is settled by mutual consent. According to him, their relationship is subject to the law of the place where they are in the latter.

The relationship between children and parents. The legal status of a child should be determined by his citizenship. In connection with the protection of children's rights, the Convention on the Rights of the Child, adopted for the Republic of Kazakhstan on November 20, 1989, is in force.

There is a generally recognized principle in the legislation of the Republic of Kazakhstan, according to which the citizenship of children under the age of 14 is linked to the citizenship of their parents. And citizens between the ages of 14 and 16 must agree to change their citizenship. This document, in turn, is subject to notarization.

If both parents acquire citizenship of the Republic of Kazakhstan, if their citizenship of the Republic of Kazakhstan is terminated, the citizenship of their children is changed accordingly

If both parents or the only parent living in the Republic of Kazakhstan, recognized as the guardian of the child, renounce the citizenship of the Republic of Kazakhstan, then at the request of the parents they can retain the citizenship of the Republic of Kazakhstan.

In some cases, both parents, upon renouncing citizenship, may not show enthusiasm for their child, in these cases, at the request of the child's guardian, he may retain citizenship of the Republic of Kazakhstan. But this, in turn, is not an obstacle to the subsequent change of citizenship by the child to the parents. If one of his parents terminates the citizenship of the Republic of Kazakhstan, the child retains the citizenship of the Republic of Kazakhstan. At the request of the parent, his child may also be terminated in the citizenship of the Republic of Kazakhstan and receive his citizenship.

The State undertakes to defend the rights of the citizen remaining in his citizenship in all other respects. In addition, a child is a citizen of the Republic of Kazakhstan if his parents, being unknown, are located on the territory of the Republic of Kazakhstan. The recognition of paternity in the Republic of Kazakhstan is carried out according to the law of our country, regardless of the citizenship of parents and children.

The relationship between parents and children in the Republic of Kazakhstan is in all cases regulated by Kazakh law, regardless of whether the child is a citizen of the Republic of Kazakhstan or not.

Parents are obliged to provide financially for their minor children, in addition, they are obliged to support children without labor discipline. If the parents refuse to support the child, in accordance with the legislation of the Republic of Kazakhstan, alimony is provided for them. If a person leaves the Republic of Kazakhstan, he is obliged to pay alimony to his child who remains in the territory of the Republic of Kazakhstan. The obligation to pay such alimony is also payable for a child living outside the territory of the Republic of Kazakhstan. There are no conflict-of-laws rules governing the application of norms related to alimony obligations in our legislation.

The norms applied in connection with the settlement of the relationship between a parent and a child are reflected in various agreements on the provision of legal assistance. In accordance with these conditions, the relationship between parent and children is subject to regulation by the law of the State in which the parent and child reside.

But if a parent lives in one of the States parties to the agreement, and the child himself lives in the other, then it must be said that the relationship between them is determined by the law of the State in which this child lives.

Institutions of adoption, guardianship and guardianship in private international law, in accordance with the Convention on the Protection of the Rights of the Child of 1989, it is stated that "the signatories of this convention recognize the existence of an adoption system and provide for the interests of the very first child." In addition, he: 1) adoption should be decided only by the authorities of this state, which decide on the adoption of a child. 2) the transfer of a child for adoption to another State is an alternative form of creating conditions for a child under this Convention and applies only when the child cannot be placed for adoption in the State itself; 3) the adoption of a child in one State determines the effect of the Provision on the Adoption of a child in force in the State itself; 4) when adopting a child, the purpose of obtaining benefits related to this child should not be for either party.

In accordance with the provisions of the Law "on Marriage and Family", foreigners can adopt a child in the Republic of Kazakhstan, as well as adopt a child whose citizen is a citizen of the Republic of Kazakhstan who is abroad. Such adoption is determined by the legislation of the Republic of Kazakhstan.

The adoption of a child who is a citizen of the Republic of Kazakhstan is carried out through the consular offices of the Republic of Kazakhstan. In this case, the adoptive parents must request the consent of the executive body, if they are not citizens of the Republic of Kazakhstan.

For the adoption of a child, a number of requirements are imposed on the adoptive parent. The adoptive parent is obliged to indicate the right certifying the right to adopt a child in the State of ez.

According to the rules of the Hague Convention, adopted on May 29, 1993, adoption applies only to citizens under the age of 18.

**Lecture 14. International civil procedure.**

The purpose of the lecture: 1. the difference between the methods of Civil Procedure and the Civil Codes of the Republic of Kazakhstan for determining the legal capacity and legal capacity of foreign persons. 2. the relationship between the concepts of "jurisdiction", "competence" and "jurisdiction" in the context of international civil proceedings.; 3. International and domestic jurisdiction. Determination of jurisdiction in cases involving foreigners The main terms of the lecture: English, French and German models. Actions in personam and actions in rem. Forum non conveniens. "I do not know," he said...

The main questions of the lecture:

1. Contractual competence. The immutability of competence. Expensive and derogatory agreements. 2. the possibility of limiting the legal capacity of foreigners. 3. notarial actions, consular legalization and apostille of foreign documents. Recognition and enforcement of foreign judgments. The importance of proceedings in a foreign court.

International civil procedure is a set of procedural issues related to the protection of the rights of foreigners and foreign legal entities in court and arbitration.

The term "international civil procedure" is conditional, since the procedural process is conducted on the territory of any country and under any national legislation. International civil procedure includes the following issues: - determination of jurisdiction in relation to cases arising from civil, family and labor relations with a foreign (or international) element;

- the state of legal proceedings of foreign citizens and foreign legal entities;

- the procedural status of a foreign State and its diplomatic and consular representative

- definition of the content of foreign law;

- applying to foreign courts with instructions on filing documents and performing certain procedural actions and executing orders from foreign courts;

- recognition and enforcement of foreign judgments;

 - performance of notarial actions; - recognition of foreign arbitration agreements; - arbitration of disputes; - enforcement of foreign arbitration decisions.

**Lecture 15. International commercial arbitration. Problems of conflict of laws applied in international commercial arbitration.**

The purpose of the lecture:

1. Arbitration as a form of dispute resolution and a branch of law.

2. The nature of international commercial arbitration. The ratio of arbitration and judicial processes.

3. Types of arbitration. Institutional and Ad hoc arbitration. Domestic and international arbitration. State and non-state arbitration. The concept and types of arbitration agreement.

The main terms of the lecture:

The relationship of the arbitration clause to the main contract. Theory of contractual, procedural and mixed arbitration.

The main questions of the lecture:

1. Ex parte discussion. Problems of conflict of laws applicable in international commercial arbitration..;

2.Lex voluntatis and lex arbitri. Arbitration, revision, revision. Torelikshygyndardyzhabutartibi.;

3. learning foreign languages. International inter-municipal events in the field of inter-municipal cooperation.

International commercial arbitration is a non-governmental (arbitration) commercial arbitration courts specifically designed to consider disputes between participants in international commercial transactions, the parties to which are persons (foreign firms and organizations) belonging to different states. These bodies should also be distinguished from other types of arbitration courts, which can consider disputes between subjects of public international law — States.

In addition to applying to State courts, International commercial arbitration is one of the most popular tools for resolving disputes between the parties to an international agreement. When choosing arbitration as a way to resolve disputes under the contract, the parties should take into account the following factors:

1. The implementation of a future decision against the other side of the case is very important if the parties are located in different States. Even in case of victory in a State Court, the execution of its decision in other States is possible only on the basis of a special international agreement or on the basis of mutual understanding. In international practice, agreements on the recognition of judicial decisions have not yet achieved much success. The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters has been signed by only five States. The Council of Europe's decision on jurisdiction and enforcement of judgments in civil and commercial matters applies only within the EU. Similarly, a number of conventions on the recognition and enforcement of judgments in the CIS, for example, the agreement on the procedure for resolving disputes related to business activities (Kiev, March 20, 1992), has a limited group of parties.

International arbitral awards against them are enforced worldwide in accordance with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[3]. The Convention has been ratified by more than 140 States, that is, by all economically significant jurisdictions.

On the other hand, a court decision under "its" jurisdiction is executed immediately, and an arbitral award requires the court to recognize its execution.

2. Confidentiality of production. As a rule, the court proceedings may be known to the public and the press, except in cases where the court decides on a closed meeting or otherwise restricts the publication of the case, and court decisions may be published. Arbitration proceedings are much more closed and can remain confidential for a long time if both parties want to keep it secret.[2][4]

3.Cost and duration of production. At the beginning of its history, commercial arbitration was considered as a faster and less expensive form of legal proceedings [2]. However, over time, arbitration has many doubts about this advantage [5].

A. Duration of production. In essence, the arbitration proceedings were conceived as shorter than the judicial review of the case, due to the fact that, first of all, the arbitration decision is not appealed, and therefore the parties do not go through any "instances" when considering their case [2]. However, the real intention of the Arbitration Court to make the "most correct" decision in complex arbitration disputes often leads to the fact that the proceedings in this single "instance" are delayed for years[6]. However, it should be understood that the duration of the proceedings is most often due to objective (independent of the arbitrators) reasons, such as: a large volume of documents, evasion by one of the parties from considering the case ...

B. components of arbitration costs. The main components of arbitration costs are: on the one hand, payment of arbitration fees and fees of arbitrators, on the other -payment for the services of legal consultants. These two components directly depend on the duration of production.

Indeed, in Arbitration, the parties themselves bear all the technical costs of the proceedings, as well as pay the judicial fees, which amount to tens and hundreds of thousands of dollars. In a State court, the amount of state duty rarely reaches such values. Nevertheless, the main component of the parties' expenses remains the payment for the services of legal consultants, which exceeds all other expenses in the aggregate. In this regard, with the increase in the duration of arbitration proceedings, they are approaching the cost of ordinary court cases[7].

As a rule, information about the amount of expenses for conducting a case in commercial arbitration remains confidential. Public decisions of investment arbitration can give some idea of the amounts and their ratio. For example, in the recently released decision against Macedonia, Swisslion DOO Skopje (ICSID Case No. ARB /09 / 16, decision of July 6, 2012) the plaintiff stated during the consideration of the case, which lasted three years: ICSID registration fee — $25,000, advance payment for other arbitration costs (including arbitrators' fees) — $250,000, services of a leading international law firm — 1 million euros, services of local consultants — 595,500 euros[8]. The defendant spent $3,675,211 on this case [9].

4. Neutrality. An important factor in the attractiveness of international arbitration is its impartiality and non-governmental status [10]. If the parties to the agreement from two different States resolve a mutual dispute, it will be difficult for each of them to agree to consider it in the courts of the opposite party, since it is obvious that the foreign party causes a certain level of bias. At the same time, the courts of a third State may refuse to go to court, and in any case their decision will be difficult to implement.

From this point of view, preference is given to arbitration, which is conducted by neutral individuals (including third States) and whose decisions are universally implemented.

Other factors that may affect the choice between arbitration or litigation, unlike a judge appointed by the State, a party may be able to choose an arbitrator; the consensual nature of the jurisdiction of justice, which makes it difficult or impossible to involve defendants and third parties; the relative flexibility of the arbitration process, which can determine the elements of the parties and the tribunal, etc

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