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**КӨПСАЛАЛЫ  
ҒЫЛЫМИ ЖУРНАЛЫ  
МНОГОПРОФИЛЬНЫЙ  
НАУЧНЫЙ ЖУРНАЛ**

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3. Бижикеева Х. Деньгам нужен счет, даже электронным// Интернет-ресурс://www.profit.kz/.

4. Кодекс РК «Об административных нарушениях» от 30.01.2001г. (с изменениями и дополнениями).

#### References:

1. Закон РК «О внесении дополнений в некоторые законодательные акты Республики Казахстан по вопросам электронных денег» от 25.07.2011

2. Alina G.B. Razvitiye elektronnykh deneg v Kazakhstane// Banki Kazakhstana №11, 2015

3. Bizhikeyeva Kh. Dengam nuzhen schet, dazhe elektronnym// Internet-resurs://www.profit.kz/.

4. Kodeks RK «Ob administrativnykh narusheniyakh» ot 30.01.2001 (s ismeneniyami i dopolneniyami).

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### SOME TOPICAL ISSUES OF FAMILY LAW AGREEMENTS: CANADIAN EXPERIENCE

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*The analysis of the Canadian experience of legal regulation of family law agreements on the basis of which recommendations about negotiating and also about contents of family law agreements, quite suitable for Kazakhstan, are formulated is presented in article.*

*The fundamental purpose of all family law agreements bough in common law and in civil law is to settle an issue that has come up, or one that could come up, and might be the subject of a legal dispute.*

*Family law agreements also give an incredibly flexible way of resolving various disputes. The family law agreement can be tailored to suit your particular circumstances and needs, and can be far more creative in resolving a problem than a court order ever could be.*

*Despite the considerable popularity of the family law agreements in Europe, the USA, and Canada, the mentality of the Kazakhstan people still cannot accept this deal as normal, so experience of the Kazakhstan legislative execution in the family law agreements is precious little. Therefore studying of experience of those countries where practice of legislative execution in the family law agreements and also adjustment of disputes according to them is rather rich, for example Canada, is of obvious interest.*

*Keywords: family; agreement; law; court; dispute; negotiation; Canada.*

### ОТБАСЫ-ҚҰҚЫҚТЫҚ КЕЛІСІМДЕРДІҢ КЕЙБІР ӨЗЕКТІ МӘСЕЛЕЛЕРІ: КАНАДА ТӘЖІРИБЕСІ.

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*Мақалада отбасы-құқықтық шарттардың құқықтық реттеуінің канадалық тәжірибесінің талдауы көрсетіле отыра, соның негізінде Қазақстан үшін жеткілікті түрде келіссөздерді жүргізу, сондай-ақ отбасы-құқықтық шарттардың мазмұны бойынша ұсыныстар құрастырылған.*

*Отбасы-құқықтық келісімдердің англосаксондық, сонымен қатар континенталдық құқықтық жүйелеріндегі негізгі мақсаты орын алып отырған немесе орын алуға мүмкін мәселелердің реттелуінде тұр, ал ол өз кезегінде құқықтық даудың нысанасы болуы әбден мүмкін.*

Отбасы-құқықтық келісімдер, сөйтіп, түрлі дауларды шешудегі сенгісіз икемді тәсілі болып табылады. Отбасы-құқықтық келісімдер нақты мән-жайлар мен қажеттіліктерді қанағаттандыру үшін тиісті түрде құрастырылуы мүмкін, сондай-ақ мәселені шешуде соттың қаулысына қарағанда икемді болуы ықтимал.

Отбасы-құқықтық келісімдердің Еуропа, АҚШ және Канадада елеулі түрде кең таралғанына қарамастан, Қазақстан халқының менталитеті осы бір келісімдерді әдеттегі деп қабылдан алмауда, сондықтан отбасы-құқықтық келісімдерді реттеудегі қазақстандық заңнаманың тәжірибесі мардымсыз болып келуде. Осыған орай, аталмыш келісімдердің заңнамалық реттелуінің бәймашығы бар елдердің тәжірибесін зерттеу, сондай-ақ отбасы-құқықтық келісімдерден туындайтын даулар бойынша сот тәжірибесі, мысалы Канаданың, әлбетте қызығушылық туғыдырады.

Кілт сөздер: отбасы; шарт; құқық; сот; дау; келіссөздер; Канада.

## НЕКОТОРЫЕ АКТУАЛЬНЫЕ ВОПРОСЫ СЕМЕЙНО-ПРАВОВЫХ СОГЛАШЕНИЙ: ОПЫТ КАНАДЫ.

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В статье представлен анализ канадского опыта правового регулирования семейно-правовых договоров, на основе которого сформулированы вполне пригодные для Казахстана рекомендации по ведению переговоров, а также по содержанию семейно-правовых договоров

Основная цель семейно-правовых соглашений, как в англосаксонской, так и континентальной правовых системах, состоит в урегулировании имеющихся или возможных проблем, которые, в свою очередь, могут стать предметом правового спора.

Семейно-правовые соглашения, таким образом, представляют собой невероятно гибкий способ решить различные споры. Семейно-правовые соглашения могут быть построены таким образом, чтобы удовлетворить конкретным обстоятельствам и потребностям, и может быть более гибким в решении проблемы, чем постановление суда.

Несмотря на значительную популярность семейно-правовых соглашений в Европе, США и Канаде, менталитет населения Казахстана, все еще, не может принять эти соглашения, как обыденные, поэтому опыт казахстанского законодательства в регулировании семейно-правовых соглашений крайне незначителен. В связи с чем, изучение опыта тех стран, где довольно богата практика законодательного регулирования таких соглашений, а также судебная практика по спорам, возникающим из семейно-правовых соглашений, например, Канада, представляет очевидный интерес.

Ключевые слова: семья; договор; право; суд; спор; переговоры; Канада.

The fundamental purpose of all family law agreements bough in common law and in civil law is to settle an issue that has come up, or one that could come up, and might be the subject of a legal dispute.

It is almost always better to settle a dispute yourself rather than have the courts resolve your problem for you. It is usually cheaper to settle a dispute rather than take it to court, and negotiated settlements usually give you the best possible chance of maintaining a halfway decent relationship with each other in the future. Family law agreements also give you an incredibly flexible way of resolving your dispute. Your agreement can be tailored to suit your particular circumstances and needs, and can be far more creative in resolving a problem than a court order ever could be.

Despite the considerable popularity of the family law agreements in Europe, the USA, and Canada, the mentality of the Kazakhstan people still cannot accept this deal as normal, so experience of the Kazakhstan legislative execution in the family law agreements is precious little. Therefore studying of experience of those countries where practice of legislative execution in the family law agreements and also adjustment of disputes according to them is rather rich, for example Canada.

In Canada, people who sign a family law agreement when they marry or plan to marry are entering into a *marriage agreement*, also called a pre-nuptial agreement. People who sign an agreement when they start living together or plan on living together are entering into a *cohabitation agreement*, also called a *living-together agreement*. Under the Family Law Act [1], most couples who live together for two years have the same rights on separation as couples who are married, so there is no significant difference between a marriage agreement and a cohabitation agreement. Many people make agreements that will be effective regardless of whether they are living together or married.

The usual point of agreements like these is to say what will happen if the relationship breaks down, although they can also talk about how things will be handled during the relationship or if one person dies during the relationship. The weird thing about marriage agreements and cohabitation agreements is that although they mostly talk about what will happen when a relationship ends, that may not happen for five

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years or 20 years, or it may never happen at all. As a result, it can be difficult to make plans based on what the family's circumstances might be like at some unknown point in the future when the relationship ends.

Married spouses, unmarried spouses and other unmarried couples who enter into an agreement after their relationship has broken down are entering into a separation agreement. A separation agreement is a contract that describes how some or all of the legal issues arising from the end of the relationship have been resolved.

All of these different kinds of agreement are legal contracts that describe the parties' rights and obligations towards one another. They can deal with everything from who gets to keep the Kenny G boxed CD set, to where the children will live, to how the parties will deal with their mutual friends, to who gets to keep the Ford Pinto. While these agreements are usually all-inclusive, they don't have to be; some issues can be left aside for the courts to deal with. A couple might sign a *property agreement* dealing with just property issues, or a *parenting agreement* dealing with just the care of the children when their relationship has ended [2].

Despite the intentions of the couple when they signed an agreement, the terms of their agreement may still wind up being reviewed by the court, and possibly changed, if one of the parties later has a problem with the agreement. While the court will pay a great deal of respect to any written agreement, if an agreement was unfairly negotiated, is significantly unfair or becomes significantly unfair the court will generally be willing to look into things and perhaps set aside the agreement and make an order on different terms.

The Family Law Act encourages people to make agreements resolving their disputes rather than going to court. Section 6 of the act says this:

- (1) Subject to this Act, 2 or more persons may make an agreement
  - (a) to resolve a family law dispute, or
  - (b) respecting
    - (i) a matter that may be the subject of a family law dispute in the future,
    - (ii) the means of resolving a family law dispute or a matter that may be the subject of a family law dispute in the future, including the type of family dispute resolution to be used, or
    - (iii) the implementation of an agreement or order.
- (2) A single agreement may be made respecting one or more matters.
- (3) Subject to this Act, an agreement respecting a family law dispute is binding on the parties.

Under s. 214 of the act, the court may:

- 1 set aside part of an agreement, without changing the rest of the agreement,
- 2 incorporate all or part of an agreement into an order, or,
- 3 make an order replacing all or part of an agreement [1].

The test the court must apply in deciding whether to set aside an agreement changes depending on the subject matter of the particular part of the agreement at issue. Some tests, like the test to make a child support order in place of an agreement on child support, are really easy; others, like the test to set aside an agreement on property division, are really hard. If you're asking the court to set aside an agreement, you must read the parts of the Family Law Act that deal with setting aside agreements.

Marriage agreements and cohabitation agreements usually talk about what will happen if the parties' relationship breaks down, although they can sometimes talk about how things will be handled during the relationship. These sorts of agreements are normally made well before the parties marry or begin to live together, but can be made at any time during the parties' relationship.

It is important to know that you do not have to enter into a marriage or cohabitation agreement just because your partner wants you to, or just because you're about to marry or start living with someone. While your partner may want you to sign an agreement, you are under no legal obligation to do so. With or without a family law agreement, remedies are almost always available under the common law, the Divorce Act [3], or the Family Law Act if problems crop up later on.

Marriage agreements and cohabitation agreements aren't always appropriate. Most people who enter into these agreements have been married before (once bitten, twice shy!), are coming into the relationship with children, are coming into the relationship with significant assets or significant debts, or expect to receive significant assets during the relationship. A young couple who have no significant assets or debts and no children don't necessarily have any particular need to sign a marriage agreement or a cohabitation agreement.

The sorts of terms people want to apply during their relationships are most often financial. That being said, family law agreements are incredibly flexible and can require the parties to do anything imaginable, from caring for the children during the work week, to having a certain number of holidays each year, to always wearing purple shirts on Thursdays, to sharing the household chores. Typically, however, people want to address issues like these:

- How will a joint bank account be managed? Will the parties contribute a fixed monthly amount to the joint account?

- How will common household expenses be shared? Will specific bills be paid by a specific party or will they be shared proportionately to the parties' incomes?
- How will unexpected expenses be paid for? Will both parties pay for household repairs?
- How will savings, retirement funds be managed? Will each party be required to contribute a fixed monthly amount?
- How will each party's income during the relationship be handled? What will happen if someone gets an unexpected windfall, like a lottery win or an inheritance?

Some agreements do not deal with these issues, and some paint only a vague picture of the parties' respective financial responsibilities. Other agreements are mind-bogglingly detailed and cover even the tiniest details. In my view, unless someone is spectacularly anal retentive, the less said in a marriage agreement or cohabitation agreement about how a relationship will be managed, the better. You wouldn't want every aspect of your relationship governed by a legal contract — that's exactly the sort of thing that encourages relationship breakdown.

The most common reason why people enter into a marriage agreement or a cohabitation agreement is to specify how property will be dealt with if the relationship comes to an end, although agreements like these can also deal with the payment or waiver of spousal support. Typically, however, these sorts of agreements just try to preserve a party's interest in an asset after the relationship has ended.

Agreements about the care of children or the payment of child support are only binding if they are made after separation or when the parties are about to separate.

Separation agreements are entered into after a relationship has broken down. There is no need for the parties to have moved out or gotten a divorce when the agreement is made; in fact, when a couple is married it's usually best to deal with the separation agreement before you apply for a divorce, just in case you can't reach an agreement.

Separation agreements are always the product of negotiations between the parties and, hopefully, their lawyers. The goal of a separation agreement is to deal with all or some of the issues related to the separation in a way that both parties are as happy with as possible. Separation agreements usually deal with the following issues:

- How will the children be cared for? How will important parenting decisions about the children be made?
- If the children will be living mostly with one parent, how much time with the children will the other parent have?
- How much child support be paid, and which of the children's expenses will be shared between the parents?
- Should a party receive spousal support? If so, how much support should be paid and for how long?
- How will the family property be divided? Should the parties' excluded property be divided?
- How will the family debt be divided?

Separation agreements can cover everything that is a problem for a couple, even things that the court would not ordinarily deal with or be able to deal with.

Separation agreements are binding from the moment they are signed by both parties, unless the agreement says something different. They operate from the time they are made and, where children, child support, or spousal support are issues, they often continue to operate indefinitely into the future. Theoretically, a separation agreement will be binding on the parties until they die. In practice, however, most people stop relying on the agreement once the children have grown up, left home and become independent, even though their agreement continues to be legally binding on them [4].

The point of a family law agreement is to make a legal contract that both parties intend to be bound by and that the court can and will enforce if a party doesn't live up to their obligations. In order to be legally binding and enforceable, agreements must be negotiated, drafted and signed in a certain way and include certain terms.

Family law agreements are about really important things like where the children will live, who will pay support to whom and how the parties will divide their property. As a result, the terms of the agreement are almost always the result of lots of talking and negotiating. It is critical that:

- each person has all of the information that is necessary, to figure out what's a good deal and what's a bad deal,
- each person understands their legal rights and obligations, to know what's a good deal and what's a bad deal,
- each person is able to express their views and contribute to negotiating the agreement, and
- there is no pressure to reach an agreement on either party, beyond the importance of reaching a reasonable agreement and saving money on legal fees and court costs.

Properly negotiating and entering into a family law agreement isn't simply a matter of putting the important parts on paper and signing the document. There must be fairness in the way an agreement is negotiated, fairness in the way it is drafted, and fairness in the way it is signed. The people who are negotiating the agreement must be able to understand the agreement, be capable of agreeing to it, and

agree to it voluntarily. This is what s. 93(3) of the Family Law Act says about agreements for the division of property and debt:

(3) On application by a spouse, the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement ... only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:

(a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;

(b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;

(c) a spouse did not understand the nature or consequences of the agreement;

(d) other circumstances that would, under the common law, cause all or part of a contract to be voidable [1].

This is fairly straightforward:

- you have to make full disclosure of your income, your expenses, your assets and your debts, and any other information that is important to the agreement,

- you can't exploit the other party's weaknesses to get a good deal for yourself,

- you have to make sure that the other party understands exactly what the agreement means and how it will affect their life, both now and in the future, and,

- you can't force or pressure someone to sign the agreement, you can't cheat someone into signing the agreement, and the agreement must be reasonable.

Although s. 93 is about property, s. 164(3) says the same thing about agreements for spousal support, and I think that this is a pretty reasonable standard to set for all other family law agreements. If you don't want the court to throw out your agreement, you've got to take the time to do it right, and you've got to be fair and not take advantage of the other party [1].

The legal formalities common to all family law agreements are these:

- The parties to the agreement must provide full financial disclosure to each other and must be completely honest in describing their circumstances.

- The agreement must be in writing. (While oral agreements have been upheld by the courts, it can be very difficult to establish the terms of the agreement, and oral agreements cannot be enforced until a court has determined what the terms of the agreement are.)

- The parties can't be under any sort of legal disability such as insanity.

- The parties must both sign the agreement of their own free will, without unfair pressure by the other party.

- The agreement must be properly executed, which means being signed by each of the parties in the presence of at least one witness who is not a party to the agreement.

As a general rule, each person who enters into a family law agreement should get *independent legal advice*, advice from their own lawyer, before the agreement is signed about:

- what the agreement means,

- what rights and obligations the agreement gives to each party,

- how the agreement does or doesn't limit the other legal remedies that might be available,

- how the agreement may affect each person over the short- and long-term, and,

- the options and remedies that would have been available if everyone had decided to go to court instead of settling things with an agreement.

Independent legal advice is important for two reasons: it ensures that the parties to the agreement know exactly what their rights and obligations are; and, it makes the agreement stronger by preventing a party from claiming later on that they didn't fully understand what the agreement meant or how it would impact them. If you really want to make sure that your agreement will stand the test of time, you've got to make sure that you and the other party have both seen a lawyer about the agreement!

Lawyers often write family law agreements in a standard format using standard terms, tailored, of course, to the specific needs and circumstances of the parties. Just because family law agreements are often written using standard terms and standard language doesn't mean that an agreement using different wording will be set aside because it expresses things in a different way. As long as it is clear what the intentions of the parties are and as long as the agreement is fair and continues to be fair, the courts will usually uphold the agreement.

Below, we describe the structure of usual family law agreements.

#### 1 The introduction

The introduction to an agreement, also known as the *exordium*, is the portion of an agreement that identifies the parties to the agreement, provides a title for the agreement, and sets out the date on which the agreement is made.

#### 2 The recitals

The recitals describe the parties' circumstances when the agreement is made in a summary sort of way. They include the basic facts of their relationship, give the names and birth dates of any children,

describe the property and debts that the agreement deals with, and describe the parties' incomes, among other things.

The recitals are the foundation on which the agreement is built. They should be sufficient to tell a complete stranger why the parties entered not just into any agreement but this particular agreement. It is important that the recitals be as complete as possible because if anyone tries to challenge the agreement in the future, the recitals will set out the facts that were important to the parties at the time the agreement was made. Other recitals might describe the make, model and value of each party's car, the address and value of the family home, the credits cards owned by the parties and the amounts owing on them, and so on. Essentially, every fact that is relevant to the agreement should be put into the recitals to the agreement.

By the way, the parts where you see a capitalized word in brackets, like (the "Date of Separation"), are called defined terms.

### 3 The operative clauses

The operative clauses of an agreement are the nuts and bolts of the settlement. They are the essential terms of the agreement and describe what each party's rights and obligations are.

### 4 The signatures

The last part of a family law agreement is where each of the parties will sign their names in the presence of a witness. The parties can sign the agreement at the same time or separately, at different times and in different locations. Either way, each party's signature must be witnessed, and the witness, after seeing the party sign the agreement, must sign their name to the agreement. The witness usually provides some other information, typically their full name, address, and occupation. The page with the parties' signatures should include at least one operative paragraph of the agreement.

The witnesses to the parties' signatures do not become parties to the agreement and the agreement cannot be enforced against them. The signature of the witness simply says that they saw the particular party sign the agreement, in case someone ever denies signing the agreement.

It is also a good idea for each of the parties and the witnesses to initial each page of the agreement, other than the page with the parties' signatures [5].

Negotiating considerations. For many couples, negotiations begin and end over a cup of coffee at the local Tim Hortons [2]. This is fine, providing that everyone is relatively friendly and the parties are approaching their negotiations from a relatively level footing. The court will respect the agreements that negotiations like these produce, on the basis that people are free to make their own bargains and to contract to whatever they like.

Problems can arise when negotiations aren't completely fair. In a 2003 case from the Supreme Court of Canada, *Miglin v. Miglin*, 1 SCR 303, the court held that family law agreements should not be considered under exactly the same standards that are applied to ordinary commercial contracts because family law agreements are usually negotiated at "a time of intense personal and emotional turmoil, in which one or both of the parties may be particularly vulnerable [6]." Some of these vulnerabilities were described in a 2000 case from Ontario, *Leopold v. Leopold*, CanLII 22708 (ON SC):

"One party may have power and dominance financially, or may possess power through influence over children ... often both contracting parties are vulnerable emotionally, with their judgment and ability to plan diminished, without the other spouse preying upon or influencing the other. The complex marital relationship is full of potential power imbalance." [7]

In a 2009 case, *Rick v. Brandsema*, 1 SCR 295 the Supreme Court of Canada added another factor to this list, incomplete or misleading financial disclosure [8].

Potential unfairness, then, can come from:

- exploiting a party's emotional or psychological vulnerability,
- influence over a party through dominance and oppression,
- control over the family finances,
- influence over the children's allegiances, or
- access to or control over the release of financial information.

Where unfairness is found, the court will be more likely to set aside an agreement or to make an order on terms different than those set out in an agreement. As a result, people negotiating family law agreements must take special care to ensure that everyone is on a level playing field and are negotiating from positions of relative equality. Here are some things that can help:

- Independent legal advice: Make sure everyone has legal advice about the meaning and consequences of the agreement from their own lawyers. Have the lawyers who provided the independent legal advice witness the parties' signatures on the agreement, and sign certificates of independent legal advice.

- Respect vulnerabilities: Stop negotiations when someone is too upset to continue or appears to be compromised in any way. If there is any doubt that a party is not in their right mind, down tools and come back to the table later. Consider the need for counselling or therapy before continuing.

- Make full disclosure: Always make full disclosure of all financial facts, whether disclosure has been requested or not. Have documentation available of current income, past income, bank and investment

account balances, outstanding debts, property values, values of shares and options, art and jewelry appraisals, and so on.

- Never lie: Intentionally misleading someone about the value of something, the amount of a debt, past income and future income expectations, or any other relevant fact will always undermine the strength of an agreement. Be scrupulously honest and transparent at all times.

- Know the law: The *Divorce Act* and the *Family Law Act* say when and why spousal support and child support should be paid. The *Divorce Act* and the *Family Law Act* talk about how much time children should have with their parents. For married spouses and unmarried spouses, the *Family Law Act* talks about how property and debt should be divided. Know how the law treats these different subjects and ensure the agreement roughly reflects the law [2].

In the conclusion, we will give several important advises formulated by the Canadian lawyers who quite are suitable also for the Kazakhstan citizens wishing to conclude the family law agreements.

1 First of all, it is always best to have a lawyer prepare any sort of contract, including family law agreements. A family law lawyer will be best able to advise you of the duties and obligations involved in the contract, the rights you will be giving up by entering into the contract, and other unexpected but critical issues the agreement might involve

2 Don't use "legalese" Some people are tempted to use words that sound particularly legal, like using the word "issue" to refer to children. Avoid this at all costs, and try to use plain language to express the content of your agreement. Words like "issue" can have a particular legal meaning — in this case first-generation, directly-descended heirs — that are often at odds with what people think the term means. As a result, if you use legalese there is a risk that your contract won't wind up meaning quite what you think it means. Be as clear as possible. If a term of your agreement has more than one possible interpretation, it may lead to future conflict between yourself and the other party.

3 Avoid agreeing to agree. An agreement that requires a further, future agreement — "the household furniture will be divided as Mary and Jerry will agree" — is open to further, future conflict. Whenever possible, try to limit an agreement to all that can be agreed upon at the moment and try to agree on as much as possible.

4 Remember the loose ends. It is always best to tie up any loose ends. This may require some thought as it isn't always obvious what else needs to be included. If a house has to be sold, for example, who will list it and hire the realtor? Who will live in it until the sale? What debts will be paid from the sale proceeds? These things should all be specified, where at all possible.

5 Be realistic. You've got to live with the agreement; make sure it is something you can live with, not just now but in three or five years. Make sure that the obligations you must fulfill under the agreement are obligations that you can reasonably fulfill. Promising to pay off a credit card within a year, for example, isn't always the easiest thing to do and it isn't always practical. Sometimes people who have separated are desperate to have done with it, to have a deal signed and finished. If you feel rushed into an agreement, step back and take two (or twenty-two) deep breaths. The world will not end if you take a moment or a week to think about something. It is critical that whatever you wind up agreeing to is something that you will still be okay with next month, next year, and in 10 more years. It can be very difficult to change an agreement in the future, especially one about division of property or debts, if only one of the parties wants the agreement to be changed. Be patient and take your time.

6 Use sample clauses with caution. Before copying a term from someone else's agreement into your own agreement, make sure you fully understand what that term means. A clause that suits one couple in one situation may be entirely inappropriate for another couple. It is all too easy to adopt a term that sounds good or appropriate, without fully considering what that term means. Be cautious, be prudent, be careful.

#### References:

1. **Family Law Act, SBC 2011** [Text] // [https://wiki.clicklaw.bc.ca/index.php?title=Family\\_Law\\_Act](https://wiki.clicklaw.bc.ca/index.php?title=Family_Law_Act)
2. **Living Together or Living Apart”, chapter 2, Making Agreements** [Text] // [https:// www. clicklaw. bc. ca/ resource/1058](https://www.clicklaw.bc.ca/resource/1058)
3. **Divorce Act, RSC 1985** [Text] // [https://wiki.clicklaw.bc.ca/index.php?title=Divorce\\_Act](https://wiki.clicklaw.bc.ca/index.php?title=Divorce_Act)
4. **Making an agreement after you separate** [Text] // <http://www.familylaw.lss.bc.ca/resources/factsheets/makingAnAgmtAfterYouSeparate.php>
5. **How Do I Execute a Family Law Agreement?** [Text] // [https://wiki.clicklaw.bc.ca/index.php?title=How\\_Do\\_I\\_Execute\\_a\\_Family\\_Law\\_Agreement%3F](https://wiki.clicklaw.bc.ca/index.php?title=How_Do_I_Execute_a_Family_Law_Agreement%3F)
6. **Miglin v. Miglin, [2003] 1 SCR 303, 2003 SCC 24 (CanLII)** [Text] // <https://www.canlii.org/en/ca/scc/doc/2003/2003scc24/2003scc24.html>
7. **Leopold v. Leopold, 2000 CanLII 22708 (ON SC)** [Text] [Text] // <https://www.canlii.org/en/on/onsc/doc/2000/2000canlii22708/2000canlii22708.html>
8. **Rick v. Brandsema, [2009] 1 SCR 295, 2009 SCC 10 (CanLII)** [Text] // <https://www.canlii.org/en/ca/scc/doc/2009/2009scc10/2009scc10.html>

## ЛИТЕРАТУРА:

1. М. Хердеген Принципы международного экономического права, [Текст]: Оксфорд Юнивесити пресс, 2013 – 534 с.
2. Дж. Гербер Глобальная конкуренция: право, рынки и глобализация [Текст]: OUP, 2010 – 132 p.
3. Генеральное соглашение о тарифах и торговле (GATT 1947) [Текст]: [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm)
4. Юридические тексты: соглашения ВТО [Текст]: [https://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](https://www.wto.org/english/docs_e/legal_e/final_e.htm)
5. ВТО: исторический, правовой и организационный обзор [Text]: <http://www.internationalecon.com/wto/ch1.htm>
6. Многосторонняя либерализация торговли: Уругвайский раунд и Всемирная торговая организация [Текст]: <http://www.globalization101.org/multilateral-trade-liberalization-the-uruquay-round-and-the-world-trade-organization/>
7. Марракешский протокол к Генеральному соглашению о тарифах и торговле 1994 [Текст]: [https://www.wto.org/Englishliberalization/Docs\\_E/Legal\\_E/13-mprot\\_e.htm](https://www.wto.org/Englishliberalization/Docs_E/Legal_E/13-mprot_e.htm)
8. П. Бош, Право и политика Всемирной торговой организации [Текст]: CUP, 2008 – 105p
9. Решение о «связанных с внедрением вопросах и проблемах» (14 ноября 2001) WT/MIN (01)/17 [Текст]: <http://fs.nashaucheba.ru/docs/60/index-1294836.html>
10. 6-ая конференция министров стран, входящих в ВТО Гонконг, 13-18 декабря 2005 [Текст]: <http://dfat.gov.au/international-relations/international-organisations/wto/Pages/sixth-wto-ministerial-conference.aspx>
11. К. Аддо, Соотношение между трудовыми стандартами и международной торговлей. [Текст]: <https://www.peacepalacelibrary.nl/research-guides/special-topics/labour/>

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## АЛҚАБИЛЕРДІҢ ҚАТЫСУЫМЕН ҚЫЛМЫСТЫҚ ІСТЕРДІ ҚАРАУДЫҢ МӘСЕЛЕЛЕРІ

Майсатаева А.Ш. - Ахмет Байтұрсынов атындағы Қостанай мемлекеттік университеті, қылмыстық құқық және процесс кафедрасының аға оқытушысы, заң ғылымының магистрі

Мақалада алқабилердің қатысуымен қылмыстық істерді қараудың құқықтық табиғатын зерттей келе, алқабилердің қатысуымен қылмыстық істерді қарауды жетілдіру мәселелерін қарастырған. Алқабилер қарауға тиісті қылмыстық іс сотқа түскен кезде соттың төрағасы істі сотта іс жүргізуге қабылдау туралы мәселені шешеді. Судья келіп түскен іс бойынша басты сот талқылауын тағайындау немесе алдын ала тыңдау жүргізу туралы шешімдердің бірін қабылдайды.

Алқабилердің қатысуымен жүргізілетін сот – сот төрелігін атқаруда халықтың қатысу нысандарының бірі. Бұл институт процестің жарыспалылығын ынталандырады, сонымен қатар, азаматтардың құқықтары мен бостандықтарының неғұрлым пәрменді қорғалуына ықпал етеді.

Алқабилер қылмыстық іс-әрекет жасалды ма және оны жасағаны үшін сотталушының кінәсі бар ма немесе жоқ па деген сауалдарға жауап беретін болғандықтан, олардың пікірін жеткіліксіз