



Research Article

© 2022 Togzhan Bakhtybaevna Zhunussova.  
This is an open access article licensed under the Creative Commons  
Attribution-NonCommercial 4.0 International License  
(<https://creativecommons.org/licenses/by-nc/4.0/>)

Received: 6 June 2022 / Accepted: 15 August 2022 / Published: 2 September 2022

## Influence of Legal Traditions and Legal Culture on the Institution of Marriage Contracts and the Possibility of its Improvement: The Experience of Kazakhstan

Togzhan Bakhtybaevna Zhunussova

Karaganda Buketov University,  
100028, Universitet St 28, Karaganda,  
Kazakhstan

DOI: <https://doi.org/10.36941/ajis-2022-0124>

### Abstract

*Since the Republic of Kazakhstan gained independence, it developed market relations and established private property as the leading type of ownership. Such fundamental changes required corresponding changes in the system of law, including family law. However, such reforms often depend on the mindset, legal culture, and legal traditions that have developed in society. In Kazakhstan, the practice of concluding marriage contracts (which govern property relations between spouses) has not developed or been seriously limited. Thus, this sphere needs to be considered for further improvement. The study aims at determining the social and legal factors affecting the regulation of marital relations through the conclusion of marriage contracts in Kazakhstan. Based on an expert survey, the authors of the article have revealed both positive and negative aspects of concluding a marriage contract and considered the main reasons for a small number of such contracts concluded between citizens of Kazakhstan. There a marriage contract is a special extrajudicial way of settling property relations between spouses that may arise in the future, a means of protecting their property rights and exercising property obligations. However, this method of regulation and protection is resorted to families with a high-income level and great life experience and often in special life situations.*

**Keywords:** legal culture, family law, marriage contract, spouses, property relations, non-property relations

### 1. Introduction

The possibility of applying the principles of contract theory to marriage, in an environment where spouses are viewed as autonomous individuals (Witte, 2012), is being discussed in scientific literature. In many parts of the world, legislative bodies are vigorously debating (Rodríguez & Rojas, 2013) whether it is appropriate to reform marriage law to bring it in line with contractual principles. Whatever the marriage, it is impossible to insure relations between people by excluding the possibility of divorce between them. In our opinion, the marriage contract is regarded as an extrajudicial mechanism to mitigate the consequences of divorce for wives and children. Spouses try to insure against property losses in the event of a divorce. In most cases, they simply want to avoid litigation in the future.

The issues of the marriage contract not only as a legal document but also as a social institution are most clearly formulated in the United States. There is no doubt that the marriage established in

the USA is contractual, and the contract model is being introduced in various fields of modern life (Rodríguez & Rojas, 2013). Although lawyers (McLellan, 1996) recognize the impossibility of enforcing many personal provisions of the marriage contract, they do not view this circumstance as a decisive factor. Practicing lawyers believe that this document allows a couple (about to be married) to shape their expectations from this marriage, determine the nature of their future relationships with other persons, etc. In this regard, such provisions are included in the body of the contract to stimulate rather than enforce the proper behavior of spouses (Kudinavičiūtė-Michailovienė, 2011; Matouschek & Rasul, 2008).

Despite a seemingly rational approach, US scholars note that the marriage contract in Western Europe cannot fix the fundamental imbalance of power in modern marriage and rely on the division into public and private, which contradicts the ideas of freedom and equality provided by the contract (McLellan, 1996). There are much more difficulties in understanding the marriage contract as a social institution when we consider countries in which contractual relations in family law are still under formation. In particular, this refers to the post-Soviet countries. In Europe and the USA, 70% of spouses conclude marriage contracts. In the Republic of Kazakhstan and other post-Soviet countries, this figure does not exceed 3-5% (Badaeva & Lashina, 2015). We believe that the reasons for such statistics are due to a set of legal, social, historical, and economic factors that need to be considered. The study of legal consciousness is not limited to its practical and applied aspects. At each stage of social development, legal ideology and legal education get a new interpretation due to the corresponding tasks of social evolution, including in the field of marriage and family relations. On the one hand, it is necessary to explore legal mechanisms that enhance the development of contractual relations between spouses. On the other hand, it is required to raise the level of legal culture of the population. The level of legal culture and trust in the legal system and the state as the guarantor of its observance determine the understanding of legal phenomena and processes. If spouses properly comprehend patterns and trends in their development, it will help better understand the possibilities of prenuptial agreements, make decisions more confidently, avoid litigation and be less dependent on stereotypes. At the same time, the regulation of marital relations is a very complex issue, in particular, there are active discussions in science (Ketscher, 2018) about the rights, obligations, and relations of married couples and the role of the state in this matter.

The evolution of marriage from a status-based relationship to a relationship governed by contractual norms causes strong objections from communitarians who see the abolition of guilt and the use of market mechanisms in relation to marriage as destructive to the values of caring and commitment typical of traditional marriage. This is a model of marriage as a contract, according to which the state is a neutral “deal maker” between spouses. Many scholars argue that such a “limited” concept of marriage makes women vulnerable, harms the interests of children, and undermines public welfare (Boele-Woelki, Dethloff, & Gephart, 2014; Meller-Hannich & Haertlein, 2015).

Other researchers (Naixin, 2019; Trifonova, 2020), who use legal and economic methodology argue that a no-fault divorce turned marriage into an “illusory agreement” that does not provide any remedies for breaking marriage vows. From this viewpoint, a unilateral divorce without fault encourages resistance to the behavior of one of the spouses, which destabilizes the relationship and threatens processes such as joint housekeeping or long-term investments. This can lead to relationships that can be described as an “unreliable marriage” at the everyday level. Thus, communitarian, legal, and economic scholars argue that a guilt-free regime has led to the decline in the importance of marriage and the loss of its valuable social functions.

The scholars supporting relational theory suggest (Scott & Scott, 1998) that the formal legal compliance of all the terms of a “marriage deal” is inappropriate since legal intervention undermines the balance of the parties and, ultimately, reduces their efforts to maintain a strong relationship. Thus, enforcement is limited to observing apostasy from the cooperative norm and resolving economic and parental claims after the dissolution of a marriage. The realm of law is the area beyond social and relational norms. In our opinion, amendments to the UK legislation can serve as an example of such an approach: It is no longer necessary – or even possible for either party to prove

“fault” in order to obtain a divorce. This is part of the new no-fault divorce law that aims to end the 'blame game' (Parliament of the United Kingdom, 2020).

Based on the identified areas, we define the following features of the marriage contract:

1. is concluded between the persons who applied for marriage registration or spouses, i.e. it has a special subjective structure (Slepakova, 2013);
2. this agreement regulates property relations between spouses, determines their property rights and obligations, i.e. it has a special subject of legal regulation (Antokolskaya, 2016);
3. is concluded only by agreement of the parties, i.e. it is a right not an obligation (Elkina, 2009);
4. has a complex legal nature since it cannot be regarded only as a contract, agreement, legal fact, document or obligation (Albikov, 2010).

A number of studies reflect the social application of the marriage contract in the post-Soviet countries associated with the transformation of their social structure (Aginskaya, 2011), the modernization of the modern family (Serdyuchenko, 2012), and the moral aspects of such an agreement (Krasilnikova, 2009). Thus, scholars try to find the optimal form and mechanism for regulating relations between spouses. Based on a modern understanding of the issue and considering legal features, we strive to explain possibilities for developing the institution of marriage contracts in Kazakhstan.

The study aims at determining the social and legal factors affecting the regulation of marital relations through the conclusion of marriage contracts in Kazakhstan.

The research tasks are as follows:

1. To trace historical features that influence the formation of the social institution of marriage contracts in Kazakhstan;
2. To consider the current reasons for the low activity of Kazakh citizens in concluding marriage contracts;
3. To determine opportunities for the formation of legal culture and improvement of legislation in order to increase interest in concluding marriage contracts among the population.

## 2. Methods

To achieve the above-mentioned objective, we studied the possibilities of changing the legal culture for developing the regulation of marriage relations as exemplified by Kazakhstan in the period from October 1, 2021 to December 1, 2021. This comprehensive study comprised three stages:

- Stage 1 – to determine the positive and negative aspects of concluding a marriage contract in Kazakhstan (based on the expert survey);
- Stage 2 – to reveal the main reasons behind the low activity of Kazakh citizens in concluding marriage contracts (based on the expert survey);
- Stage 3 – to consider challenges of regulating and concluding marriage contracts in the post-Soviet (Eurasian) countries.

In the course of the study, we used the following research methods:

- The analysis of scientific literature on the legal regulation of marital relations within the framework of marriage contracts. The quality criteria of the selected sources of information (monographs, articles in scientific journals, proceedings of scientific conferences) were the scientific interests of their authors, the subject of publications, and the credibility of the publisher/publication;
- The expert survey, whose results highlighted the positive and negative aspects of concluding a marriage contract, identified the main reasons for the low activity of Kazakh citizens in concluding such agreements;
- The case method to analyze the legal regulation of marriage contracts in Kazakhstan in order to reveal the issues of concluding and regulating such agreements.

The expert survey was conducted through e-mail. Fifty-five legal experts were asked two questions “What are the positive and negative aspects of concluding marriage contracts?”, “What are the main reasons for the low activity of Kazakh citizens in concluding marriage contracts?”. It was necessary to substantiate their answers in free form and send them within two weeks.

The criteria for selecting experts included at least 10 years of legal experience in the field of marriage and family relations. All the respondents were informed about the survey objective and the intention to publish the study results in a summarized form.

Fifty-one experts sent back their responses. The answers suitable for subsequent analysis were taken into account. They included those “positive and negative aspects of concluding marriage contracts” and “reasons for the low activity of Kazakh citizens in concluding marriage contracts” whose expert mentions exceeded 50%.

Further, we ranked expert opinions, whose consistency was assessed by the concordance coefficient using the SPSS software.

### 3. Results

#### 3.1 Historical prerequisites for developing the institution of a marriage contract in Kazakhstan

The modern institution of marriage contracts was introduced in Kazakhstan in 1998 due to the socio-economic development of the country and the evolution of its civil and family relations. Soviet Kazakhstan was oriented toward the socialist model of society that did not stipulate any business agreements between spouses (Bekkozhiba, n.d.). Kazakh customs and Islamic law had a great influence on the regulation of marriage and family relations. In these traditions, the concept of a marriage contract was originated.

Among the Kazakhs, the most common form of marriage was matchmaking and paying the ransom, so marriage was a property-related agreement between the parents (close relatives) of those getting married. After concluding this contract, the bride entered the groom's family. Kalym (“kalyn mal”) was a prerequisite for marriage and its payment was equal to marriage. For the Kazakhs, it meant the business of the entire clan since new family relations were established, the cooperation of Kazakh clans was guaranteed, and their interests were united. Gradually, the custom of paying the ransom by the bride girl (“kara mal”) emerged.

In the traditional Kazakh society, marriage pursued two main goals: the conclusion of a kalym agreement regulating the property relations of spouses and establishing strong inter-clan ties to increase their competitiveness. Thus, the “kalym contract”, not called a “marriage contract” in traditional society, can be defined as the forerunner of the modern marriage contract in terms of its nature and material aspects (Akhmetova, 2010).

However, regulating premarital and marriage-family relations, the “kalym contract” as a marriage agreement did not aim to regulate relations and disputes between spouses that could arise after a divorce. In the modern sense, the marriage contract performs a different legal function than the previous marriage agreements. The fundamental difference between the term “prenuptial agreement” used by the modern legislation of most countries, including Kazakhstan, is that it is impossible to equate marriage and a prenuptial agreement.

#### 3.2 Motivation and limitations of concluding a marriage contract

Based on the survey, the experts identified positive (mainly legal) and negative (mainly psychological) aspects of concluding marriage contracts (Table 1).

**Table 1:** Positive and negative aspects of concluding marriage contracts

	Explanation	%*	Rank
Advantages	The premature distribution of property between spouses in case of divorce, i.e. the parties agree immediately on who and what will get if their relationship ends	88.9%	1
	Excludes fraudulent actions against one of the spouses. This is a kind of guarantee of non-violation of the material and property rights of a person	77.8%	2
	A clear statement of property and social requirements for the joint life of spouses. In this case, more advantages are given to financial and material separation. Social issues often include support by one of the spouses in cases when the other cannot work independently (disability, childcare)	74.1%	3
Disadvantages	The advance planning of one's life for possible discord and break up	64.8%	1
	Resentment and oppression for those with lower incomes	64.8%	2
	Manipulative nature	64.8%	3

Note: compiled on the basis of an expert survey; \* - % of expert references; the concordance coefficient  $W = 0.81$  ( $p < 0.01$ ) which indicates strong consistency of expert opinions.

The experts have revealed the following reasons behind the low activity of Kazakh citizens in concluding marriage contracts (Table 2).

**Table 2:** The main reasons for the low activity of Kazakh citizens in concluding marriage contracts

No.	Cause	Explanation	%*	Rank
1	Mindset	Most citizens of Kazakhstan have not learned to be prudent about the possibility of violation of their rights. In other words, it is “not a common thing” to divide property even before the marriage for ethical reasons	88.9%	1
2	Low legal culture	Only in recent years, the issue of concluding a marriage contract has entered the focus of Kazakh citizens. Subsequently, scholars began to analyze and interpret this topic more actively	77.8%	2
3	No significant personal property among future spouses of the younger generation	Few young people have significant property of their own, it is often acquired at the expense of their parents or inherited. Basically, parents register property in their own name in order to secure its future loss in case of a divorce	74.1%	3
4	Lack of litigation practice	People are accustomed to American TV shows or movies, where the issue of a prenuptial agreement (contract) is often addressed. It is perceived as a norm and a necessity. Due to the outdated views, people cannot move to a new level and try to apply it in their state	64.8%	4
5	Mistrust	Citizens of Kazakhstan are wary of the need to conclude additional agreements or take any other actions aimed at additionally securing their own rights	64.8%	5

Note: compiled on the basis of the expert survey; \* - % of expert references; the concordance coefficient  $W = 0.85$  ( $p < 0.01$ ) which indicates strong consistency of expert opinions

The study demonstrated (Table 2) that the institution of marriage contracts is relatively new for Kazakhstan and the population has a critical attitude towards it. This is conditioned by the Soviet traditions and the lack of legal knowledge among the population. Positive factors include the most common case formulated by one of the experts (Yerlan, 16 years of experience): “Spouses simply do not want unnecessary problems during divorce which is already a serious psychological trauma”. Another expert (Damir, 18 years of experience) highlighted an important feature of marriage contracts among the population of Kazakhstan: “A marriage contract is not typical of the Kazakh mindset. Spouses had a mutual distrust of each other, they are worried about their own property and housing”. Thus, the very fact of concluding a marriage contract reveals the complex nature of marital

relations and indicates that their marriage is on the brink of divorce.

In relation to the general practice of concluding a marriage contract, we should mention the following facts. In 2020, 128,800 people entered into marriage in Kazakhstan (Khabar 24, 2021) but the number of marriage contracts was insignificant. Before concluding such an agreement, future spouses consult a notary. After the preparation of the draft agreement, the process of signing begins. As for the cost of its registration, there is a fixed fee of 10 official minimum wages, which is approximately 130 USD. Thus, economic restrictions are not the reason for the low activity of Kazakh citizens in concluding marriage contracts.

### 3.3 *The emerging practice of concluding marriage contracts*

To comprehend the results obtained, it is necessary to clarify that the unpopularity of marriage contracts in Kazakhstan is conditioned by the low awareness of the population about their existence and functions, as well as the fact that today not all Kazakhstani understand the concept of such an agreement. Firstly, its conclusion is not obligatory according to the current legislation. Secondly, the majority of young couples who want to get married reject the conclusion of such an agreement on moral grounds. Usually married couples with experience prefer concluding a marriage contract. In particular, Alikhanova concluded that people who had divided property in the past, foreigners, and the wealthy often decide to sign marriage contracts. Undoubtedly, marriage contracts are more popular among the middle class in Kazakhstan. However, most Kazakhstani simply have nothing to divide (Krasilnikova, 2009).

In general, this thesis is confirmed by the study of Serdyuchenko (2012): most people will not conclude a marriage contract if their property consists mainly of consumer goods, given that they seem to have nothing to divide in case of divorce. Thus, this research and studies of our colleagues prove that a prenuptial agreement is a tool for regulating jointly acquired property for people with a high level of income. For example, a prenuptial agreement is of interest to entrepreneurs who want to protect their property in case it will be divided after divorce. Bekkozhiba (n.d.) noted that, in practice, the family of entrepreneurs tries to protect themselves in case of an unwanted collision with law enforcement agencies and competitors, so the property in such cases seemingly belongs to the wife while the person financially responsible for the business is her husband. In this regard, property cannot be inventoried or count towards the debt.

Based on the above-mentioned trends and scientific conclusions, it is not necessary to copy the foreign experience of regulating marriage and family relations. National legal traditions, mindset, and legal culture provide a link between the past, present, and future not only within law and legal culture but also within social culture as a whole (Tyurikov, Bolshunov, Gostev, & Bolshunova, 2021). Legal traditions are facts of legal inheritance; their authority is proved by usefulness, prevalence, mass application, and effectiveness. Therefore, traditions in law generally do not need coercion and form the legal culture of society with less effort.

### 3.4 *The influence of legal culture and traditions on the development of the institution of marriage contracts*

We believe that the integrity of law and the level of legal culture are achieved not only by acts of preserving and using traditions, ensuring their continuity but also by the very existence of what can be called, by analogy with cultural heritage, legal heritage. The latter is a set of connections, relationships, and results of the legal development of past historical eras within a separate legal culture, system, or family. This heritage is embodied in a certain code of legal values, including family values, which forms the basis of any legal system and is a necessary condition for the existence, functioning, and development of legal culture (Muratzhan, Shalabaev, Bagasharov, Bishmanov, & Seitakova, 2021). Thus, the national legal culture of each specific moment contains the legal heritage and creates it. Consequently, the need for a reorientation from "legal progress" to support traditions

is even more noticeable since it becomes possible to ensure a humanistic understanding of modern law and a high level of legal culture in the population of Kazakhstan.

Another important feature helping the population realize the need for a marriage contract is the historical traditions in law. Kazakhstan is a country that is under the constant influence of Christian and Muslim traditions. The difference between the West and the East is manifested in two traditions of law which play a decisive role in forming the legal heritage of various civilizations and cultures. The Western tradition of law is associated with autonomy, separation of law from morality, religion, politics, ideology, focuses on rights and freedoms, clearly distinguishes between the spheres of private and public law, and is supported and developed by the legal elite. The Eastern tradition of law stipulates that other systems of social regulation enter the legal sphere with significant legal obligations, no clear separation between private and public law, the development of law determined by state power, and no separate legal elite (Marysheva & Muratova, 2014).

In recent years, most changes in the legal sphere of Kazakhstan were associated with the Western tradition of law, and the modern legal culture of Kazakhstan is not fully focused on the use of its legal heritage, characterized by legal acculturation, uncritical borrowing of the Western achievements.

Unfortunately, the main role of the Western tradition of law does not ensure the effective influence of law on public life, the consciousness and will of people, and their behavior. The crisis of the Western legal tradition highlights the diversity of the existing legal world with its unique legal cultures.

We believe that the national mindset, culture, economic conditions, and political specifics allow overcoming the idea of legal uniformity, recognizing legal diversity, and considering the dualism of modern law: the defining role of rights in the West, the importance of duties in the East. In this regard, both the specific features of the national legal development of Kazakhstan and its belonging to the Eurasian civilization should be taken into account.

In science, the institution of marriage contracts is traditionally divided into legal families: Anglo-American, continental and Islamic. Like many post-Soviet countries (Azerbaijan, Armenia, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Ukraine, and Uzbekistan), Kazakhstan is oriented toward the continental approach. An exception is the Republic of Belarus, where the Anglo-American approach is borrowed (Articles 13 and 13-1 of the Marriage and Family Code of the Republic of Belarus) (Levushkin, 2011).

The idea of introducing the Western legal experience in Kazakhstan is most often supported by judgments about the belonging of the legal system to Romano-Germanic law (continental). Despite the active borrowing of the achievements of the Romano-Germanic legal family and the common law family, the legal system of Kazakhstan still significantly differs from these systems. An original group of legal systems is preserved (Kazakhstan, Russia, and Belarus), whose content and development testify to the existence of a specific legal family, called the Eurasian legal family by Shulepov (2017).

When evaluating legal development, including in the field of marriage and family relations, it is worth considering the difference in socio-cultural worlds with specific ideas about personal worldviews, the conditions of one's existence, and related forms of family life. At the same time, a similar level of education among spouses, as shown in the following studies (Cremer, Pestieau, & Roeder, 2015; Kapustina, 2021), helps overcome some stereotypes, thereby not perceiving the marriage contract as a document regulating property rights during divorce.

### *3.5 Legal opportunities for improving the institution of marriage contracts*

Along with the low activity of Kazakh citizens in concluding marriage contracts, associated with legal traditions, there are legal debatable issues. In our opinion, their solution will contribute to the development of the institution of the marriage contract in Kazakhstan.

One of such issues is the legal nature of marriage contracts. First of all, it is a question of what principles it refers to: civil law or family law. There is no doubt that such an agreement should meet

the requirements that the Civil Code of the Republic of Kazakhstan put forward for civil agreements. The marriage contract is endowed with certain features that distinguish it from other civil law transactions. Such signs are enshrined in the Code of the Republic of Kazakhstan on Marriage (Matrimony) and Family and relate to its special composition, the moment of conclusion, subject, and content (Alikhanova, 2010).

In this regard, Mikhailova (2021) claimed that the marriage contract was a family law contract since only spouses were its parties. A. Blair-Stanek (2014) believed that civil law in family relations was applied according to the principle of subsidiarity, which primarily concerns the marriage contract, so they should be regarded as a type of civil contract.

According to Levin (2009), the marriage contract is a civil-family agreement characterized by the features of an intersectoral agreement. In her opinion, the subject composition is the sign that allows to include the marriage contract into both civil and family law. Bulaevskii (2017) did not agree with this position and believed that there were many contractual structures with a specific subject composition. Consequently, the separation of the marriage contract from the sphere of civil law is artificial. One reference to the structure of marriage contracts cannot deny their other features that are inherent in civil agreements. It is worth mentioning that in civil law there are many contracts with a special composition, which distinguishes them from civil contracts, so the marriage contract should be attributed to the field of family law.

The possibility of concluding a marriage contract through a representative is still debatable. In this connection, Marysheva and Muratova (2014) argued that marriage contracts could not be concluded either with the participation of a legal representative or by proxy. The possibility of concluding such an agreement by the guardian of an incapacitated husband or wife, whose incapacity was established during their marriage, or by a person whose legal capacity was limited, with the consent of the guardian, as well as an emancipated person before marriage is also disputed by Saliko (2017). However, Davletova (2012) considered it lawful to use legal, as well as contractual representation, if all the conditions of the future contract were determined.

Certain disputes among scholars raise questions regarding the possibility to provide for the non-property rights and obligations of spouses in the marriage contract because the Code of the Republic of Kazakhstan on Marriage (Matrimony) and Family allowed them to regulate only property relations between themselves. Such a norm was included in the document due to the specifics of non-property relations, which in most cases are not subject to legal regulation, so their inclusion into the body of a marriage contract seems redundant. For example, the marriage contract cannot oblige spouses to love and respect each other or not to gamble, etc.

However, the property relations of spouses might depend on the occurrence or non-occurrence of non-property conditions. Therefore, some scholars (Grishin & Myskin, 2009) believe that under certain conditions both property and non-property rights and obligations of spouses can be included in the marriage contract. Tsabieva (2010) mentioned that such rights and obligations could be included in the body of the agreement but only if sanctions for their non-execution were enshrined in this agreement.

When concluding a marriage contract, it is impossible to put one party in the most disadvantageous position, i.e. to ensure maximum protection for only one of the spouses. According to Levin (2009), an agreement that initially puts one of the spouses in a better position is easy to challenge in the court. The notary is also responsible for certifying agreements that put one party at a disadvantage. However, as shown by our research and similar studies in this area, citizens do not have sufficient legal knowledge (Krasilnikova, 2009) and, in practice, one of the parties often tries to put the other in a clearly disadvantageous position by misleading this party and the notary.

Levushkin (2011) claimed that at the current stage of development in the post-Soviet countries the marriage contract was essentially not a contract but rather a will: both documents can only determine the legal regime of property that is inherited by one or another family member after a certain legal fact, i.e. after the death of the testator in case of a will and after divorce in case of a marriage contract. Of course, the legislator allows this contract to regulate the property issues

between spouses but most married couples do not require a clear separation of their property from the common property of the spouses during their married life (Kirillova, Bogdan, Kaymakova, Ozerov, & Zenin, 2016). Usually, such a need arises after divorce. The issues that regulate the sphere of married life (everyday, the upbringing of children, the distribution of the family budget, etc.), the legislation of Kazakhstan does not include in the marriage contract.

On the one hand, we believe that the institution of a prenuptial agreement is a deterrent that favorably affects the duration of marriage. On the other hand, it allows regulating the property relations of spouses with a high-level income and valuable life experience.

#### 4. Conclusion

The marriage contract acts as a special extrajudicial way of settling property relations between spouses or property relations that may arise in the future, a means of protecting the property rights of spouses and exercising property obligations.

It would be a mistake to assume that marriage contracts will allow spouses to avoid litigation but the value of such agreements in the Kazakhstani law lies primarily in expanding their ability to settle property relations at their own discretion in marriage and/or in case of divorce. Although most young couples who want to get married don't want to forecast negative situations, legal culture is being formed. In the future, this institution will not regulate special cases in the life of families with a high-level income and much life experience but will play a stabilizing role in building family relations within a new family.

#### References

- Aginskaya, T. I. (2011). Brachnyi dogovor kak sledstvie transformatsii sotsialnoi struktury rossiiskogo obshchestva [The marriage contract as a consequence of transforming the social structure of the Russian society]. In *Proceedings of the 14<sup>th</sup> International conference "Culture, personality, society in modern world: methodology and empirical research"* (Part 1, pp. 258-263). Yekaterinburg, Russia: UrGU.
- Akhmetova, N. S. (2010). *Obychnoe pravo kazakhov v 18 i pervoi polovine 19 veka* [The Kazakh customary law in the 18<sup>th</sup> century and the first half of the 19<sup>th</sup> century]. Almaty, Kazakhstan: Kazak Universiteti.
- Albikov, I. R. (2010). Osnovnye polozeniya brachnogo dogovora [The main provisions of a marriage contract]. *Semeinoe i zhilishchnoe pravo*, 6, 27-29.
- Alikhanova, G. A. (2010). Pravovoe regulirovanie imushchestvennykh otnoshenii suprugov v Respublike Kazakhstan [The legal regulation of property relations in marriage in the Republic of Kazakhstan]. *Yuridicheskaya nauka i pravookhranitel'naya praktika*, 22(12), 63-70.
- Antokolskaya, M. V. (2016). *Semeinoe pravo* [Family law]: student's textbook. The 4th enlarged and revised edition. Moscow, Russia: Norma: Infra-M, 432 p.
- Badaeva, N. V., & Lashina, M. V. (2015). Dogovornyi rezhim imushchestva suprugov v stranakh EAES (na primere Rossii, Belorussii i Kazakhstana) [The contractual regime of spouses' property in the Eurasian Economic Union (as exemplified by Russia, Belarus and Kazakhstan)]. *Vestnik VGU. Seriya 5: Yurisprudentsiya*, 4(29), 175-180.
- Bekkozhdina, G. (n.d.). Brachnyi dogovor ne sprovotsiruet razvod [The marriage contract cannot cause divorce]. Available: [https://online.zakon.kz/Document/?doc\\_id=30448376&pos=6;-106#pos=6;-106](https://online.zakon.kz/Document/?doc_id=30448376&pos=6;-106#pos=6;-106)
- Blair-Stanek, A. (2014). Defaults and choices in the marriage contract: How to increase autonomy, encourage discussion, and circumvent constitutional constraints. *Touro Law Review*, 24(1), 33-72.
- Boele-Woelki, K., Dethloff, N., & Gephart, W. (Eds.). (2014). *Family law and culture in Europe – Developments, challenges and opportunities*. Intersentia. doi: 10.1017/9781780685274
- Bulaevskii, B. A. (2017). Kontseptsiya sovershenstvovaniya semeinogo zakonodatelstva kak neobkhodimost [The concept of improving family law as a necessity]. *Aktualnye problemy rossiiskogo prava*, 5, 41-45.
- Cremer, H., Pestieau, P., & Roeder, K. (2015). United but (un)equal: Human capital, probability of divorce, and the marriage contract. *Journal of Population Economics*, 28(1), 195-217. doi: 10.1007/s00148-014-0504-1
- Davletova, A. R. (2012). Pravovoi rezhim imushchestva suprugov po zakonodatelstvu Rossii i Frantsii: opyt sravnitel'nogo pravovedeniya [The legal regime of spouses' property according to the Russian and French legislation: comparative legal studies]. *Vlast Zakona*, 2, 123-129.

- Elkina, O. S. (2009). Brachnyi dogovor kak sposob obespecheniya imushchestvennykh prav suprugov [Marriage contract as a means to ensure the property rights of spouses]. *Grazhdanskoe pravo*, 4, 42-46.
- Grishin, P. P., & Myskin, A. V. (2009). K voprosu o regulirovanií lichnykh neimushchestvennykh otnoshenii v brachnom dogovore [The regulation of non-property relation within the marriage contract]. *Yurist*, 10, 41-46.
- Kapustina, D. M. (2021). Philosophical understanding of the concept of success and its modern interpretation by students of a technical university. *Perspektivy Nauki i Obrazovania*, 2(50), 118-129. doi: 10.32744/pse.2021.2.8
- Ketscher, K. (2018). From marriage contract to labor contract: Effects on care duties and care rights. In K. Nousiainen, Å. Gunnarsson, K. Lundström, & J. Niemi-Kiesiläinen (Eds.), *Responsible selves. Women in the nordic legal culture* (pp. 155-173). London, England: Routledge. doi: 10.4324/9781315193656-6
- Khabar 24. (2021). Gde v Kazakhstane chashche vsego razvodyatsya i zhenyatsya [Where there is the largest number of marriages and divorces in Kazakhstan?]. Available: <https://24.kz/ru/news/social/item/464747-gde-v-kazakhstane-chashche-vsego-razvodyatsya-i-zhenyatsya>
- Kirillova, E. A., Bogdan, V. V., Kaymakova, E. V., Ozerov, I. N., & Zenin, S. S. (2016). Inheritance rights of spouses in the actual marriage: A comparative-legal aspect. *Journal of Advanced Research in Law and Economics*, 7(2), 270-277.
- Krasilnikova, T. (2009). Moralno-pravovye aspekty brachnogo dogovora v Rossii [Moral and legal aspects of the marriage contract in Russia]. *Vlast*, 11(55), 55-57.
- Kudinavičiūtė-Michailovienė, I. (2011). Peculiarities of legal regulation of marriage contracts. *Jurisprudence*, 18(1), 143-159.
- Levin, Yu. V. (2009). Aktualnye voprosy brachnogo dogovora v RF [The relevant issues of the marriage contract in the Russian Federation]. *Pravo i politika*, 2, 358-363.
- Levushkin, A. N. (2011). Nekotorye osobennosti zakonnogo rezhima imushchestva suprugov v otdelnykh gosudarstvakh – uchastnikakh Sodruzhestva Nezavisimyykh Gosudarstv [Some features of the legal regime of spouses' property in certain countries – the Commonwealth of Independent States]. *Vestnik BGU. Seriya: Pravo*, 2, 138-145.
- Marysheva, N. I., & Muratova, O. V. (2014). Brachnyi dogovor v mezhdunarodnom chastnom prave: pravovoe regulirovanie v Rossii i ES [The marriage contract in the international private law: legal regulation in Russia and the EU]. *Zhurnal rossiiskogo prava*, 6(210), 101-111.
- Matouschek, N., & Rasul, I. (2008). The economics of the marriage contract: Theories and evidence. *Journal of Law and Economics*, 51, 59-110.
- McLellan, D. (1996). Contract marriage – The way forward or dead end? *Journal of Law and Society*, 23(2), 234-246. doi: 10.2307/1410418
- Meller-Hannich, C., & Haertlein, L. (Eds.). (2015). Familienkonflikte vor gericht – Eine rechtsvergleichende perspektive [Family conflicts in court - A comparative law perspective]. In *Rechtsslage – Rechtskenntnis, rechtsdurchsetzung, Festschrift für Eberhard Schilken zum 70 geburtstag* (pp. 249-259). Munich, Germany: Beck.
- Mikhailova, I. A. (2021). Dogovornoe regulirovanie otnoshenii mezhdu suprugami v zarubezhnom i otechestvennom zakonodatelstve: Genezis, transformatsiya i perspektivy razvitiya [The contractual regulation of marital relations in foreign and Kazakh legislation: Genesis, transformation and development prospects]. *Lex Russica*, 74(5), 38-51.
- Muratzhan, Z., Shalabaev, K. K., Bagasharov, K. S., Bishmanov, K. M., & Seitakova, B. (2021). Optimization of the model of relations between the state and religion in multi-confessional Kazakhstan: Development of the regulatory framework. *Relações Internacionais no Mundo Atual*, 3(32), 1-17.
- Naixin, H. (2019). Revisiting the legal nature and content of a marriage contract in the modern law of the PRC. *Humanities and Social Sciences Reviews*, 7(5), 1003-1006. doi: 10.18510/hssr.2019.75133
- Parliament of the United Kingdom. (2020). Divorce, Dissolution and Separation Act 2020. Available: <https://www.legislation.gov.uk/ukpga/2020/11/contents/enacted>
- Rodriguez, J. B., & Rojas, D. F. C. (2013). The making of contracts in common-law marriages. *Vniversitas*, 126, 65-88.
- Saliko, H. (2017). The legal nature of the marriage contract. *Global Journal of Politics and Law Research*, 5(7), 88-93.
- Scott, E. S., & Scott, R. E. (1998). Marriage as relational contract. *Virginia Law Review*, 84(7), 1225-1254. doi: 10.2307/1073673
- Serdychenko, Ya. V. (2012). Brachnyi dogovor, kak proyavlenie priznakov modernizatsii rossiiskoi semi [Marriage contract as a symbol of modernizing the Russian family]. In *Aktualnye problemy modelirovaniya, proektirovaniya i prognozirovaniya sotsialnykh i politicheskikh protsessov v multikulturalnom prostranstve sovremennogo obshchestva*. Rostov on Don, Russia: Izd-vo SKNTs VSh YuFu, 194 p.

- Shulepov, N. A. (2017). The concept of "Eurasian" law in modern comparative law. *Vestnik MGLU. Obrazovanie i pedagogicheskie nauki*, 5(782), 220-224.
- Slepakova, A. V. (2013). *Pravootnosheniya sobstvennosti suprugov* [The legal property relation of spouses]. Moscow, Russia: Statut, 444 p.
- Trifonova, I. (2020). Development trends of the marriage contract institution in the digital age. In T. Kolmykova, & E. Kharchenko (Eds.), *Digital future economic growth, social adaptation, and technological perspectives. Lecture notes in networks and systems* (Vol. 111, pp. 427-434). Cham, Switzerland: Springer. doi: 10.1007/978-3-030-39797-5\_43
- Tsabiava, S. E. (2010). Lichnye neimushchestvennye otnosheniya v brachnom dogovore [Personal non-property relations in the marriage contract]. *Obshchestvo i pravo*, 1, 127-130.
- Tyurikov, A. G., Bolshunov, A. Y., Gostev, A. N., & Bolshunova, S. A. (2021). The religious factor in intercultural communication and international relations. *European Journal of Science and Theology*, 17(1), 49-61.
- Witte, J. Jr. (2012). *From sacrament to contract, second edition: Marriage, religion, and law in the Western tradition*. Louisville, KY: Westminster John Knox Press.

Buketov University