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Проблемы и перспективы развития правового регулирования медицинского обслуживания в Республике Казахстан

Статья посвящена проблемам правового регулирования медицинского обслуживания в Республике Казахстан в современный период. Автором рассматриваются актуальные вопросы обеспечения качества медицинского обслуживания и перспективы развития законодательства о здравоохранении. В условиях обновления действующего законодательства тема статьи представляется актуальной, а исследование указанных вопросов — своевременным.

References

- 1 Devyatko V.N., Akanov A.A. *People's health and health care in Kazakhstan during the intermediate period: experience, lessons, problems*, Almaty: Zhety Zhargy, 1999, 140 p.
- 2 Strogova V.B., Grigor'yev I.Yu. *Healthcare*, 2011, 10, p. 168–175.
- 3 Mikhailova Yu.V. *Healthcare*, 2002, 9, p. 157–161.
- 4 Vasilyeva Ye.Ye. *Contract on the provision of medical services under the laws of the Russian Federation*, dissertation of legal sciences candidate, Tomsk, 2004, 192 p.
- 5 Zhilinskaya Ye.V., Korotkikh R.V., Loukova N.Kh., Simakov N.V. *Healthcare*, 2009, 7, p. 49–64.
- 6 Address by the President of the Republic of Kazakhstan, Leader of the Nation, N.A.Nazarbayev to the people of Kazakhstan «Strategy Kazakhstan 2050»: New political course of the established state». dd. 14. December 2012, www.kaznmu.kz
- 7 The Code of the Republic of Kazakhstan On People's Health and Healthcare System (has been amended for the 08.01.2013), www.economika.astana.kz
- 8 Zharov V.V., Fadeyev S.P. *Healthcare*, 2010, 9, p. 165–171.

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The legal regulation of the purchase and sale agreement in the sphere of entrepreneurship

The article considers the conditions of ordering business relations, namely the legal conditions of sale and purchase, especially the implementation of constancy between entrepreneurship subjects. Conditions provide useful remedies that satisfy the interests of the involved subjects. Only the terms of payment achieve the impossible condition using administrative legal bodies, to guarantee the discipline, consistency and to organize in economic circles, for обеспечения of mutual interests based on legal regulations.

Key words: term, buying-selling terms, entrepreneurship, momentous rules, consumer, seller, buyer, businessman.

The concept of the subject has its origins in the legal Rome and today is many faces and entrenched notion. It is considered from three perspectives: emergence of legal relations, based on this it is the legal relations, and of course as the form of perception of the legal relations. In the Roman legal system the term includes two bases: firstly, conventio or consensus, and secondly, special contract basis in the form of specific purpose (causa) [1; 120].

In modern theory of law the term «term» (condition) is used in various basis. Namely, according to some authors, the term is, firstly, appearance, change and termination of relationship, namely, legal argument and, secondly, formation of these foundations are legal relationships themselves. According to other authors, the term is despite of legitimate data and contingent liability, it is a document proving securing binding of legal relationship.

In the theory of law seeing restrictions on the content of the theory concepts of «law», in order to solve the question, firstly, we should look through it's legal concept. Therefore, according to the Republic of Kazakhstan's civil laws the term is understanding the emergence of legal obligations. The relevance of conditional orderings of business relations are:

- regarding the importance of the business in today's economic conditions;
- of the lack of opportunities to streamline the public relations without the aforementioned legal form;
- general provisions of the conditions in property turnover of legal orders;
- the emergence of new subject responsible for the implementation of the common rules of entrepreneurial business;
- inadequate treatment of common doctrine of the term (in comparison with the development of special rules);
- the emergence of constant debate between procurers bills of Kazakhstan and legal scholars on the above issues.

The most common type of relationship in business relationships are sales. Sales are the main mode of conveyance or other legal ownership transfers.

Nowadays, the sales are used among businesses, the most common civil turnover, as well as the condition it is praising the relationship between owner and user (retail sale).

Under the terms of the sales first party (seller) undertakes to transfer to the other side (buyer) of the property (goods) for farming or track return, and the buyer agrees to take the property (goods) and pay a certain amount (it's cost) for it [2]. Above mentioned is the basis for determining the importance of sales in the entrepreneurial business.

The purpose of this study is to determine the importance and the place of conditions of sale appearing in the Entrepreneurship.

Society and social — political and economic relations develop new ways of arranging legal economic relations which require concentration of norm publishers on the civilization doctrine, namely on the conditional rights. Considering legal innovations ordering, conditional rights regarding market today has led to a rapid increase in the conditional ordering business relationship, experiencing difficulties with the development of trade. The formation of spreading emergence and development of the current conditional rights of the Republic of Kazakhstan appear to destroy the global market competition.

For writing research work as the research method were used legislator and law subordinate acts, regulations, residential and foreign famous lawyers' monographs, as well as periodicals. Methodological basis are taken from legal research methods, historically legal, officially legal, legal and relatively discussion phenomenon laws.

To discuss this topic in Russia and Kazakhstan, we are interested in the study of Russian scientists on this issue. Namely, firstly, the similarities between the two countries economic basis, and secondly, the similarities in the legal reforms of farming.

Conditions of sale make it possible to form the material basis for the implementation of business. Also, with the help of mentioned terms products manufactured by entrepreneurs are in demand among customers, and appears confidence of future implementations. And all these themselves help to develop production. Mentioned examples are based on nowadays sells term's rising.

Conditions of sale are shown as the main form of participation of civil revolutions. Current changes in the economy emerge from the needs to reduce the mandatory drafting contracts, and now the state of the latter will be solved by the parties after the ordering law. Basic labeling is based on the ordering of possible and necessary disciplines of human behavior within the law as an example.

Formation forms provided determine importance of goals of today's conventional rights: find new ways to aspirations of the national economy and raise competitiveness in the global economy, under monopolization of developing of the production needed to support the freedom of entrepreneurship.

The Civil Code of Kazakhstan explains the sale as a concept embracing all kinds of obligations that rip it out of the property of the estate for a certain amount. The most common types of sales are: retail sale (RK CC 445 p.), terms of delivery (RK CC 458 p.), conditions of signing contracts (RK CC 478 p.), conditions of energy supply (RK CC 482 p.), conditions of sale of the enterprise (RK CC 493 p.). Anyway, it can not be argued that the above conditions are sufficient, because RK CC doesn't take the main role, and it shows that there are other types of law and acts according to the law (securities, currency values, the rights for property and other sells RK CC 406 p. 2 t.- 5 t.) [3; 128].

Naturally sale is consensual (as if parties reached an agreement subject to all the rights, contracts is thought to be concluded), valuable (the commitments while transferring of goods are the purchase price, or vice versa dissatisfaction), mutual (sinallagmaticchesky) (both parties have subjective rights and obligations).

To fulfill the conditions under the law in written and oral form, it can be performed only when approving obligation of saving special forms under the conditions of sale of businesses. Namely, according to RK CC point 494, as a property complex of the enterprise sales executed in writing form, and is mandatory to state registration, and since registration is performed [2]. This form applies to all contracts for real estate. In other cases, the conditions of sells are carried out according to the general rules of negotiation.

In accordance with the conditions of sale the seller and the buyer could be anyone: citizens, entities or government. But, they can be restricted in private cases by law, and also features provided legal entity.

The only condition of sale is its subject. The subject is the property that shall be given by seller to buyer. The subject is determined by term «goods». Nowadays the subject can be any property, it includes allowed to sell movable and immovable property. The contract may be signed in the cases that the goods available to the seller is not labeled differently in legislation or differ from the description, as well as in the case that goods are missing, but these are products which can be manufactured or bought in the future by entrepreneur (buyer). If contract covers names and quantity of goods, the subject of sells is thought to be agreed.

The quantity of goods specified for the buyer shall be indicated in special measures or in the form of money. Also, determining the amount of the goods may be agreed in the contract. It should be noted that the reference amount is required and not indicating the quantity means no signing of the contract.

If terms concerning is quantity of goods specified in the contract are broken, the buyer, unless otherwise specified contract, has the right to refuse to pay, but if paid, is entitled to claim a refund and compensation [4; 37].

In the contract of sale there may be listed species, samples, volumes, colors and other settings. Under such contract, the seller must deliver the goods to the buyer at a specified species (RK CC 420 p.).

Looking through the local and international experience, the seller is strictly liable under the Civil Code of the RK for the quality of the delivered goods and the lack of conformity requirements.

Product quality is a set of standards, technical norms, patterns, standards, other regulations and conditions of the agreement embodied quality of goods. Quality of goods sold must meet the requirements of the contract. In the absence of agreed quality goods in the contract, the seller must deliver the goods fit for use.

Delivery of defective goods significantly harm the interests of the buyer, where there are different types of protection, it is Article 428 of the Civil Code of the RK and RK Law on «Consumer Protection». Thus, in the case of product defects are not indicated, the buyer has accepted a defective product, at its discretion:

- replace the defective product to the appropriate contract;
- at the appropriate time to troubleshoot free;
- reduce the price at the appropriate level;
- refuse to comply with the conditions of the contract and to demand compensation for the amount paid;
- the right to demand reimbursement for troubleshooting;

It is important to guarantee the quality of goods. One must be able to distinguish between legitimate and agreed quality assurance [5].

The stipulated safeguards used in the contract. The guarantee of the legality of the CC RK displayed in the following values: goods must conform to the required quality, at the time of transfer of goods from seller to buyer, unless other terms determine the quality of the contract within the period to be delivered, goods must be appropriate for use.

When the quality assurance specified in the contract, seller shall provide the goods of appropriate quality which is specified in the contract terms.

The importance of the warranty period is defined as follows: First, they extend the time to make it possible to establish quality requirement, Secondly, compared with the other terms provide the possibility to protect the interests of the buyer. Namely: a) it is not necessarily to proof the goods are defected, b) in the absence of evidence of damage to the goods after the transfer from seller to buyer, when not used properly, storage, transfer to third parties or unforeseen circumstances, be entitled to claim a refund or replacement of defective goods, c) the burden of proof rests with the seller.

It is important to be able to differentiate the shelf life of quality from the assurance. The shelf life, in laws, in accordance with state standards and other regulations, is unfit for use beyond the expiration date from the date of manufacture.

The seller is obliged to sell the goods subject to the expiration date.

In accordance with the contract of sale the seller must deliver the goods suitable model treaty, if the contract does not specify the data collection of goods shall be determined subject to working time or usually distinguished according to requirements.

In case of violation of the condition of the commodities specified in the contract and violation of the condition of realization of commodities lead to such consequences as: purchaser at his discretion has the right to demand compensation from the seller to the extent or acquisition of goods due to time. If the seller understaffed goods within a specified time, the buyer has the right to request a replacement of the product understaffed to staffed or refuse to perform the contract or to demand the return of the amount paid.

It is important to note that the indication of inappropriate quantity, type, quality, completeness and packaging, is a violation of the contract of sale by the seller.

Price of the contract of sale is a certain amount of money, paid by the buyer to the seller and also is an integral part of the contract, the buyer's obligation is to pay the purchase price to the seller. According to point 438 of CC RK, in the absence of the rules of contract and appropriate law, in order to determine the price for the goods, when making a contract with similar situations usually goods are sold at the price of a similar product.

The length in the contract of sale acquires the importance in the consent of the parties or as specified by law, and deadlines are important in the loss or damage of goods in transit.

The main purpose of the seller is to transfer the goods to the buyer. Correct execution, as it is said, has a direct relation to the legitimacy of the product. Therefore, the seller must deliver the goods to the buyer in accordance with the following: appropriate quality; agreed quantity; agreed type; appropriate staffed and bundling; related thereto device and documentation; outside third party rights.

In normal cases, the market provides, with the help of the law and regulations, not only the buyer's rights, but also the rights of the seller for his goods. Acceptance of goods by the buyer ordering and paying for it is important, especially in the current situation of preventing the execution of payment.

The duties required by law or a contract for the payments by buyer include the payment, using possible methods (letter of credit stipulated in the contract, bank guarantees, etc.) of payment and to ensure the preservation of any forms. The buyer is obliged to pay a certain price for a product or a specific contract method specified in the contract. If the price is not stipulated, the buyer must fulfill the obligation to pay the price for the goods under similar situations [6; 325].

While doing business there widely used these types of sales as a retail sale, delivery of goods, the signing of the agreement, energy provision and sale of businesses. Correct execution of the above-mentioned legal ordering sales contract leads to proper management of business between entrepreneurs and consumers.

When doing research on the issue came as such conclusions as:

- problem regarding mandatory and non-mandatory standards in the legal agreements regarding entrepreneurial relations;
- equality of legal ordering; namely, signing a contract and along with the general rules and principles of the performance of the contract formed special rules of current contracts to organize objects and duties;
- along with the traditional instruments of the state-planned clerks there have distributed control system and there are many other types of contracts relating to the legal requirements of the ordering;
- along with the needs of the state, demands of firms are intensive standardizing contractual rights used in practice, namely to facilitate the signing of the contract, performs standard contracts relating to other requests;
- inherently an agreement on business differs from family, work and other legal branches of the contract. In this regard, the legal ordering of social relations should not oppose each other and can not connect to civil contracts, but occupying important places in the ordering of social relations must organize social relations within the business rights.

The contract of sale is a legal way to meet the needs of the parties with the help of the second party. Therefore at achieving the above objects used within the business contract is able to provide consistency and organizational discipline. The freedom of parties takes up a general framework definitions of the rights to the contract which is closely associated with an autonomous institution. But the distinctive features of different types of sales contracts determine the features of objective and subjective methods. And, under the terms of the contract there must be clearly indicated the penalties for unfulfilled obligations of the paragraphs.

If you fill the above disadvantages proposed by circumstances occupied in the back of the property, it would have increased the role and meaning of property relations as a legal ordering device.

References

- 1 *Новицкий И.Б.* Основы римского гражданского права: Учебник для вузов. Лекции. — М.: ЗЕРЦАЛО, 2000. — 400 с.
- 2 Қазақстан Республикасының Азаматтық кодексі (Жалпы және Ерекше бөлімдері). — Алматы: Юрист, 2010. — 352 б.
- 3 *Киздарбекова А.С.* Предпринимательское право: Учеб. пособие. — Караганда: Изд-во КарГУ, 2010. — 198 с.
- 4 Гражданское право. Учебник. Т. 2. — 3-е изд., перераб. и доп. / Под ред. Ю.К.Толстого, А.П.Сергеева. — М.: Проспект, 2000. — 736 с.
- 5 Қазақстан Республикасының «Тұтынушылардың құқықтарын қорғау туралы» 2010 жылғы 4 мамырдағы № 274-IV Заңы (2014.13.01. берілген өзгерістермен). — [ЭР]. Қолжетімділік тәртібі: http://online.zakon.kz/Document/?doc_id=30711870
- 6 Гражданский кодекс Республики Казахстан (Особенная часть). Комментарий (постатейный): В двух книгах. Кн. 1 / Отв. ред. М.К.Сулейменов, Ю.Г.Басин. — Алматы: НИИ частного права КазГЮУ, 2006. — 872 с.

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Кәсіпкерлік қызмет саласындағы сатып алу-сату шартының құқықтық реттелуі

Мақалада кәсіпкерлік қатынастарды шарттық реттеудің ерекшеліктері, оның ішінде сатып алу-сату шартының құқықтық қырлары, кәсіпкерлік қатынас субъектілері арасындағы тұрақтылықты қамтамасыз ету ерекшеліктері қарастырылды. Шарт шарттық қатынастардағы субъектілердің мүдделерін қанағаттандыру шегіндегі тиімді құқықтық құралдардың бірін көрсетті. Тек шарт қана қатал әкімшілік-құқықтық құралдардың көмегімен мүмкін емес негіздерге қол жеткізуге, экономикалық айналымда тәртіп пен тұрақтылық, ұйымдастырушылық секілді тәсілдерді қамтамасыз етуді құқықтық реттеудегі тараптардың өзара мүдделерін негіздейді.

Г.Б.Асетова

Правовое регулирование договора купли-продажи в сфере предпринимательской деятельности

В статье рассматриваются условия упорядоченности предпринимательских отношений, а именно юридические условия купли-продажи, особенно внедрение постоянства между субъектами предпринимательства. Отмечено, что условия обеспечивают полезные средства, которые удовлетворяют интересы вовлеченных субъектов. Автор определяет, что административные, правоохранительные органы призваны гарантировать обеспечение взаимных интересов сторон договора, основанных на правовом регулировании, при совершении сделки.

References

- 1 Novitskiy I.B. *Basics of Roman civil law*, textbook for high schools. Lectures, Moscow: ZERTSALO, 2000, 400 p.
- 2 Civil Code Republic of Kazakhstan (common and different chapters), Алматы: Yurist, 2013, 352 p.
- 3 *Kizdarbekova A.S.* *Business Law*, study literature, Karaganda: Publisher KSU, 2010, 198 p.
- 4 Civil law, Tutorial. vol. 2. Third edition, revised and enlarged, edit. Yu.K.Tolstoy, A.P.Sergeyeva, Moscow: Prospect, 2000, 736 p.
- 5 ‘Consumer Protection’ law of Republic of Kazakhstan № 274-IV from 4 May, 2010 (2014.13.01. changed), http://online.zakon.kz/Document/?doc_id=30711870
- 6 The Civil Code of the Republic of Kazakhstan (Special Part). Comment (itemized): In two books, 1, edit. M.K Sulejmenov, Yu.G.Basin, Алматы: Institute of Private Law KazHJU, 2006, 872 p.