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## THE CONCEPTS OF "PROPERTY" AND "THING" IN CIVIL LAW

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The text of this article is relevant, since the main part of civil legal relations is of a property nature, having the object of this or that property. In civil law, there was a mixture of two different legal categories "property" and "thing".

In civil literature, as a rule, the concept of "property" is differentiated in the economic and legal sense. For example, G. F. Shershenevich defines the legal content of the term "property" as a set of property, i.e., subject to monetary valuation, legal relations in which a known person is located; purely personal relations are not included here. Consequently, the maintenance of the property from a legal point of view is expressed, on the one hand, the aggregate of things owned by an individual by right of ownership and other proprietary rights, and assignment of rights to the actions of others, and the totality of things belonging to others, but is temporarily in his possession, and set of obligations lying on it. The sum of the first kind of relationship is the asset of the property, the sum of the second kind of relationship is the liability of the property [1].

In modern civilistic literature, even more meanings of the term "property" are used. A. p. Sergeev as property defines:

- 1) individual things and their totality;
- 2) things, money and securities;
- 3) not only the objects listed above, but also property rights;
- 4) the totality of cash items, money, securities, property rights, and obligations of the subject

[2].

R. A. Mametova defines the concept of property as not only things, but also property relations, mandatory rights of claim, the subject of which are things [3].

The legal capacity of a thing can be determined by its properties of good (utility) by default, that is, without the influence of human forces and will. Legal capacity is determined solely by the status and recognition of property as an object of civil turnover, and, as a result, the subject of public relations.

Mandatory rights of claim are a consequence of actions and events that occurred in the context of mutual rights and obligations of the parties for an already established object of relations.

Thus, the term "property" needs to be defined in relation to a specific situation. We believe that in the context of the research topic, the concept of property should be used only in one sense — as a set of things that are objects of property rights and other property rights. All other possible meanings of the term "property" as a set of subjective rights, obligations, etc. are not included in the subject of this study and will not be used unless specifically mentioned in the text. Therefore, property is a set of things belonging to a particular subject of law. Often this meaning of the term "property" in the text of the Civil code sounds like property. But the latter is a much smaller

concept in its scope, since it consists of things that belong to a specific subject of law only on the property right, while ignoring the ownership of things on other property rights [4].

E. A. Sukhanov points out the different meanings of the concept of "property". In some cases, this concept is used to refer to specific things, in others - as a certain set of rights and obligations of the subject, in third cases, property is understood as a set of things, rights of claim, as well as debts (obligations) [5].

Property, writes M. K. Suleimenov, is a multidimensional concept. It is used, in particular, to refer to:

- a set of things or material values that are owned by a certain person on the right of ownership or other property rights;
- the totality of things and property rights to receive things or other property satisfaction from other persons (asset);
- sets of things, property rights and obligations that characterize the property status of the carrier (asset and liability) - universal succession [6].

It is impossible to agree with the statement of M. K. Suleimenov and E. A. Sukhanov that the set of property obligations and debts is used to designate one of the sides of the content of the concept "property" and can be recognized as property as such.

The concept of property in civil law science is considered exclusively in two guises: "property benefits" and "property rights". The following follows from the interpretation of paragraph 1 of article 115 of the Civil code of the Republic of Kazakhstan.

Property as a property good.

The concept of property for the purposes of civil turnover is used as an individually defined thing that does not have other subject-separate (acting as an independent object of civil turnover) things considered in the aggregate as a unity. The subject of civil transactions can be exclusively individual-specific property that is allocated from other objects of civil and non-civil rights, in the latter case-that is, that is not recognized and is not an object of civil turnover. For example, real estate that is not properly registered in accordance with the law on state registration of rights to real estate and transactions with it is not negotiable property, therefore, can not be the subject of civil transactions. Objects of the material world are of interest to civil science only as negotiable property.

Property as a property right.

It is characterized by the absence of the actual possession of an individually defined thing by the subject, but by the presence of a clearly established amount of rights and interests to acquire (receive) material goods from other persons, as well as the amount of these rights established and recognized by law and society. Property law is an expression of the rights of the rightholder in relation to an individual thing.

The liability referred to above cannot be compared with property benefits and property rights, since in contrast to them it has the opposite characteristics: satisfaction of the rights and interests of another person, ensuring the material benefit of another person, alienation (transfer in compliance with the requirements of the law or contract), granting certain rights and obligations to other persons, etc.

Thus, according to the current civil law, only property benefits and property rights are recognized as property.

B. A. Lapach the contents of the property from a legal point of view expresses, on the one hand, the aggregate of things owned by an individual by right of ownership and other real rights, and in total rights to the actions of others, and on the other hand, a set of things belonging to other persons, but temporarily in his possession, and set of obligations, lying on it [1].

This content is not the content of property, but the content of relations, which according to the theory of state and law act as a triad of elements: subject, object and content.

Speaking about the institutional category "property", we understand the whole set of property benefits that can be the object of disposal of the subject of civil law [7]. There is an opinion according to which, objecting to attempts to proclaim "property" as an object of property

rights in General, V. A. Dozortsev noted that it is necessary "to clearly distinguish property as a generic category and objects of property rights as one of its varieties. The proclamation of property rights contractual rights and obligations, or even a spread on them in some parts of the legal regime of property rights is just wrong and can only cause misunderstanding in practice" [8].

The General characteristic of the object of civil rights can be reflected by the defining object-thing. The concept of "thing" for civil law has always been and will be of fundamental importance, since the "brain" part of the subject of civil law is property relations.

As V. I. Senchishchev points out, one of the main characteristics of the legal status of an object of law is its turnover capacity. At the same time, it contains existing subjective rights and obligations in relation to this phenomenon. From the point of view of law, what is important is not the thing itself as a set of physical and chemical characteristics, but the legal significance attached to this object by virtue of positive law, which is embodied in subjective rights and obligations [9].

So A. P. Sergeev understands by things the values of the material world given by nature and created by man, acting as objects of civil rights [2].

C. V. Scriabin believes that a thing should be considered as an object of the material world, having a legally recognized bodily form, through which it receives its external expression and represents a certain property interest for the owner. Based on this definition, he identified three essential features of a thing:

- 1) a thing is a material substance, something that lies outside the person's personality;
- 2) individual certainty of a thing;
- 3) a property interest is associated with a thing.

Highlighting the above features of a thing as an object of law, S. V. Scriabin notes that the concept of "materialized property" is more relevant than ever and at the same time traditional for continental law, especially its German branch, and, in his opinion, there are currently no significant legal grounds for its revision. Rather, on the contrary, he believes, it should be very seriously engaged in its development and improvement in relation to the modern conditions of the Republic of Kazakhstan [5].

By the way, the interest can be not only property, but also spiritual, and in most respects also property and spiritual at the same time equally, or with the prevalence of one of the interests.

E. A. Sukhanov believes that things are material, physically tangible objects that have the economic form of goods. At the same time, it indicates that things are (should be) the results of labor that have a certain material (economic) value [6].

A more detailed definition is proposed by V. A. Panteleenko: things are spatially limited objects and phenomena of the material world that exist independently of the subject, both in their natural state and adapted by a person to his needs, recognized by objective law as an object of subjective rights, including some types of energy mastered by a person [10].

We can agree with the position of I. Gumarov about the existence of intangible things, since the non-cash or non-documentary form of securities and money is characterized by a similar value for the owner, if the funds were expressed in cash, that is, to be tangible. However, material and non-material things have a very real material value and can be attributed to material goods. The progressive development of technologies, means of production, and living conditions of society has led to the appearance of an unrealized type of property that does not have the properties of object matter. However, the validity of the presence of certain property is always associated with the presence of supporting documents. The person knows (can confirm) that there is a corresponding amount of money in a certain account, that it belongs to him by right, that this right (as a right of claim) exists by law, but at the moment these funds are not in possession. This set of funds is immaterial (non-objective) until a certain time or until a certain action is performed by the copyright holder. In this regard, the attribute of immateriality of a thing is not static, fundamental, or immutable. The immateriality of a thing is expressed in its form and appearance.

Thus, the science of civil law understands things as objects given by nature and created by man in the material world that have useful values and properties.

The concept of "thing" is a very broad category that covers various phenomena, several classifications, differences in the legal regime of objects of property rights, etc. In addition, the typology (classification) of things is essential for:

- 1) the content of the subjective property right, especially for determining the limits of the exercise of the rights of the owner with respect to the owned thing;
- 2) determining the moment in time from which the right of ownership arises or ceases;
- 3) the use of certain methods by the owner to protect their rights.

Thus, the concepts of "property" and "thing" occupy a Central place among all categories of civil law in the prism of all civil law. Understanding the content of these definitions is the main task facing the lawyer. Issues of turnover and legal regulation of these objects of civil rights should be clearly defined by science and practice in order to create a unity of legal understanding and enforcement.

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