

АЗАМАТТЫҚ ЖӘНЕ АЗАМАТТЫҚ ІС ЖҮРГІЗУ ҚҰҚЫҒЫ ГРАЖДАНСКОЕ И ГРАЖДАНСКОЕ ПРОЦЕССУАЛЬНОЕ ПРАВО CIVIL AND CIVIL PROCEDURE LAW

<https://doi.org/10.31489/2025L4/95-103>

UDC 347.611

Received: 30 July 2025 | Accepted: 17 September 2025

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The family as a subject of law and economics: a balance of personal and entrepreneurial interests

The article considers the family as a multifaceted social institution that simultaneously performs the functions of a subject of law and economics. The author focuses on the dual nature of the family: on the one hand, it is a space of personal connections based on trust, love and mutual support, on the other — a carrier of property interests and a participant in economic activity. The article analyzes the legal subjectivity of the family, its limitations, as well as its economic role in the transformation of modern society. Special attention is paid to the problem of the balance between the personal and entrepreneurial dimensions of the family, the identification of contradictions between them and the search for possible mechanisms for their reconciliation. The importance of the family entrepreneurship as a form of realization of the economic function of the family and an important factor in the sustainability of society is emphasized.

Keywords: family, social institution, subject of law, subject of economy, property interests, family entrepreneurship, balance of personal and economic values, sustainable development of society.

Introduction

The family is traditionally recognized as one of the fundamental values and basic social institutions of society and the state. The family ensures biological reproduction, upbringing, and socialization of children, the transmission of cultural and moral norms, and creates a special environment for personal development. The family is actively involved in economic processes and is a participant in entrepreneurial activities, manages property, enters into obligations, and acts as a subject of economic life, forming households and creating family businesses.

This understanding of the functions of the family raises the question of its status: should the family be considered solely as a social phenomenon, or should it be recognized as an independent subject of law and the economy? The expansion of the family's functions sharpens the contradictions between its personal and economic dimensions.

On the one hand, the family represents a space for intimate connections based on trust, love, and mutual support. On the other hand, the family becomes a carrier of property interests, a subject of ownership, and often a participant in business. This dual position defines the particular relevance and need for a comprehensive understanding, the problem of balancing personal and property interests, as well as the significance of entrepreneurial functions within the family: how can one reconcile the family's universal human values of assistance and support with economic interests, property obligations, and business risks.

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The relevance of the topic is due to the necessity of considering the family not only as a social institution but also as a subject of law and the economy, where individual rights, collective values, and entrepreneurial interests intersect. The stability of both the family itself and society as a whole depends on how successfully a balance between these elements can be found.

The purpose of this research is to analyze the current state of the family as a subject of law and the economy, identify the contradictions between personal and entrepreneurial interests, and outline the mechanisms for their potential balance.

The objectives of the study are to examine the family as a social institution and identify the features of its transformation in the modern period; to characterize the legal subjectivity of the family and its limitations; to analyze the economic role of the family, including the phenomenon of family entrepreneurship.

Methods and materials

In the course of the study on the chosen topic, the method of comparative legal analysis was used, along with a logical approach to solving the problem, as well as a statistical method that allowed identifying the causes of the development of family entrepreneurship abroad and in Kazakhstan. An extensive literature review was conducted, examining the family as an element of law and economics in the context of family entrepreneurship. Based on this review, the dynamics and trends in the development of family entrepreneurship in Kazakhstan were identified as significant economic and legal factors in the country's overall development. A comprehensive analysis of the current state of the family involvement in entrepreneurship was carried out, and specific strategies for the development of family entrepreneurship were determined. The subject of the study included regulatory legal acts, in particular the Marriage and Family Code of the Republic of Kazakhstan, scientific literature by domestic and foreign authors, and other informational and analytical materials. The research involved a thorough analysis of academic books, scientific articles, and online resources. An in-depth theoretical analysis of academic sources, as well as national legislation regarding the regulation of family law relations, was conducted.

Discussion

The Family as a Social Institution. Modern society comprises numerous social institutions, among which marriage and the family the most widespread — social formations that determine the life of every individual. It is commonly understood that a social institution is a historically developed system of formal and informal rules, principles, and norms regulating human behavior in a particular area of life and reflecting a system of roles and social statuses [1; 149].

Thus, a social institution can be defined as an established form of organization for joint living activity of people. Family and marriage are primary social institutions that define rules and models of life and thought, reinforcing traditions, customs, and kinship relations between people. The family, as a small social group, has a stable structure, a number of essential functions, and is an independent management system in which all members develop a culture of communication and shared values.

The modern approach to the family's functions assumes that, in general, the average family is characterized by a certain set of life functions, the absence of which would deprive the family of its meaning. No classification can be considered definitive throughout the entire period of the family's existence, as some functions are lost over time, others change, some become additional, and others become more relevant with time and development of the family [2; 92].

A detailed analysis of the family's main functions is provided in the work of A.N. Elizarov:

- 1) Birth and upbringing of children;
- 2) Preservation, development, and transmission of societal values and traditions to subsequent generations;
- 3) Accumulation and realization of socio-educational potential;
- 4) Satisfaction of people's needs for mental comfort, emotional support, a sense of safety, self-worth, emotional warmth, and love;
- 5) Creation of conditions for the development of the personality of all family members;
- 6) Satisfaction of sexual and erotic needs;
- 7) Organization of joint household management, division of labor within the family, mutual assistance;

- 8) Satisfaction of the individual's need for communication with loved ones, establishing strong communicative ties with them;
- 9) Satisfaction of individual needs for parenthood, contact with children, their upbringing, self-realization in children;
- 10) Organization of financial support for the family;
- 11) Social control over the behavior of individual family members;
- 12) Recreational function — protection of the family members' health, organization of their rest, stress relief, etc. [3; 42–49].

The family, remaining the foundation of stability and the cornerstone of social relations, has become more mobile and dynamic. Changes in the family reflect demographic processes, socialization of individuals and relationships, and the continuity of generations. These changes are characterized by the categories of “crisis” or “modernization”. The “modernization” model of family transformation involves changing the forms of family-marital relationships (their diversity), the distribution of social roles within the family, which is an irreversible evolutionary process, also having positive outcomes. Speaking of the “crisis” of the modern family, the emphasis is placed on the loss and insufficient fulfillment of traditional family functions, particularly the reproductive function, the instability of the family and marriage, and the dilution of family values that lead to family distress. The changes, in general, are characterized as deformation of the family lifestyle [4; 359–370].

Within traditional society, the family functioned as a unified whole, where the personal interests of its members were subordinated to the collective goals of the clan or household. However, the modern situation is fundamentally different. Transformation processes, such as urbanization, growth of individualization, and economic mobility, have altered the structure and meaning of the family. Nuclear families, the increase in single-parent households, the rise in marriages without registration, and alternative forms of cohabitation indicate that the family is no longer exclusively “traditional”. Despite the fact that individualization strengthens the focus on personal rights, sometimes contradicting the collective interests of the family as a whole, scholars such as R. Baumeister and M. Liri argue that “being part of a group (relatives, friends, colleagues, community), forming and experiencing attachment is our fundamental need” [5; 497–529].

Thus, in the modern world, the family retains its status as a key social institution, but its content becomes multilayered and contradictory. These changes are reflected not only at the value and cultural level but also in the family's legal and economic roles.

The Family as a Subject of Law. According to the legislation of the Republic of Kazakhstan, under paragraph 29 item 1 of Article 1 of the Marriage and Family Code of the Republic of Kazakhstan, “The family is a circle of people bound by property and personal non-property rights and obligations arising from marriage, kinship, adoption, or another form of accepting children for upbringing, and is intended to promote the strengthening and development of family relations” [6].

Historically, the family was a specific legal institution, subject to detailed regulation, and the main features of the family structure were expressed with exceptional completeness and consistency. The family was considered a public institution. Any changes in family regulation determined changes in the economic life of society and the ideology of the ruling class. Moreover, the concept of family differed from the modern understanding. For example, in Roman law, the term “familia” was used, which in all modern languages approximates the idea of blood relations; however, in its original sense, it encompassed not only blood relations but everything under the authority of the paterfamilias — wife, children, offspring, sons, slaves, cattle, and inanimate objects [7; 119].

It is important to note that the study of the genesis of the family, from its primitive forms to the paired marriage, is still disputed by contemporary scholars, particularly N. Rulan, who challenges the conclusions of F. Engels on the issue of the origin and forms of the family [8; 74].

According to A.I. Zagorovsky's definition, “The family is a group of people connected by marriage or kinship, living together... the family union includes three types of relationships: between spouses, between parents and children, and between guardians and wards” [9; 123].

In the view of V.I. Sinaiskii, “In our law, the concept of family is unclear and indefinite. On the one hand, in our laws, the family is almost mixed with the concept of kin, while on the other hand, the family can mean a very narrow circle of people — parents, spouses, and children, or a broader one, including some collateral relatives and even non-relatives accepted into the family”. He also points out that the Senate operates with the concept of the family as a labor unit — the peasant household [10; 368].

G.F. Shershenevich noted that “a family is the permanent cohabitation of a husband, wife, and children, i.e., it represents a union of persons connected by marriage and those descending from them”. The foundation of the family lies in a physiological aspect — the desire to satisfy sexual needs. Children are a physiological consequence of cohabitation. The physical and moral structure of the family arises independently of law... the legal aspect is necessary and appropriate in the realm of property relations between family members [11; 214].

Notably, O.S. Ioffe’s opinion reflects the general view of scholars from the Soviet period. He stated that the family is “a union of persons recognized and supported by the state and society, based on marriage by love and natural closeness by origin, and existing for the purposes of procreation, communist upbringing, and material mutual assistance”. He identified three functions of the family: natural, ideological, and economic [12; 153].

V.A. Ryasentsev, in discussing the family as a legal institution, positively assessed the absence of a universal definition of the family, because, firstly, “it would lead to more negative consequences than advantages. If such a definition were constructed in an overly general manner, aiming to cover the widest possible range of relationships regulated by family law, it would diverge from the sociological understanding of the family and would turn the legal concept of family into an artificial and contrived construction. The features of a family in the modern period are mostly optional in nature”. Secondly, in his view, “there is no need for a legal definition of the family because the law does not treat the family as an independent legal entity. Granting the family a special legal status, which was typical of earlier stages in the development of human society, is no longer dictated by economic or social needs, and would, in fact, contradict them” [13; 82].

A detailed analysis of the institution of the family was conducted by E.M. Vorozheikin, who studied the role of the family in the social structure, the socio-legal concept of the family, the interaction between family and law, its consolidation in legal norms, and the autonomous nature of the family. In his view, the family represents a triune entity: a social cell of the state, a structure of a special, limited human collective, and a sphere of personal life activity. Each of these aspects requires special regulation [14; 223].

In the legal system, the family occupies a special place. It is recognized and protected by the state as a social value, but it also functions as an element of legal relations. Family law establishes it as a special legal institution that regulates personal and property relations between its members [15; 196].

In classical legal theory, the family is not a legal entity, yet it possesses legal capacity within the scope of family relations. The subjects can be both the family as a whole (e.g., in cases of adoption, child-rearing) and its individual members. The peculiarity of the family’s legal capacity lies in the combination of personal non-property rights (such as the right to marriage, parenthood, upbringing) and property rights (such as joint ownership and maintenance obligations) [16; 110].

The law primarily focuses on personal relationships (marriage, children, spousal duties), while the economic activity of the family, according to researchers, remains insufficiently addressed. For instance, family businesses, joint entrepreneurship by spouses, or the transfer of property complexes by inheritance are areas where the boundaries between family and corporate law are blurred. The lack of comprehensive regulation leads to conflicts — such as property division during divorce, family liability for business debts, and the protection of rights of family members not involved in entrepreneurship [17; 147].

Thus, the legal subjectivity of the family is limited: it is clearly defined in the realm of personal and familial relationships but does not fully reflect economic realities.

The Family as an Economic Subject. Traditionally, the family was considered primarily as a consumer household subject in economics — a unit that forms demand, makes decisions on budget allocation, and invests in the education and health of children. Human capital theory emphasizes that it is the family that creates, preserves, and transmits the main resources: labor, education, culture.

In modern conditions, the family increasingly acts not only as a consumer but also as a producer. This can manifest in forms of family farming, handicrafts, small businesses, and family companies. These forms combine labor, capital, and social connections within the family, creating a special model of economic activity [18; 273].

Family entrepreneurship occupies a special place as an activity where business and family relationships are inextricably intertwined. It has advantages (trust, continuity, long-term orientation) and risks (conflicts of interest, blending personal and business matters). International practice shows that family companies are major players in the economy (in some countries, up to 60–70 % of small and medium-sized businesses are family-owned) [19; 431–436].

A family accumulates not only material resources but also intangible forms of capital: human, social, cultural, and entrepreneurial. All of this makes it a unique economic entity that cannot be reduced merely to the role of a consumer. However, contradictions arise here: where do the boundaries between personal and entrepreneurial life lie. How fair and effective is the regulation of family members' participation in the business? These questions point to the need for a balance.

Results

Family entrepreneurship represents a unique form of economic activity based on the interaction of family members as both owners and participants in the business. Unlike conventional entrepreneurship, business and personal relationships are intertwined in family entrepreneurship, giving it distinct characteristics. Family entrepreneurship should not be reduced solely to family businesses: it is a broader and more dynamic phenomenon, encompassing entrepreneurial activity initiated and supported by the family [20; 539–575].

The characteristics of family entrepreneurship include the involvement of family members in management; concentration of capital within the family, generational continuity and inheritance of the business, and the blending of personal and entrepreneurial roles (e.g., spouses as business partners, parents and children as managers and heirs).

At the same time, family enterprises remain the “backbone of entrepreneurial economies”, and researchers emphasize the growing interest in how families create, pass on, and transform entrepreneurial opportunities across generations [21].

Key functions of family entrepreneurship manifest in the combination of its economic and socio-cultural nature. These include job creation and contributions to the development of small and medium-sized enterprises, which allows family entrepreneurship to be viewed as a factor of regional and national sustainability (Anwar et al., 2023); the transmission of entrepreneurial skills and values from one generation to the next, forming “succession capital”. Successful entrepreneurial families, as noted in the monograph *Family Entrepreneurship: Insights from Leading Experts* (Springer, 2021), are focused not only on preserving the business but also on developing family identity, values, and management mechanisms. Family entrepreneurship is oriented towards the transfer of entrepreneurial skills and values from generation to generation, creating a distinct “succession capital”. According to Springer, successful entrepreneurial families focus not only on continuing the business but also on reinforcing family values and management mechanisms. Maintaining stability during economic crises is based on a high degree of intra-family solidarity. Studies show that family businesses often demonstrate greater resilience in turbulent conditions compared to corporate structures. Moreover, in rural areas, family entrepreneurship plays a stabilizing role by providing employment, preserving traditions, and maintaining social cohesion, thereby strengthening family bonds through joint activity, which confirms the special social role of family entrepreneurship beyond its purely economic function [22; 101–106].

Despite its obvious advantages, family entrepreneurship is fraught with several issues: conflicts of interest between family members, arising from differences in strategies and goals; difficulties in distinguishing personal and professional spheres, leading to heightened tension; intergenerational disputes over business development, especially in inheritance matters. Thiele notes that family constitutions, as a tool of «soft law», help mitigate such conflicts; however, normative regulation remains weak, expressed by the absence of specific legal forms or status for family enterprises. In this context, Randerson emphasizes the need for legal differentiation between family business and family entrepreneurship for more precise regulation. Special attention in contemporary research is also given to the gender aspect: “gender expectations often limit the recognition of women as full-fledged entrepreneurs, relegating them to supportive and “invisible” roles in the family business. Thus, family entrepreneurship performs simultaneously economic, social, and cultural functions, but its potential largely depends on adequate legal recognition and institutional support from the state. In global practice, family businesses account for a significant portion of the economy: in Europe and the US, up to 60–70 % of SMEs are family-based. In Kazakhstan and the CIS countries, family entrepreneurship is developing but lacks a stable legal status. It mainly exists in the form of individual entrepreneurship, farms, and limited liability partnerships (LLCs), where relatives serve as owners and managers” [19; 431–436].

Thus, family entrepreneurship becomes a vivid example of how a family simultaneously fulfills personal and economic functions. On the one hand, this strengthens its role in the economy; on the other, it creates specific conflicts that require legal and social balancing mechanisms.

Conclusion

The modern family emerges as a multilayered phenomenon: simultaneously a social institution, a legal entity, and an economic subject. Its functions are undergoing profound transformations. The traditional focus on collective values and the continuation of lineage is increasingly combined with trends toward individualization and the strengthening of personal rights of family members. These changes are directly reflected in the family's legal and economic status. The modern family is not only a union of close individuals but also an economic unit, where personal relationships intersect with entrepreneurial activity, giving rise to specific conflicts related to property, roles, intergenerational dynamics, and psychology.

Legal mechanisms for maintaining balance include prenuptial agreements, property division agreements, shareholder agreements within family businesses, inheritance law, and the use of mediation. Social and psychological mechanisms include intra-family agreements, a culture of open discussion, and the formation of values based on trust and continuity. Harmony between the personal and the entrepreneurial enhances the resilience of both the family and its business, while imbalance can lead to the breakdown of both.

A unique situation is unfolding in domestic law: the term “family” is actively used in legislation, yet its definition is not explicitly provided. In practice, the legislator allows each branch of law to interpret this concept based on its specific regulatory objectives. However, a rigid legal definition of “family” introduces new challenges: an overly broad interpretation deprives the term of legal clarity, while an unreasonably narrow one restricts the real diversity of family forms. Previous attempts to define the family in normative terms have often gone beyond a purely legal approach, incorporating sociological and ideological elements. The multifaceted nature of the institution complicates the formulation of a unified definition that can simultaneously meet legal requirements and reflect the social essence of the family.

Viewing the family as an independent legal subject could help resolve this issue, and in our view, such an approach is becoming increasingly relevant in today's context.

It is now reasonable to consider the family as a holistic socio-legal institution, moving away from the opposition between sociological and legal approaches. This perspective leads to the idea of recognizing the family as an independent legal subject, which could help resolve a range of legal issues. However, this raises a broader question — what are the boundaries and forms of interaction between the family and the state, and to what extent is it beneficial for society and the state to recognize the family as an independent subject. The importance of the family as a social phenomenon is unquestionable: it provides for the socialization of individuals, the satisfaction of basic human needs, and population reproduction. At the same time, the level and objectives of its interaction with the state require further reflection, especially in light of the current transformation of both family relations and state family policy.

Considering the family as a subject of law and economics reveals its dual nature. On the one hand, it is a space for personal relationships based on trust, love, and mutual support. On the other hand, it becomes a bearer of property interests and a participant in business and economic processes. The phenomenon of family entrepreneurship clearly demonstrates this interweaving of dimensions: the personal and the economic are closely connected, creating both new opportunities and new contradictions. The absence of clear legal regulation, intergenerational conflicts, and blurred roles underscore the need to find effective balancing mechanisms.

Balancing personal and entrepreneurial interests becomes a key condition for the family's stability. This balance is achieved not only through legal mechanisms but also through social and cultural practices based on trust, consensus, and mutual responsibility. Such a balance is attained through both legal tools (prenuptial agreements, corporate contracts, inheritance law) and through social and cultural practices—trust, continuity, and conscious distribution of roles within the family. It is precisely the ability to combine the personal and the entrepreneurial that makes the family a unique legal and economic subject. Harmonizing these spheres is a key condition for the resilience of the family and its contribution to societal development.

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Отбасы құқық пен экономиканың субъектісі ретінде: жеке және кәсіпкерлік мүдделердің тепе-теңдігі

Мақалада отбасы құқық субъектісі мен экономикалық қатынастарға қатысушы ретінде бір уақытта қызмет ететін күрделі және көп қырлы әлеуметтік институт ретінде қарастырылады. Авторлар отбасының екіжақты табиғатын атап көрсетеді: бір жағынан, ол сенімге, сүйіспеншілікке және өзара қолдауға негізделген жеке қатынастар кеңістігі; екінші жағынан, мүлктік мүдделердің иесі және шаруашылық қызметтің қатысушысы ретінде көрінеді. Зерттеуде отбасының құқықтық субъективтілігі, оның шекаралары мен іске асыру ерекшеліктері, сондай-ақ қазіргі қоғамның трансформациясы жағдайындағы экономикалық рөлі талданған. Отбасының жеке және кәсіпкерлік өлшемдері арасындағы тепе-теңдік мәселесіне, олардың арасындағы қайшылықтарды анықтауға және оларды үйлестірудің мүмкін тетіктерін іздеуге ерекше назар аударылады. Отбасылық кәсіпкерліктің отбасының экономикалық қызметін жүзеге асыру нысаны және қоғамның тұрақтылығының маңызды факторы ретіндегі маңыздылығы атап өтіледі.

Кілт сөздер: отбасы, әлеуметтік институт, құқық субъектісі, экономика субъектісі, мүлктік мүдделер, отбасылық кәсіпкерлік, жеке және шаруашылық құндылықтардың тепе-теңдігі, қоғамның тұрақты дамуы.

Ф. Аbugалиева, М. Жаскайрат

Семья как субъект права и экономики: баланс личных и предпринимательских интересов

В статье рассматривается семья как сложный и многогранный социальный институт, выполняющий одновременно функции субъекта права и участника экономических отношений. Автор акцентирует внимание на двойственной природе семьи: она представляет собой пространство личных связей, основанных на доверии, любви и взаимной поддержке, и в то же время — носителя имущественных интересов, включенного в хозяйственную деятельность. Анализируется правовая субъектность семьи, её границы и особенности реализации, а также экономическая роль в условиях трансформации современного общества. Особое внимание уделяется проблеме баланса между личностным и предпринимательским измерением семьи, выявлению противоречий между ними и поиску возможных механизмов их согласования. Подчёркивается значение семейного предпринимательства как формы реализации хозяйственной функции семьи и важного фактора устойчивости общества.

Ключевые слова: семья, социальный институт, субъект права, субъект экономики, имущественные интересы, семейное предпринимательство, баланс личных и хозяйственных ценностей, устойчивое развитие общества.

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