

## Civil Law

### Part I: Civil Law

#### 1. Introduction to civil law

Гражданското право е съвкупност от правни норми, които уреждат **положението** на гражданскоправните субекти и **равнопоставените отношения** между тях.

**Civil law** is a body of rules that establishes the **legal status** of individual persons, governs their **subjective rights** and **legal relationships**, and deals with the **legal disputes** arising between them.

Системата на гражданското право съдържа следните **правни институти**: **Вещно право, Облигационно право, Авторско право, Семейно право, Наследствено право.**

Civil law comprises the following **legal areas**: law of persons (includes **family law**), contract law, law of torts (includes **intellectual property law**), trust law, **law of property, law of succession.**

Основни източници на гражданско право в България са: Конституцията, Закон за собствеността<sup>1</sup>, Закон за задълженията и договорите<sup>2</sup>, Закон за лицата и семейството<sup>3</sup>, Семейен Кодекс<sup>4</sup>, Закон за наследството<sup>5</sup>, и др.

There is no comprehensive codification of civil law (**private law**) in common law jurisdictions of the kind that is achieved for instance in the German Civil Code (*Bürgerliches Gesetzbuch*). There are various sources of civil law: statutes, precedents, customs, equity, etc.

<sup>1</sup>Bulgarian Ownership Act.

<sup>2</sup>Bulgarian Obligations and Contracts Act.

<sup>3</sup>Bulgarian Persons and Family Act.

<sup>4</sup>Bulgarian Family Code

<sup>5</sup>Bulgarian Succession Act.

#### 2. The Law of Property

At common law, the area of property law covers various forms of **ownership** and **possession** of **real property** and **personal property**. Possession is largely a matter of fact, while ownership is an aggregate right described as “the entirety of the **power of use** and the **power of disposal** allowed by law”. The traditional common law distinction between “real property” (**realty**) and “personal property” (**personalty**) roughly corresponds to the Continental discrimination between “**movable property**” and “**immovable property**”. Ownership interests in real property can be divided into **freeholds** and **leaseholds**. Freehold estates are ownership interests with **indefinite duration**, while the duration and conditions of leaseholds are usually specified in the **lease** – a contract for **exclusive possession** in return for the payment of **rent** concluded for a **term of years**. Ownership interests in personal property (**chattels personal**) can be divided into **choses in possession** and **choses in action**. Choses in possession are ownership interests in physical things that can be touched (e.g. goods, furniture, animals, etc.), while choses in action have no tangible existence (e.g. stocks and shares, patent rights, copyrights, etc.).

#### 3. Intellectual Property Law

Intellectual property (IP) law is related to the **legal protection** of the **commercial exploitation** of **legal entitlements** that attach to original creative works and the **prohibition** of their **unauthorised use**. **Infringement** of IP rights can trigger off **civil remedies** but **criminal sanctions** can also be imposed. Three types of **intangible property rights** are most commonly associated with IP law: **copyright**, **patents**, and **trade marks**.

Copyright **arises** automatically with the creation of an **intellectual product** and its **embodiment** in the specific **medium**. Copyright cannot be **registered** but gives the **copyright holder**, usually the author, **exclusive rights** to use and **reproduce** the work. Use of the **copyright symbol** ©, followed by the author's name and date is possible, but not necessary to achieve **copyright protection**.

Patents are **granted** to **patent holders** for **inventions** and **utility models** by the relevant **patent office** for a **statutory period**. The **scope of protection** is determined in the **patent claim** – usually, the **exclusive right (monopoly right)** in an invention includes the right to use the invention, the right to prevent other parties from using it, and the right to dispose of the patent.

Trade marks are original **marks** that are created to represent particular **brand** of goods or services graphically. In order to restrict its unauthorised use a holder of a trade mark should apply for its registration with the relevant patent office.

#### 4. Family Law

Family law covers **domestic relations** such as: **marriage**, **divorce**, **adoption**, **guardianship**, etc. Common law views marriage as a contract between two persons having the necessary capacity which affects the legal status of each of them and imposes rights and obligations of a special kind: “Marriage is a **voluntary union** for life of one man and one woman to the exclusion of all others.” Hence, the **voluntary consent** of the parties is essential and all **forced marriages** and marriages by deceit, i.e. misinterpretation of the essential nature of the transaction, or by mistake, i.e. material mistake, are **void**. A **petition for divorce** can be submitted to the court. The British Family Law Act, 1996 sets out the general principles of divorce: a) The institution of marriage is to be supported; b) The parties to the marriage which may have broken down are encouraged to take steps to save the marriage; and c) A marriage which has **irretrievably broken down** should be brought to an end with minimum distress to the parties and any children, in a manner to promote a good continuing relationship and to stop **unreasonable costs** from the process. Any risk of **domestic violence** to one of the parties should be removed or diminished. Bulgarian Family Code allows divorce at **mutual consent** expressed by both parties. An **adoption order** made by a court extinguishes the rights, duties and obligations of the **natural parents** or guardian and vests them in the **adoptive parents**. Once adopted the child is deemed to be the **legitimate child** of the adopters to the formal exclusion of almost all ties with its former relatives. The relationship of guardianship exists between an infant (**ward**) and a person who has the right of **custody** on him or her and ensures his or her maintenance, education and welfare. These are powers normally exercised by parents but under different circumstances they can be entrusted to someone else.

#### 5. The Law of Succession

At common law, **succession** takes place when A **succeeds** B to particular property. According to this definition, a **gift inter vivos** (a **transfer of property** whereby the **transferor**, or **donor**,

receives no valuable **consideration** from the **transferee**, or **donee**) is considered a succession. Nevertheless, the term is more often used in reference to **succession on death**. Every jurisdiction has its own **rules of succession** which determine how and to whom the **possessions (property)** of the deceased person is to be **distributed**. The procedure usually follows two patterns: a) the **testator** may have recorded his or her last wishes in a **will** or **testament** and may have appointed **personal representatives** to **execute** it; b) if no document is previously drawn up to regulate the **devolution** of the deceased person's property, the jurisdiction's **rules of inheritance** are observed.

## Part II: Civil Procedure

### Civil action in the UK

**action and suit**. A mode of proceeding in court to enforce a private right, to redress or prevent a private wrong, or to punish a public offence. Originally, *action* referred exclusively to proceedings in a court of law, while *suit* referred to proceedings in chancery (equity), as well as prosecutions at law. Today since virtually all jurisdiction have merged the administration of law and equity, the terms *action* and *suit* are interchangeable.

*A Dictionary of Modern Legal Usage*

The Civil Procedure Act, 1997 provides for the making in England and Wales of Civil Procedure Rules (CPR) governing the practice and procedure to be followed in the civil division of the Court of Appeal, the High Court and County Courts.

The standard method of commencing a **claim** under the CPR is when the court issues a **claim form** prepared for or by the **claimant**, at the request of the claimant. This form sets out the essential details of the claim, incorporating a concise **statement** of the nature of the **cause of action** and a statement of the remedy sought. The claimant is also required to provide rather fuller **particulars of claim** which must include a concise statement of the facts upon which he or she relies. A copy of the claim form is served on the **defendant (respondent)** together with a "**response pack**" containing: a) **form of admission**, b) **form of defence**, c) **counterclaim form**, and d) **acknowledgement of service form**, i.e. the defendant is expected either to admit, or to defend, or to claim against, as long as he or she responds within a given period. If the defendant does not respond (or does not apply for **time extension**), the court may **decide in favour of the claimant (default action)**.

### Civil Action in the USA

The US federal court system uses standardised Federal Rules of Civil Procedure (FRCP) which govern civil action at the federal level. However, each state can decide on what rules of civil procedure its state court system should employ. The FRCP regulates the filing of **complaints** by **plaintiffs**, the issuance of **summons** by the court; it covers **pleadings**, **motions**, **defences**, **counterclaims** and **discovery**; it describes the trial and judgment procedures; and finally, provides for **special proceedings**.