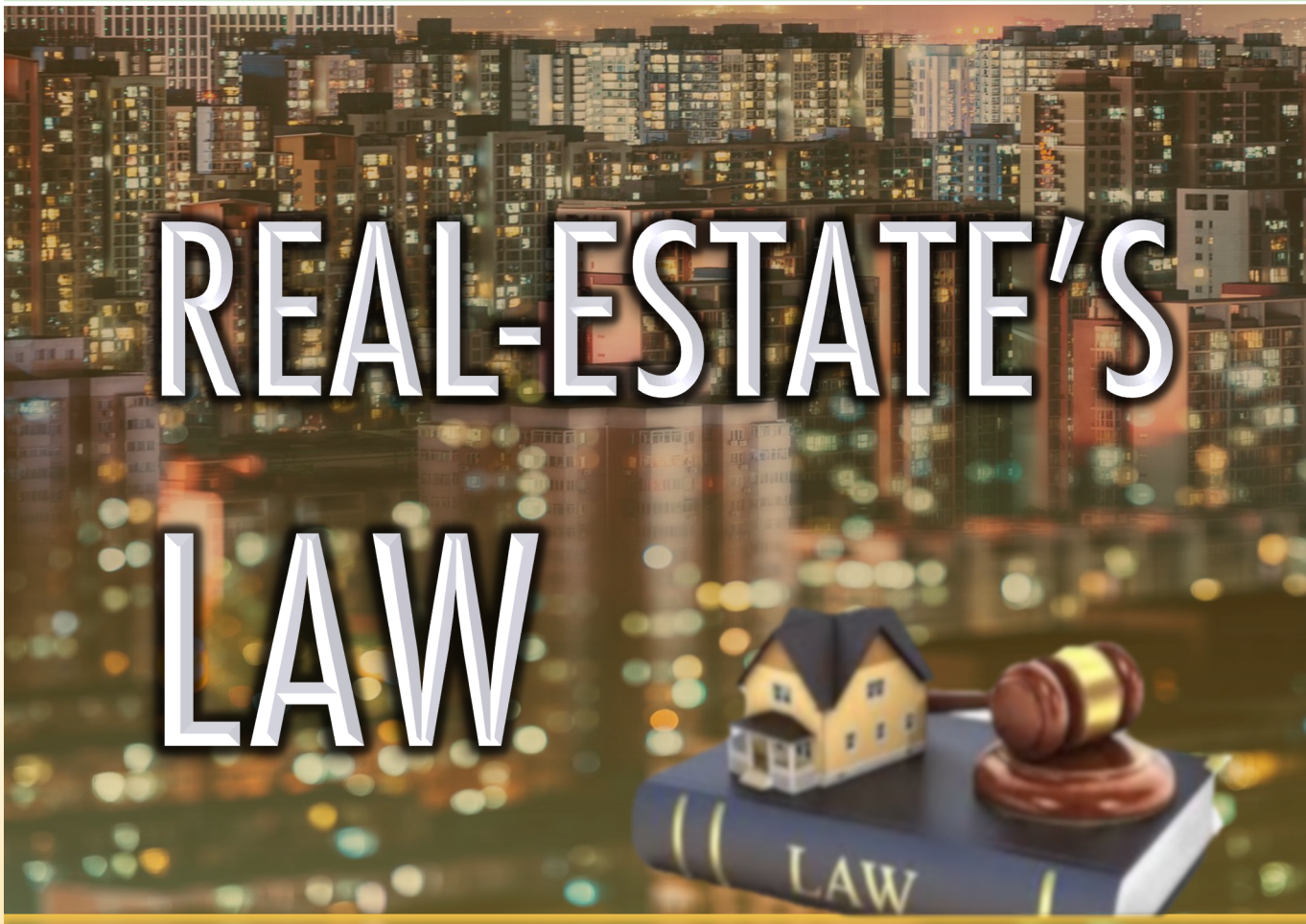
LECTURE NOTES

PROF. DR. TAHSİN YOMRALIOĞLU

REAL-ESTATE'S LAW



V.2021-12

İTÜ GEOMATICS ENGINEERING

İSTANBUL TEKNİK ÜNİVERSİTESİ 1773

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<Kapak arka sayfası>

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ABOUT "GEO209- REAL ESTATE'S LAW"

İTÜ
DERS KATALOG FORMU
(COURSE CATALOGUE FORM)

Dersin Adı	Course Name
GEO 209 Taşınmaz Hukuku	Real Estate's Law

Kodu (Code)	Yarıyılı (Semester)	Kredisi (Local Credits)	AKTS Kredisi (ECTS Credits)	Ders Uygulaması, Saat/Hafta (Course Implementation, Hours/Week)		
				Ders (Theoretical)	Uygulama (Tutorial)	Laboratuar (Laboratory)
GEO 209	3	2	2	2	-	-

Bölüm / Program (Department/Program)	Geomatik Mühendisliği **(Geomatics Engineering)**		
Dersin Türü (Course Type)	Zorunlu ITB **(Compulsory SHS)**	Dersin Dili **(Course Language)**	Türkçe **(Turkish)**
Derse Önkoşul olan dersler (Course Prerequisites)	-		
Dersin önkoşul olduğu dersler (prerequisited courses)	GEO 303 Kadastro Bilgisi		

Dersin mesleki bileşene katkısı, % (Course Category by Content, %)	Temel Bilim (Basic Sciences)	Temel Mühendislik (Engineering Science)	Mühendislik Tasarım (Engineering Design)	İnsan ve Toplum Bilim (General Education)
				100

Dersin Kısa Tanımı (içeriği) **(Course Description)**	Medeni Hukuk Sistemi, Medeni Hukukun Taşınmaz Mal Kavramına Yaklaşımı, Kişi Kavramı ve Kişi Türleri, Mülkiyet Hakkı ve Taşınmaz Mal Mülkiyeti, Zilyetlik, Tapu Sicili ve Sicil Sistemi, Taşınmaz Mal Yükümlülüğü, Taşınmaz Mal Rehini, Kat Mülkiyeti, Miras, Mirasçılık ve Mirasın İntikali konularını içeren bir hukuk dersidir.
	A law course which includes the Civil Law System, Approach to Civil Law of the Real Estate Property Concept, Owner Concept and Types of Persons, Property Rights and Real Estate Property Ownership, Possession, Land Registry and Registry System, Real Estate Property Requirement, Condominium Ownership, Heritage, Inheritance issues.
Dersin Amacı (Course Goal or Aim)	Bu derste, öğrencilere Medeni Hukuk sistemi hakkında temel bilgiler ve medeni hukukun taşınmaz mal kavramına yaklaşımı edindirilecektir. Ayrıca birlikte mülkiyet hakkı ve taşınmaz mal mülkiyeti kavramları açıklanarak, taşınmaz mal yükümlülüğü, rehini, kat mülkiyeti, miras, mirasçılık ve mirasın intikali konularında öğrenci taşınmaz mal mevzuatına hâkim olacak ve tapu sicil sistemi ve bu hususta temel uygulamaları gerçekleştirebilecektir.
	In this course, students will gain basic civil law system and the approach to the concept of civil law on real estate property. In addition, students will dominate the real property legislation and land registration system and can perform basic applications with the rights to property and real estate property of the concepts, property ownership and the inheritance related topics.

Dersin Öğrenme Çıktıları

Bu dersi başarıyla tamamlayan öğrenciler;

	DÖÇ
1	Hukuk kavramı ile sosyal hayatı düzenleyen kurallar arasındaki ilişkiyi açıklar.
2	Eşya hukuku konusunu oluşturan ayni (nesnel) haklar ve şahsi hakları açıklar.
3	Mülkiyet ve zilyetlik kavramları arasındaki ilişkiyi kurar.
4	Mülkiyet hakkının edinme şekilleri, kullanımı ve kısıtlama kurallarına hakim olur.
5	Tapu kayıtları ve tapu sicili ilkelerini açıklar. Yapılan işlemleri yorumlar, idari ya da teknik mevzuata uygunluğu anlamında değerlendirir.
6	Kat mülkiyeti mevzuatını açıklar. Kat mülkiyeti kurulmasını planlar ve tescilini uygular.
7	Miras hukukuna ilişkin mevzuatı anlamıştır. Miras paylarının hesabını, intikal ve iktisap işlemlerini yapar.

(Course Learning Outcomes)

Students who completes this course successfully;

	CLO (Course Learning Outcomes)
1	Describes the law concept and relationship between the rules governing social life.
2	Explain the personal rights for goods forming the subject of the objective rights laws.
3	Establishes the relationship between the concepts of ownership and possession.
4	Dominates the manner of acquisition of property rights, and by the use of rules and restrictions.
5	Explain the land registry and land registry principles. Interpret the transactions and evaluate in terms of compliance with administrative or technical regulations.
6	Explain the condominium legislation. Establish and implement the registration of condominium plans.
7	Understand the legislation relating to the law of inheritance. Makes the transition acquisition and heritage sharing accounts.

Ders Kitabı (Textbook)	• Karagöz, M., "Haritacılıkta Taşınmaz Hukuku", TMMOB Harita ve Kadastro Mühendisleri Odası, Ankara, 2010.
Diğer Kaynaklar (Other References)	• Türk Medeni Kanunu (K.No : 4721, RG: 01.12.2001, 24600). • Tapu Sicil Tüzüğü (RG:17.08.2013,28738). • Oğuzman, K., Barlas, N., "Medeni Hukuk: Giriş-Kaynaklar- Temel Kavramlar",Vedat Kitapçılık, İstanbul, 2013 • Oğuzman, K., Seliçi, Ö.,Özdemir, S.O., "Eşya Hukuku" Filiz Kitabevi, İstanbul 2013 • Hukuk Bilgisi, Savaş Taşkent, İ.T.Ü. yayınları, sayı:1275,1984 • Medeni Kanun, Turgut Akıntürk, S yayınları, 1986. • Eşya Hukuku, Nuşin Ayiter, Savaş Yayınları, 1987. • Miras Hukuku, Nuşin Ayiter ve Ahmet Kılıçoğlu, Savaş Y. 1991. • Açıklamalı Kat Mülkiyeti Kanunu, Apdülkadir Arpacı, İ.Ü. Hukuk Fakültesi, 1987.

(Other Activities)			
Başarı Değerlendirme Sistemi **(Grading Schema)**	**Faaliyetler (Activities)**	**Adedi (Quantity)**	**Değerlendirmedeki Katkısı, % (Effects on Grading, %)**
	Yıl İçi Sınavları (Midterm Exams)	**2**	**50% (Each 25 %)***
	Final Sınavı (Final Exam)	**1**	**50%**

DERS PLANI

Hafta	Konular	İlgili DÖÇ
1	Ders ve içeriğinin tanıtımı, taşınmaz mal kavramı, hukukun gerekliliği.	1
2	Türk Medeni Kanunu'na göre kişilik, kişi türleri, gerçek kişiler, tüzel kişiler	2
3	Nesnel haklar, nesnel hakların sınıflandırılması, mülkiyet hakkı, mülkiyetten başka nesnel haklar	2,3,4
4	Mülkiyet hakkının esasları	3,4
5	Mülkiyet hakkının kısıtlanması	4
6	Mülkiyetten başka nesnel haklar, irtifak hakları, taşınmaz yükümlülüğü	2
7	Taşınmaz rehini, ipotek, zilyetlik esasları	2,3
8	Yıl içi sınavı 1	
9	Türk tapu sicil sistemi	5
10	Tapu sicilinde yapılan işlemler	5
11	Tapu sicilinde yapılan işlemlere ait örneklerin incelenmesi	5
12	Yıl içi sınavı 2	
13	Kat mülkiyeti	6
14	Miras ve mirasın intikali	7

COURSE PLAN

Weeks	Topics	Related Course Outcomes
1	The introduction of the course and content of the concept of real estate property, the needs of the law.	1
2	According to the Turkish Civil Code, people, personal rights, individual person, legal person	2
3	Objective rights, classification of objects, rights, property rights, other objective rights other than property	2,3,4
4	Principles of real estate property rights	3,4
5	The restriction of real estate property rights	4
6	Other objective rights other than real estate property rights, easements, liability	2
7	Real estate pledge, mortgage, tenure principles	2,3
8	Midterm Exam 1	
9	Turkish land registry system	5
10	Transactions in the land registry	5
11	Examination of samples of transactions in the land registry system	5
12	Midterm Exam 2	
13	Condominium	6
14	Transition of legacy and heritage	7

1 INTRODUCTION

1.1 What if…?

What if people could do what they wanted, WHEN, WHERE, and HOW? What would society look like? Presumably, society would appear chaotic and disorganized. Why? People are different from one another and, if given the opportunity to do whatever they wanted, they would each act only according to their own desires, and not consider anyone else's desires or opinions. A society founded on such unregulated behaviour of its citizens would look like complete disorganization, or anarchy. Anarchy is a state of disorder in a society resulting from a lack of government authority. No person or property is completely safe in a system of anarchy.

On the other hand, laws exist to maintain peace and order in society by establishing a structure of acceptable behaviour. Through this structure, laws are designed to protect people, property, and the rights of people. So, without law, order and peace in society cannot be possible.

Rules vs Laws

It is important to understand, that not all guidelines governing human behaviour are laws. For example, rules are not laws. There may be rules in a football game, and rules in a school; but these are not laws. Laws apply to everyone in a society, whereas rules in football or school apply only to those people participating in the football game or are students at the school. Another key difference between rules and laws is that laws are enforced by the courts, but rules are not. Essentially, all laws are rules; but not all rules are laws.

Law and Morality

Law and morality are connected. Morality is a system of values that outlines concepts of right and wrong, as well as good and bad behaviours. Every society designs and enforces its own laws. These laws tend to reflect the standards of morality that the society's citizens value. So, in this way it could be said that laws, for the most part, reflect the moral standards of the society at that time.

Society-Law Relationship

Since man and society are two realities that complement each other, all human-related arrangements must take into account the nature of man and society. Because in every period of history, people have lived in society. They will probably continue to live in society in the future.

Society: it is defined as a whole with a certain physical location in which many actions and relations of people at different levels are connected, a common culture is shared, that maintains its existence by regulating human behaviours, and where very different power relations occur. In addition, society; It is also expressed as a community of people who have a common organization and interests and continue their lives depending on the same laws.

Having system and system integrity is one of the basic conditions of existence and survival. Because it is very difficult for an entity/structure without a system to maintain its vitality. When it comes to society, the concept of "system" is often expressed as society or legal order. The legal order, on the other hand, requires that human behaviours be disciplined and bound to a measure. For this, some social control tools are needed. In this sense, customs, morals and legal rules are effective tools. However, due to the inadequacy of customary rules due to social development and change, and the fact that moral rules have a more subjective character - especially today- legal rules have become more dominant social control tools in terms of maintaining social order.

1.2 What is Law?

So, what then is law...exactly? Law may be defined in several different ways. Law is the regulation of life in society based on principles of reason and fairness. Laws don't stay the same forever. Instead, the law changes continually. Law evolves to reflect both the increase in population, and the increase in the complexity of modern societies.

Law has been defined as "*a body of rules of action or conduct prescribed by a controlling authority and having binding legal force. That which must be obeyed and followed by citizens subject to sanctions or legal consequence is a law.*"

According to "A Dictionary of Basic Legal Terms", law is "*the regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society.*" This definition of the law, while true, is too abstract and long for our needs. We should therefore think of the law in more basic terms as rules that govern and guide actions and relations among and between persons, organizations, and governments. This is the short and easily understandable definition that we will use.

The law is legislation created and enforced through social or governmental institutions to regulate behaviour, with its precise definition a matter of long-standing debate.

The law shapes politics, economics, history, and society in various ways and serves as a mediator of relations between people.

Law's scope can be divided into two domains. ***Public law*** concerns government and society, including constitutional law, administrative law, and criminal law. ***Private law*** deals with legal disputes between individuals and/or organisations in areas such as contracts, property, torts/delicts and commercial law. This distinction is stronger in civil law countries, particularly those with a separate system of administrative courts; by contrast, the public-private law divide is less pronounced in common law jurisdictions.

1.3 Origins of Law

The idea of written laws dates back to ancient Mesopotamian culture, which flourished long before the civilizations of the Greeks or Romans before the Bible was written. In fact, the earliest known evidence of a legal code are tablets from the ancient city of Ebla in Syria. These tablets date back to 2400 BC. However, most scholars accept the Code of Hammurabi as the source of written laws and a formal legal system. Consisting of 282 laws written on a steep stone pillar, the Code of Hammurabi includes many of the basic legal concepts known in today's legal system. In fact, Hammurabi's law-making logic is not far from the logic of our current legal system. In his preface, Hammurabi states these laws as follows: "*Justice administration is provided in the country with the laws. The wicked are destroyed, so that the strong cannot harm the weak.*"

1.4 The Purposes of Law

In a society, the law informs everyday life in a wide variety of ways and is reflected in numerous branches of law. For example, contract law regulates agreements to exchange goods, services, or anything else of value, so it includes everything from buying a bus ticket to trading options on a derivatives market.

Property law (*Eşya hukuku*) defines people's rights and duties toward tangible property, including real estate (i.e., *real property*, such as land or buildings,) and their other possessions (i.e., *personal property*, such as clothes, books, vehicles, and so forth), and intangible property, such as bank accounts and shares of stock.

Tort law (*Haksız fiil hukuku)* provides for compensation when someone or their property is harmed, whether in an automobile accident or by defamation of character. Those are fields of civil law, which deals with disputes between individuals. Offenses against state, public or local community itself are the subject of criminal law, which provides for the government to punish the offender.

A tortious act is an action that causes damage to the property of another person or the presence of a person, contrary to the rules of law. In order for a tortious act to be mentioned, the act that caused the damage must first be against the law. The unlawful act must cause material or moral damage. The person causing the damage must be defective due to his act and there must be a causal link between the damage and the act that causes the damage, which can also be expressed as a cause-effect relationship.

The law serves many purposes. Four principal ones are establishing standards, maintaining order, resolving disputes, and protecting liberties and rights.

Establishing Standards

The law is a guidepost for minimally acceptable behaviour in society. Some activities, for instance, are crimes because society (through a legislative body) has determined that it will not tolerate certain behaviours that injure or damage persons or their property. For example, under a typical state law, it is a crime to cause physical injury to another person without justification—doing so generally constitutes the crime of assault.

Maintaining Order

This is an offshoot of establishing standards. Some semblance of order is necessary in a civil society and is therefore reflected in law. The law—*when enforced*—provides order consistent with society's guidelines. Wildlife management laws, for example, were first passed in an effort to conserve game that had nearly been hunted into extinction during the nineteenth century. Such laws reflect the value society places on protecting wildlife for future generations to enjoy.

Resolving Disputes

Disputes are unavoidable in a society comprised of persons with different needs, wants, values, and views. The law provides a formal means for resolving disputes—the court system.

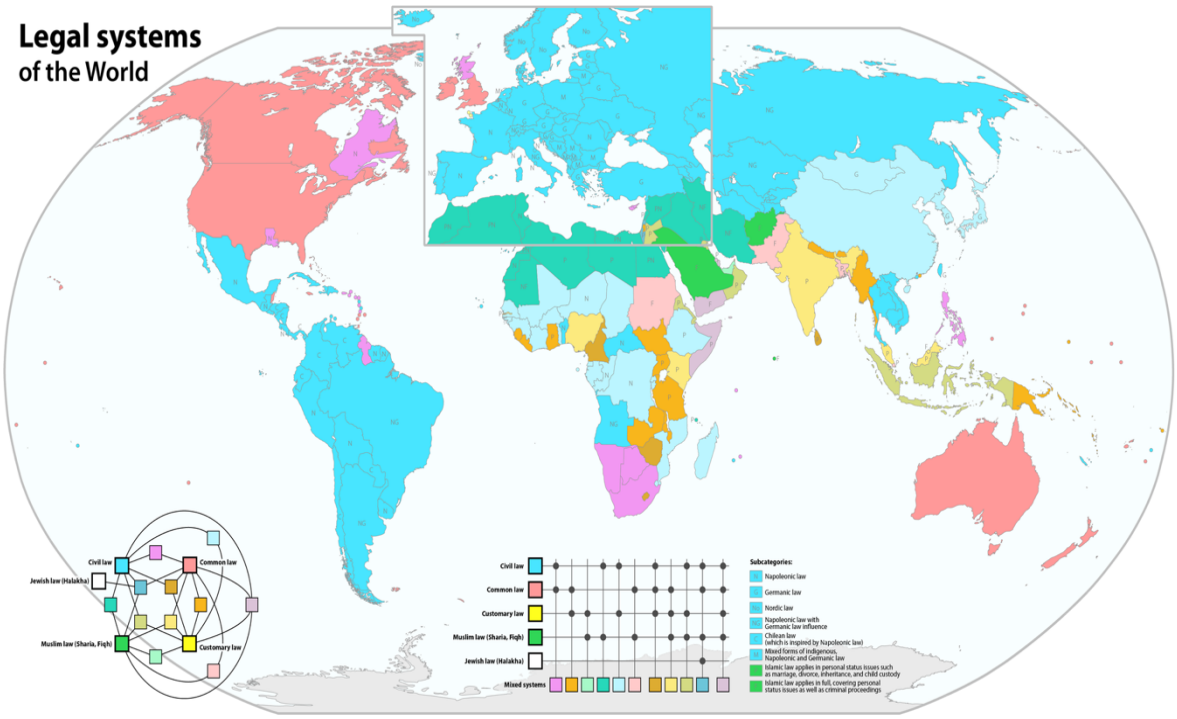
Protecting Liberties and Rights

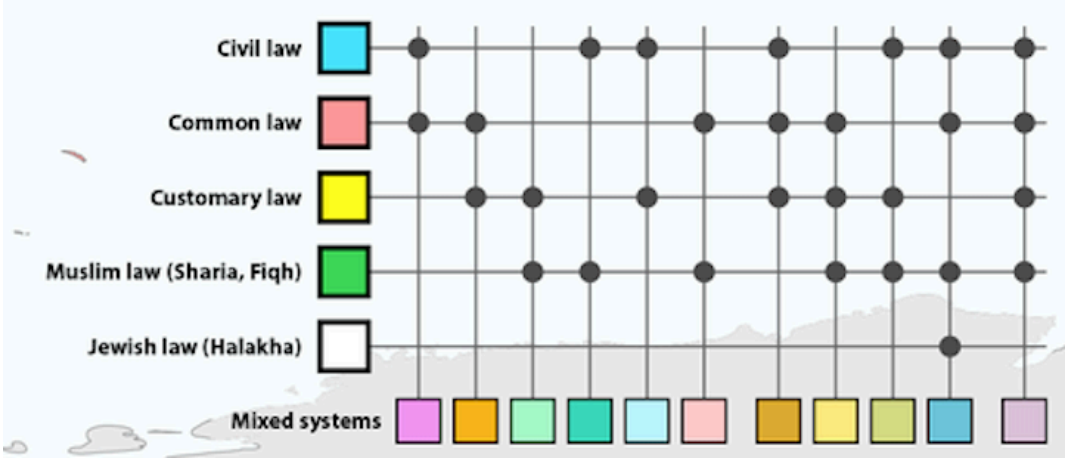
One function of the law is to protect these various liberties and rights from violations or unreasonable intrusions by persons, organizations, or government. For example, the Constitution prohibits the government from making a law that prohibits the freedom of speech. Someone who believes that his free speech rights have been prohibited by the government may pursue a remedy by bringing a case in the courts.

1.5 Legal systems

It is accepted that there are four main legal systems in the world. These are *the Continental European* ***Civil law system*** *(Roman-Germanic), the Anglo-Saxon legal system (****Common Law****), the* ***Islamic legal system*** *and the* ***Socialist legal system***.

Legal systems vary between countries, with their differences analysed in comparative law. In civil law jurisdictions, a legislature or other central body codifies and consolidates the law. In common law systems, judges make binding case law through precedent, although on occasion this may be overturned by a higher court or the legislature. Historically, religious law influenced secular matters, and is still used in some religious communities.





1.5.1 Civil law

It is based on Roman law. It is applied in the European continent outside the British Isles (England), which is called Continental Europe. The British call this legal system the "**Civil Law (*Medeni Hukuk*)"** system. Civil law is the legal system used in most countries around the world today. In civil law the sources recognised as authoritative are, primarily, legislation—especially codifications in constitutions or statutes passed by government—and custom.

Codifications date back millennia, with one early example being the Babylonian *Codex Hammurabi*. Modern civil law systems essentially derive from legal codes issued by Byzantine Emperor Justinian I in the 6th century, which were rediscovered by 11th century Italy. Roman law in the days of the Roman Republic and Empire was heavily procedural and lacked a professional legal class. Civil law codifications based closely on Roman law, alongside some influences from religious laws such as canon law, continued to spread throughout Europe until the Enlightenment Era. Then, in the 19th century, both France, and Germany, modernised their legal codes. Both these codes influenced heavily not only the law systems of the countries in continental Europe, but also the Japanese and Korean legal traditions. Today, countries that have civil law systems range from Russia and Turkey to most of Central and Latin America.

The unwritten rules of law were put into written form over time. Over time, legislatures, as the authorities that make the law, have put rules in writing. The laws made by the legislatures constitute the main source of law. This legal system adopted the distinction between private law and public law. Disputes arising from private law and disputes arising from public law are handled in separate courts, and the decisions of these courts are appealed to separate higher judicial authorities. The leading examples of this legal system, including Turkey, are France and Germany.

1.5.2 The Common law

While Roman law began to be accepted as basic law in Europe, law developed differently in England. Although the British adopted some concepts of Roman law, they did not base their laws on Roman law. As a result, a different legal system called "***common law (Anglosakson)"*** appeared.

Common law originated from England and has been inherited by almost every country once tied to the British Empire. The concept of a "common law" developed during the reign of Henry II during the late 12th century, when Henry appointed judges that had authority to create an institutionalised and unified system of law "common" to the country. The next major step in the evolution of the common law came when King John was forced by his barons to sign a document limiting his

authority to pass laws. This "great charter" or *Magna Carta* of 1215 also required that the King's entourage of judges hold their courts and judgments at "a certain place" rather than dispensing autocratic justice in unpredictable places about the country. A concentrated and elite group of judges acquired a dominant role in law-making under this system, and compared to its European counterparts the English judiciary became highly centralised.

This legal system, which is also called Anglo-American Law or Common Law, was built on the decisions (case law) made by traveller judges. The source of the decisions made by the judges is customary law. In addition, equity has been accepted as a source of law. The decisions made by the judges in concrete cases are shown as case law and bind the subsequent courts that are in a position to decide in similar cases. Over time, with the development of legislation, the laws made by the parliament emerged as a source of law.

Anglo-American law accepts customary rules as the main source. Customary law has not been written down. What is customary law is revealed in court decisions and it is imperative to learn about previous court decisions. ***In this legal system, there is no distinction between private law and public law. Disputes between individuals and between individuals and the state are resolved by the same jurisdictions.*** An appeal may be lodged against the decisions of these tribunals in the same high court. This legal system is practiced in English-speaking countries such as Australia, Canada, New Zealand, and in India, a former British colony, apart from England and America.

1.5.3 Religious law

Religious law is explicitly based on religious precepts. Examples include the Jewish Halakha and Islamic Sharia—both of which translate as the "path to follow"—while Christian canon law also survives in some church communities. Often the implication of religion for law is inalterability, because the word of God cannot be amended or legislated against by judges or governments. However, a thorough and detailed legal system generally requires human elaboration. For instance, the Quran has some law, and it acts as a source of further law through interpretation, Qiyas (reasoning by analogy), Ijma (consensus) and precedent. This is mainly contained in a body of law and jurisprudence known as Sharia and Fqih respectively. Another example is the Torah or Old Testament of Moses. This contains the basic code of Jewish law, which some Israeli communities choose to use. Canon law is only in use by members of the Catholic Church, the Eastern Orthodox Church and the Anglican Communion.

Islamic law

Islamic law is also called ***Sharia*** law. It takes its source from the Qur'an. Apart from the provisions of the Qur'an, *sunnah*, *ijma* and *qiyas* are among the sources of Islamic Law. The words (*hadith*) and practices of Hz. Muhammad are called *sunnah*. *Ijma* are the rules agreed upon by Islamic scholars based on the Qur'an and Sunnah after the death of Hz. Muhammad. Qiyas is ijtihad and shows how the provisions of the above-mentioned sources will be applied in concrete cases. Traditions that do not contradict these provisions may also be implemented in countries that adopt Islamic law.

Until the 18th century, Sharia law was practiced in an uncodified form in the Muslim world; The ***Mecelle*** code of the Ottoman Empire in the 19th century was the first attempt to codify elements of Sharia law. In the Ottoman Empire, mainly Islamic law was effective, but customary law also had an important place. In the Qur'an and sunnah (hadith), it is seen that private law relations take more place than public law relations. It can be said that the gaps in the field of public law, such as those in administrative and tax law, are mostly filled with resources such as customs and *maslahat* (public interest). Hence, they are called auxiliary sources of Islamic law.

Today, it is seen that Islamic law is applied in some countries such as Syria, Iran, Egypt, Tunisia, Pakistan, and Yemen. However, it cannot be said that Islamic law is applied absolutely in these countries. In countries where Islamic law is effective, it is seen that social rules also affect legal rules.

Canon law

Canon law (from Greek kanoon, a 'straight measuring rod, ruler') is a set of ordinances and regulations made by ecclesiastical authority (Church leadership), for the government of a Christian organisation or church and its members. It is the internal ecclesiastical law governing the Catholic Church (both the Latin Church and the Eastern Catholic Churches), the Eastern Orthodox and Oriental Orthodox churches, and the individual national churches within the Anglican Communion. The way that such church law is legislated, interpreted and at times adjudicated varies widely among these three bodies of churches. In all three traditions, a canon was originally a rule adopted by a church council; these canons formed the foundation of canon law.

1.5.4 Socialist law

According to socialism, law is based on economic conditions and the economic order contained in Marxist-Leninist doctrine. It aims to move to a new social order by changing the society. This system gives its originality to a classless society, social justice, fair distribution of resources, solidarity, struggle against individualism, defending social interests rather than personal interests. In Marxist theory, socialism is a transitional period. In this period, the dictatorship of the proletariat (worker) takes place by following the mediation of the state over the whole society. After the Bolshevik (October) Revolution that took place in Russia in 1917, it started to be applied first in the Soviet Union and then in the countries that were included or not in the Eastern Bloc (Warsaw Pact). In this legal system, the property rights of individuals are generally not recognized. As a result of this, public law rather than private law developed in this system. This is the result of prioritizing the public interest rather than the individual interest. In the socialist system, law is a temporary institution, a product of class society. The principle is that when the communist stage is passed, there will be no need for law.

After the collapse of the Eastern Bloc, this legal system became inapplicable in other Eastern Bloc countries, especially in Russia. Today, it is seen that this legal system is applied in different ways in some countries with socialist governments such as China, North Korea and Cuba.

1.6 Sources of law

The kind of sources can be divided into two groups which are basic (premier) sources and auxiliary (secondary) sources of the law.

The basic (premier) sources of law consist of two different sub-sources: written and unwritten sources of law.

The auxiliary (secondary) sources of law consist of two sub-sources as well: doctrine and judicial decisions “case law”

Customs are the forms of behaviours that are adopted by the society as a rule of law by being constantly applied.

Doctrine is the views and opinions of scientists working in the field of law. The doctrine is not binding.

Judicial/Court Decision: Where no statutory rule fits a civil law case before him, a Turkish judge is authorized to decide according to the decisions of superior courts. In cases like each other, decisions of the same content given by the courts can be applied.

Jurisprudence (İçtihatlar): The result arising from the opinions of the judge or the lawyer on the issues where the rule to be applied in the law or customary law is not clearly and unhesitatingly.

SOURCES OF LAW			
Primary sources of law **Birincil (Asli) kaynaklar**		**Auxiliary sources of law** **İkincil (Yardımcı) kaynaklar**	
Written sources of law • *Constitution (Anayasa)* • *Law/Code/Statute (Kanun)* • *Statutory decrees (KHK)* • *International treaties (Uluslararası Antlaşmalar)* • *Regulations (Tüzükler)* • *By-Laws (Yönetmelikler)*	**Unwritten sources of law** • *Customary law (Örf ve adetler)*	**Doctrine** (Bilimsel görüşler)	**Judicial Decisions** (Mahkeme kararları)

1.7 Hierarchy of norms

Hierarchy of norms is a basic principle of a law system, and it is also an important element of the rule of law. The hierarchy of norms is that the rule below the hierarchical order of legal rules is not contrary to the rule above it.

The structure of the principal hierarchy of norms looks like a pyramid structure and on the top of the pyramid there is the constitution and its rules. They are directly followed at the second level of the pyramid by statutes/codes. Thirdly we see statutory decrees. Followed by the fourth degree which are the international treaties. According to the Constitution, International treaties are valuated as domestic rules or rather as like domestic statutes/codes. On the fifth level, there are regulations in the principle of hierarchy of norms. Regulations are important for statutes/codes.

With the new system that started to be implemented on 9 July 2018, Turkey switched to the Presidential government system. The hierarchy of norms in Turkey has undergone some changes with the transition to the new system. With the new regulation, Presidential decrees replaced the Statutory Decrees (*KHK- Kanun Hükmünde Kararname*) and the statute was abolished.

The hierarchy of norms determines the degree and strength of legal norms and means the multiplicity of norms existing in a legal order. If the legal order is compared to a pyramid, this pyramid expresses the existence of more than one norm consisting of constitution, law, statute, regulation and anonymous regulatory acts.

These norms take place at different levels, there is a subordinate and superlative relationship between the norms, and each norm takes its validity from a higher legal norm. Constitutions are considered as the basic legal texts of countries, and based on this, legal texts are issued under the names of laws, decree laws, by-laws, regulations and similar names.

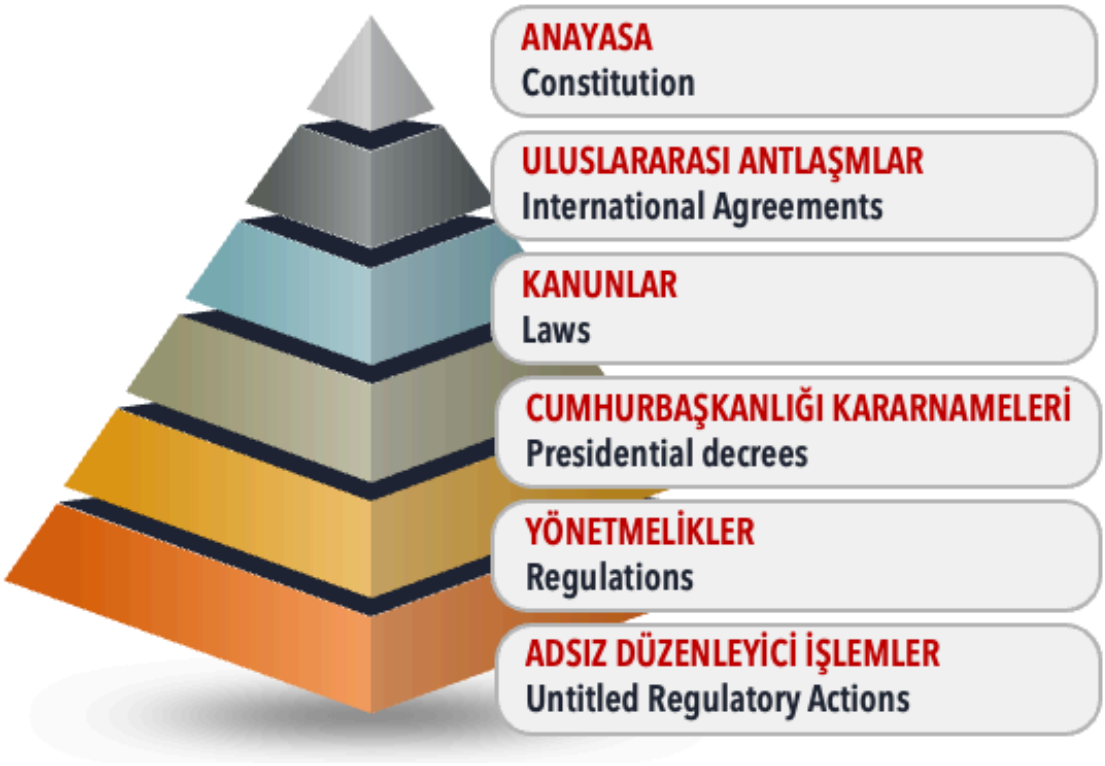


Figure x. Hierarchy of norms in law

Although the hierarchy of norms is listed in this way, problems may arise in determining the legal norm to be applied in the concrete case, if different arrangements are made in the same event between legal norms with the same legal status. In such cases, the hierarchy determined by doctrine and judicial jurisprudence (*içtihatlar*) also emerges in addition to the said order. At the same time, if two norms with equal legal status regulating the same event conflict with each other, the legal norm to be applied to the event in question is determined by looking at the relationship between the general provision and special provision or the relationship between the previous regulation and the subsequent regulation.

Although the concept of legal hierarchy is not clearly expressed in legal texts in our legal system, it appears as the conceptualization of the understanding set forth in the 1982 Constitution. As stated in various articles of the Constitution, a hierarchy of norms is established starting from the Constitution.

1.7.1 Constitution

The constitution is located at the top of the hierarchy of norms. All rules within the legal order must be in conformity with the constitution. If there is an unconstitutionality, that rule should be annulled and abolished. The constitutionality of laws is overseen by the constitutional court.

There is no state without a constitution. The constitution regulates the nature, structure, basic organs of the state and their relations with each other. The fundamental rights and freedoms of the individual against the state are also regulated by the constitution. In Article 11 of the Turkish Constitution, "Constitutional provisions are the fundamental legal rules that bind the legislative, executive and judicial organs, administrative authorities and other institutions and individuals. Laws cannot be contrary to the Constitution." The binding and supremacy of the Constitution was clearly emphasized, and a fundamental rule was laid down in the name of the legal hierarchy.

1.7.2 International agreements

International agreements duly put into effect have the force of law in accordance with Article 90 of the Constitution. For this reason, there have been hesitations in theory and practice about the legal norms to be applied in case there are different regulations on the same subject between international agreements and national laws.

It is stated that the provisions of international agreements will be taken as basis in the disputes that may arise because national laws contain different provisions on the same subject with international agreements on fundamental rights and freedoms that have been duly put into effect. Within the framework of the said provision, if the international agreements duly put into effect on fundamental rights and freedoms conflict with national laws, the provisions of international agreements will prevail.

1.7.3 Laws

As a requirement of the rule of law principle, which is mentioned in Article 2 of the Constitution and which is one of the basic characteristics of the State, the practical details of the issues regulated in general terms in the Constitution are regulated by laws and secondary legislation enacted based on these laws. With the emphasis in the preamble of the Constitution that "superiority resides only in the Constitution and laws", it is stated that laws are legal texts that come after the Constitution. In addition, Article 11 of the Constitution clearly stipulates those laws cannot be contrary to the Constitution.

1.7.4 Presidential Decrees

Decree with the force of law (*KHK*) is a regulatory act that is taken by the President directly from the Constitution or based on a limited authority that he receives from the legislature through delegation of authority, which is then subject to the control of the legislature and takes place at the law level in the hierarchy of norms. With the 91st article of the Constitution, the Turkish Grand National Assembly has been given the authority to issue a decree with the force of law to the President of the Republic, to make regulations other than the matters concerning fundamental rights, individual rights and duties, political rights and duties, without prejudice to martial law and states of emergency.

The President, by decree, appoints and dismisses the people who are in charge of the public sector. At the same time, it can make the regulations within the scope of its executive power through decrees. In addition to the regulations on fundamental and personal rights, a decree on political rights and duties cannot be issued. If there is a provision in the Constitution that a matter should be regulated by law, a decree cannot be issued on that subject either.

1.7.5 Regulations

The regulations, which are among the regulatory acts of the executive body, are regulated by Article 124 of the Constitution. With the article 124, the Presidency, ministries and public legal entities have been given the authority to issue regulations in order to ensure the implementation of the laws and by-laws concerning their fields of duty, provided that they are not contrary to these.

1.7.6 Untitled Regulatory Actions

Regulatory acts of the executive body envisaged in the Constitution are accepted as three: decree law (*KHK*), statute (*tüzük*), and regulation. However, in practice, apart from these, the executive organ is entitled and called with different names such as "decree (*kararname*)", "communiqué (*tebliğ*)", "circular (*genelge*)", "principles (*esaslar*)", "directive (*yönerge*)", "instruction (*talimat*)", "status (*statü*)", "general order (*genel emir*)", "announcement (*ilan*)", "plan", "tariff".

1.8 Rules and Sanctions

There are some obligations and some duties that the social order imposes on everyone. In the social order, not complying with the specified duties and obligations brings with it many problems. Because the social order brings some orders and prohibitions to ensure a certain harmony.

The rules that regulate the duties, rights and authorities of people living in the social order are called **social order rules**.

The purpose of these rules is to regulate the attitudes and behaviors of the individuals in the society towards each other and the society and the society towards the individuals, to establish a balance between the conflicts of interest, and thus to ensure the social order.

Social rules that will ensure order and trust can vary from society to society, country to country, place and time.

1.8.1 Rules

Rules of society are divided into religious rules (*din kuralları*), moral rules (*ahlak kuralları*), good manners (*görgü kuralları*) and legal rules (*hukuk kuralları*). Some of them may overlap and some of them may conflict. While not obeying the first three is not sanctioned by courts or administrative agencies of the state, breach of legal rules is sanctioned by law. In other words, good manners (etiquette) are sanctioned by public approval and disapproval, moral by public approval and disapproval, religious rules by religion and rules of law by the courts.

Religious rules

Sometimes religious principles may overlap with legal rules. However, the sanction of any behaviour contrary to religious principles is not concrete and belongs to the eternal life. That means, in case of acting contrary to religious principles, people encounter sanctions such as punishment in the afterlife or depriving of certain rewards. There is no sanction in this world. Thus, religious principles do not efficiently fulfil the function of legal rules.

Moral codes

Morals are the set of rules regulating people's actions regarding the behaviours that should be done or not according to value judgments about good or bad. It may differ from society to society and does not have a universal quality. There are no absolute sanctions. Non-obedience to moral codes may lead to isolation from society and underestimation.

Good manners (Etiquette)

Etiquette is the set of rules which prevail in one a society such as how to behave during a meal, or how to treat the guests coming in. In case of acting contrary to etiquette, the sanctions may include being blamed, being isolated blame, isolation, critique etc. Or else, state authority does not go into action as seen in case of acting contrary to legal rules or else it does not call being underestimated by public.

Law Rules

Law is a set of rules that regulate the behaviour and relations of the individuals forming the society, and which are subject to state enforcement (*sanctions*). Law in a broader sense; It can be defined as a set of binding rules that regulate the relations of people living in an organized society with each other and with the state, created to ensure legal security and freedoms of individuals and supported by state power.

Law rules are compulsory. Because law is a rational demand that leads to intellect entities and that should be realized by them. What brings bindingness to law is ethical values called justice and equity.

1.8.2 Sanctions

While legal rules are authoritative statements of what to do or not to do, ***sanction*** (***yaptırımlar***) are legal results if legal rules are not obeyed. Hence, it may be said that sanctions are penalties or other means of enforcement used to provide incentives for obedience with the law. To be more precise, persons who violate legal rules may receive sanctions because of actions.

It will be seen that Turkish Law is divided into two main branches as ***public law*** and ***private law***. The sanctions of the two are considerably different from each other. At this point it shall be stressed that as a sub-branch of public law, criminal law rules include imprisonment and monetary fines imposed by criminal courts on those who violate criminal rules. In this regard, Article 38 of the Turkish Republic Constitution No. 2709 states that "the punishments and penal measures shall be established only by law. No one may be punished for an act which is not prescribed by law as crime".

There are various sanctions. Some are applied by the executive or administration organs of the State, and some are applied by the judiciary organs of the State. The following figure shows the main sanctions.

MAIN SANCTIONS IN THE LAW	
APPLIED BY THE COURTS Criminal or Civil	**APLLIED BY ADMINISTRATION Governmental Agencies**
(1) Punishments (*Cezalar*)	(2) Disciplinarians (*Disiplin cezaları*) a) Caution and warning b) Fine or reprimand c) Reduction in salary d) Reassignment of duties e) Delay in career, transfer of duties f) Suspensions
(2) Compensations (*Tazminat*)	(2) Withdrawals (*Para çekme*)
(3) Revocations (*İptaller*)	(3) Penalties (*Cezalar*)
(4) Imprisonments (*Hapis cezaları*)	(4) Fines (*Para cezası*)
(5) Probations (*Denetimli Serbestlikler*)	(5) Prohibitions (*Yasaklar*)
(6) Monetary Fines (*Para cezaları*)	(6) Revocations (*İptaller*)
(7) Voidness (*Hükümsüzlük*)	(7) Suspensions (*Uzaklaştırma*)
(8) Nullity (*Geçersizlik*)	(8) Tax Punishments (*Vergi cezaları*)

Figure x. Examples of Sanctions

1.9 Difference Between Public and Private Law

Based on Roman law, the law is divided into two branches as "public law" and "private law". Public law is more concerned with the state and its organs. The rules of public law are also applied in the relations of the individual with the state.

Private law, on the other hand, is applied in relations between individuals. This distinction is valid only in the European legal system based on Roman law, there is no such distinction in Anglo-American law. Although various criteria are used in the distinction between public law and private law, it is possible to count the following as the main criteria:

a) Criterion of Interest (Çıkar kriteri): Based on the nature of the protected interest, it is decided whether the relevant issue concerns private law or public law. If there is a situation that concerns the general interest of the society, public law will be applied, and if there is a situation that concerns the private interest of the individual, the private law area will be applied. For example, punishing the murderer in the crime of homicide is in the interest of the whole society and therefore concerns the field of public law. Making a lease agreement between the landlord and the tenant is related to their individual interests and is a private law transaction.

b) Sovereignty Criterion (Egemenlik kriteri): If there is equality between the parties in a legal relationship, this concerns private law. If one of the parties is in a dominant position, there is a public law transaction. The relationship of the landlord and the tenant is a private law transaction due to the equality of the parties. However, the relationship between the state and the taxpayer concerns public law, since the state is in a superior position.

c) Freedom of Will Criterion (İrade özgürlüğü kritesi): Public law transactions are generally of an imperative nature. The parties do not have the right to change the content. In private law, the parties have the right to determine the content of the transaction with their free will. That is, he may decide otherwise. For example, the relationship between a university student and the university he/she studies at concerns public law. How the student passes the class and which rules he is subject to are determined by the law. However, the landlord and the tenant can freely decide on the relationship between them. Therefore, this situation concerns private law.

1.9.1 Public law types

a) Constitutional Law (Anayasa Hukuku): The Constitution regulates the nature, structure, basic organs of the state, their relations with each other and guarantees the fundamental rights and freedoms of the individual against the state. These issues are studied by Constitutional Law.

b) Administrative law (İdare Hukuku) regulates the rules regarding the administration of the country. It deals with administrative units other than the legislature and the judiciary. At the same time, their relations with individuals are also in the field of administrative law.

c) Criminal law (Ceza Hukuku) regulates the acts considered as crimes and the punishments to be given to them. Elephants that are considered a crime can disrupt the peace and order of the society. The principle of no crime and punishment without law has been adopted by the Constitution as well. In accordance with the principle of the individuality of the crime, everyone is responsible only for his own crime, he cannot be punished for the crime of another.

d) International Law (Milletlerarası hukuk) regulates the relations of states with each other. States constitute the most important person in this law branch. For this reason, this branch of law was also called the law of states for a long time. Apart from states, international organizations formed by states are also considered to have legal personality.

e) General Public Law deals with the state in abstract and theoretical terms. The state is a reflection of the ruler-administered relationship. The origin of the state and the source of its authority are studied abstractly by this branch of law.

f) Fiscal Law (Mali Hukuk) requires income in order to provide and protect the state and social order and to perform public services. This income is largely covered by taxes.

1.9.2 Private law types

a) Civil Law (Medeni Hukuk) is the widest private law branch in terms of scope. Civil law regulates the relations between individuals in their life as a society. Every private law transaction and action of everyone from birth to death may be of interest to civil law.

THE TURKISH CIVIL CODE (NO.4721)

The ***Turkish Civil Code is the law numbered 4721***, which was adopted by the Turkish Grand National Assembly on November 22, 2001 and entered ***into force on January 1, 2002***. Turkish Civil Code dated 17 February 1926 and numbered 743 was renewed and repealed. It is the basic law containing the rules regarding the civil law field in Turkey. Except for the initial provisions; It consists of five books, namely ***personal law, family law, inheritance law, property law and law of obligations,*** and a total of 1030 articles.

FOURTH BOOK: LAW OF GOODS

- **PART ONE: PROPERTY**
  - CHAPTER ONE: GENERAL PROVISIONS
  - CHAPTER TWO: IMMOVABLE OWNERSHIP
  - CHAPTER THREE: MOVABLE PROPERTY
- **PART TWO: LIMITED REAL RIGHTS**
  - CHAPTER ONE: EASEMENT RIGHTS AND IMMOVABLE BURDEN
  - CHAPTER TWO: PROPERTY PLEDGE (TAŞINMAZ REHNİ)
  - CHAPTER THREE: MOVABLE PLEDGE
- **PART THREE: POSSESSION (ZİLYETLİK) AND TITLE DEED REGISTRY (TAPU SİCİLİ)**

Article 1 - ***The law is applied in all matters that it deals with verbally and in substance.*** If there is no applicable provision in the law, the judge decides according to the customary law, and if this is not the case, he decides according to what rule he would have made had he been a legislator. The judge makes use of scientific opinions and judicial decisions while making a decision.

Article 2 - Everyone must abide by the rules of ***honesty (dürüstlük)*** while exercising their rights and fulfilling their obligations. The legal order does not protect the open abuse of a right.

Article 3- In cases where the law imposes a legal consequence on ***good faith (iyiniyetli)***, the main thing is the existence of good faith. However, a person who does not show the care expected from him according to the requirements of the situation cannot claim good faith.

Article 4 - ***The judge decides in accordance with the law and equity*** in matters that the law gives discretionary power or orders to consider the requirements of the situation or justified reasons.

Article 5- The general provisions of this Law and the Code of Obligations ***apply to all private law relations*** to the extent appropriate.

Article 6- Unless there is a contrary provision in the law, ***each party is obliged to prove*** the existence of the facts on which it bases its rights.

Article 7- ***Official registers and promissory notes constitute evidence for the accuracy of the facts they document.*** The proof that their content is not correct is not dependent on any form unless there is another provision in the law.

The sub-branches of Turkish Civil Law are:

Personal Law (Kişisel Hukuk): Assets accepted by law as having rights and obligations are called persons. People are real people. Human and property communities, such as associations and foundations, which are called legal entities and formed for a specific purpose, are also related to personal law. Issues such as the beginning and ending of the personality, the qualifications of the persons, and the kinship are handled by the law of the person.

Family Law (Aile Hukuku): It is the branch of law that deals with the family relations of the person. The family generally consists of husband, wife and children. Issues such as engagement, marriage, spouses' rights and property regimes, divorce are handled by family law.

Inheritance Law (Miras Hukuku): It consists of rules regarding how the inheritance will be divided in case of death of the individual. The rights and debts of the person are called his estate and how this will be transferred to the heirs is regulated by the law of inheritance.

Property Law (Mülkiyet Hukuku): It regulates the rights of persons on goods. The definition of goods also includes movable and immovable goods. The right to property is a right that gives the most extensive powers over the goods.

b) Obligation Low (Borçlar Hukuku), is closely related to Civil Law. The Law of Obligations in Turkey is regulated by the Law of Obligations adopted in 2011. This branch of law regulates the debt relationship between individuals. As private debt relations, movable and immovable sales contracts, lease contracts, loan and service contracts and surety are examined by this branch of law.

c) Commercial Law (Ticaret Hukuku): The law of obligations regulates non-commercial debt relations. Relations of a commercial nature are regulated by commercial law. According to the Commercial Code, commercial law is an integral part of civil law. Commercial law is very broad. It is divided into various sub-branches within itself. These are: Commercial business law, company law, negotiable instruments law, maritime trade law and insurance law.

d) Private International Law (Milletlerarası Özel Hukuk): It is the branch of law that regulates legal relations and disputes with foreign elements. Legal relations between persons who are bound to various states by ties of citizenship can fall within the scope of this branch of law.

e) Labor and Social Security Law (İş ve Sosyal Güvenlik Hukuku): Labor Law regulates the relations between the employee and the employer. The legal status of the workers, the employment contract, its establishment, types and termination are handled by this branch of law. Social Security Law includes social rights provided to employees and their regulation. Premiums to be paid, contributions, and pension arrangements are within the scope of this branch of law.

f) Civil Procedure and Enforcement and Bankruptcy Law (Medeni Usul ve İcra ve İflas Hukuku): Civil procedure law deals with the procedural rules to be followed by the courts in disputes arising in the field of private law. Enforcement and Bankruptcy Law complements the civil procedure law.

HUKUKUN ÇEŞİTLERİ ***TYPES OF LAW***	
KAMU HUKUKU **(*PUBLIC LAW*)**	**ÖZEL HUKUK** **(*PRIVATE LAW*)**
• Anayasa (*Constitution*) hukuku • İdare (*Administrative*) hukuku • Ceza (*Criminal*) hukuku • Devletler (*International*) hukuku • Yargılama (*Judgement*) hukuku • Vergi/Mali (*Fiscal*) hukuk • İş (*Labor*) hukuku	• Medeni (*Civil*) hukuk ▪ *Kişiler (Personal) hukuku* ▪ *Aile (Family) hukuku* ▪ *Miras (Inheritance) hukuku* ▪ *Eşya (Property) hukuku* • Borçlar (*Obligation*) hukuku • Ticaret (*Commercial*) hukuku • Devletler (*International*) hukuku • Fikir (*Intellectual property*) hukuku

TURKISH JUDICIAL SYSTEM; judicial (first instance courts, regional courts of appeal and Supreme Court), administrative jurisdiction (first instance courts, regional administrative courts and the Council of State), constitutional jurisdiction (Constitutional Court) and dispute jurisdiction (Dispute Court). In addition to these, the Council of Judges and Prosecutors, the election judiciary (Supreme Election Board) and the account judiciary (Court of Accounts) are also included in the judiciary system. Each of these institutions is independent in its own field and does not interfere with each other's fields.

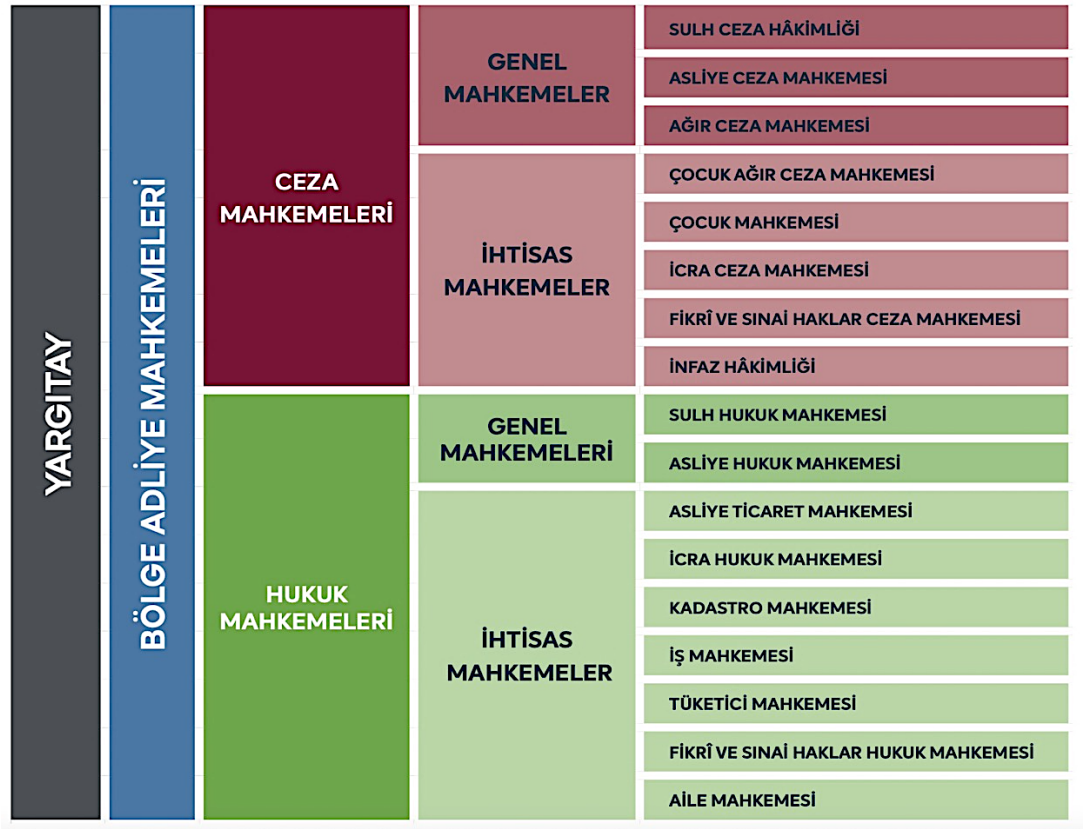


Fig x. Turkish Judicial System

Magistrates' Courts (Sulh Hukuk Mahkemeleri)

Civil courts of peace, regardless of the value or amount of the subject of the lawsuit, are the general courts in charge of resolving the lawsuits arising from the rental relationship regarding the leased immovable properties, the cases regarding the division of the movable and immovable property or the right and the dissolution of the partnership, the uncontested judicial affairs and some matters related to the mediation activity. These courts operate as a single judge.

Civil Courts of First Instance (Asliye Hukuk Mahkemeleri)

Civil courts of first instance are general courts in charge of dealing with lawsuits arising from private law disputes, especially those related to property rights, and cases related to personal property. The duty of the civil court of first instance is; The duty of the magistrate's court and the specialized courts is an exception. All cases and matters that are not explicitly declared to be tried by a court other than the civil court of first instance by a special legal provision are heard in the civil court of first instance. These courts operate as a single judge.

Administrative Courts (İdari Mahkemeler)

Administrative courts are general courts in charge of adjudicating full remedy lawsuits filed for the annulment of administrative actions and compensation for damages arising from administrative actions and actions, except those that are generally within the jurisdiction of tax courts and those that will be resolved in the first instance at the Council of State. Administrative courts generally work in committees consisting of a president and two members. However, in monetary disputes below a certain amount, it can also decide with a single judge.

2 RIGHTS IN LAW

2.1 Rights

Although rights or something equivalent to rights, like claim, privilege, power, immunity have not been recognised in all human societies at all times, today everybody possesses certain rights and duties or obligations. *A right is legal capacity to require another person to perform or refrain from an action. An obligation of law is a duty imposed on a person to perform or refrain from performing a certain act.* Legal rights which are granted to persons or recognised by law are rights which exist under the rules of legal systems. Purpose of granting or recognising right shall be observed. They cannot be used for any other purposes. Otherwise, there is abuse of rights. The Turkish Republic Constitution of 1982 recognises internationally recognised fundamental rights. Table x shows a general classification of the rights.

HAKLAR ***TYPES OF RIGHTS***	
KAMU HAKLARI **(*PUBLIC RIGHTS*)**	**ÖZEL HAKLAR** **(*PRIVATE RIGHTS*)**
A) Kişisel (*Personal*) haklar B) Sosyo-Ekonomik (*Socio-Economics*) haklar C) Siyasal (*Political*) haklar	**A) Kapsamına göre haklar (*According to Scope*)** • Mutlak (*Absolute*) haklar ⇒ *Maddi mallar üzerindeki mutlak / ayni haklar* *a) Mülkiyet hakkı (Property rights)* *b) Sınırlı ayni haklar (Limited rights in rem)* ⇒ *Maddi-olmayan mallar üzerindeki mutlak haklar* ⇒ *Kişiler üzerinde mutlak haklar* • Nispi (*Relative*) haklar **B) Konusuna göre haklar (*According to Subject*)** • Malvarlığı (*Asset*) hakları • Kişilik (*Personality*) hakları **C) Kullanıma göre haklar (*According to Usage*)** • Transfer edilebilir (*Transferable*) haklar • Transfer edilemez (*non-transferable*) haklar

Table x: A general classification of rights

According to the Turkish Civil Code No. 4721; every human being has a ***right***. Accordingly, all people are equal within the limits of the legal order, being capable in rights and obligations (Art.8). Again, according to the law, a person who has the capacity to act can acquire rights and become indebted by his own actions (Art. 9). Every adult person who has the power to distinguish and is not inadequate has the capacity to act. Adulthood begins with the age of eighteen (Art.10-11).

Entities with rights in the legal order are called ***persons***.

2.2 Absolute Right and Relative Right

Absolute right — *mutlak hak*: a legally enforceable right to take some action or to refrain from acting at the sole discretion of the person having the right. Person may have absolute ownership right. As far as absolute right is concerned, it should be stressed that **real rights — *ayni haklar*** is a right in property which can be claimed against any person. For example, if you have a property; let say a book, a piece of land or a trademark, nobody can get it from you without your permission.

Relative right — *nisbi hak*: a right that may be used by its owner towards certain other persons. **Personal rights — *şahsi haklar*** are rights that are based on one's statutes as an individual and do not derive from property. ***A personal right*** *is a right which exist only against a person/s.* For example, if you buy a property, let say a book, a piece of land or a trademark form the seller for X TL, you have a right against the seller for delivery or transfer of title of the property, in exchange the seller has a right against you for the payment of X TL.

Ownership is a real right. An owner of property has the right to consume, alter, share, redefine, rent, mortgage, pawn, sell, exchange, transfer, give away or destroy or abandon it, or to exclude others from doing these things. ***Real right*** *is a right that is attached to a thing rather than person.* Ownership is seen as a fundamental right in liberal democratic societies. Ownership is based on prevailing rules and if there were no rules there would be nothing like owning, buying, selling etc. There would, in other words, be no property to own. Ownership plays an important role in the social, legal and economic aspects of society. *However, it should be stated that ownership is not an unlimited right. These rights may be limited only by the consideration of the public interest (kamu yararı) and by law.*

Persons may have other rights over property other than right of property. ***Limited real rights (Sınırlı ayni haklar)*** are property rights with real effect derived from a right of ownership of a thing. Easement, real burden, mortgage, and charge on immoveable property rights are limited real rights, their scope is not wider as ownership.

2.2.1 Absolute rights on assets

Things that can be measured in money and transferred to others are called "**asset (mal)**" in law. Goods that have a physical existence and can be touched and seen are called ***tangible goods***. The term "**goods (eşya)**" is also used to express things that have a physical existence and can be touched and seen. Intangible goods are tangible goods that cannot be seen, but whose presence can be felt. Goods or assets come in two forms and are essential in regulating absolute rights. These.

a) Movable (Menkul) goods *and* ***b) Immovable (Real-Estate (Gayrimenkul)) goods***

Goods that can be moved from one place to another without harming their essence are ***movable***, and those that cannot be moved are ***immovable***. This issue is systematically included in the fourth book of the Turkish Civil Code. Detailed divisions are made in the context of Movable and Immovable Ownership.

Immovable property: If something cannot be transported from one place to another place without being damaged, or if it cannot move, this kind of property can be called as immovable property such as land, buildings etc.

> ***Turkish Civil Code - Article 704***
>
> *A. Content of the immovable property ownership rights are:*
>
> 1) Land (*Arazi*),
> 2) Independent and permanent rights registered on the separate pages on the land ground book (Parcel) (*Arsa*),
> 3) Condominium rights registered on the title (Building) (*Yapı*).

Absolute rights on assets are in two ways. These are:

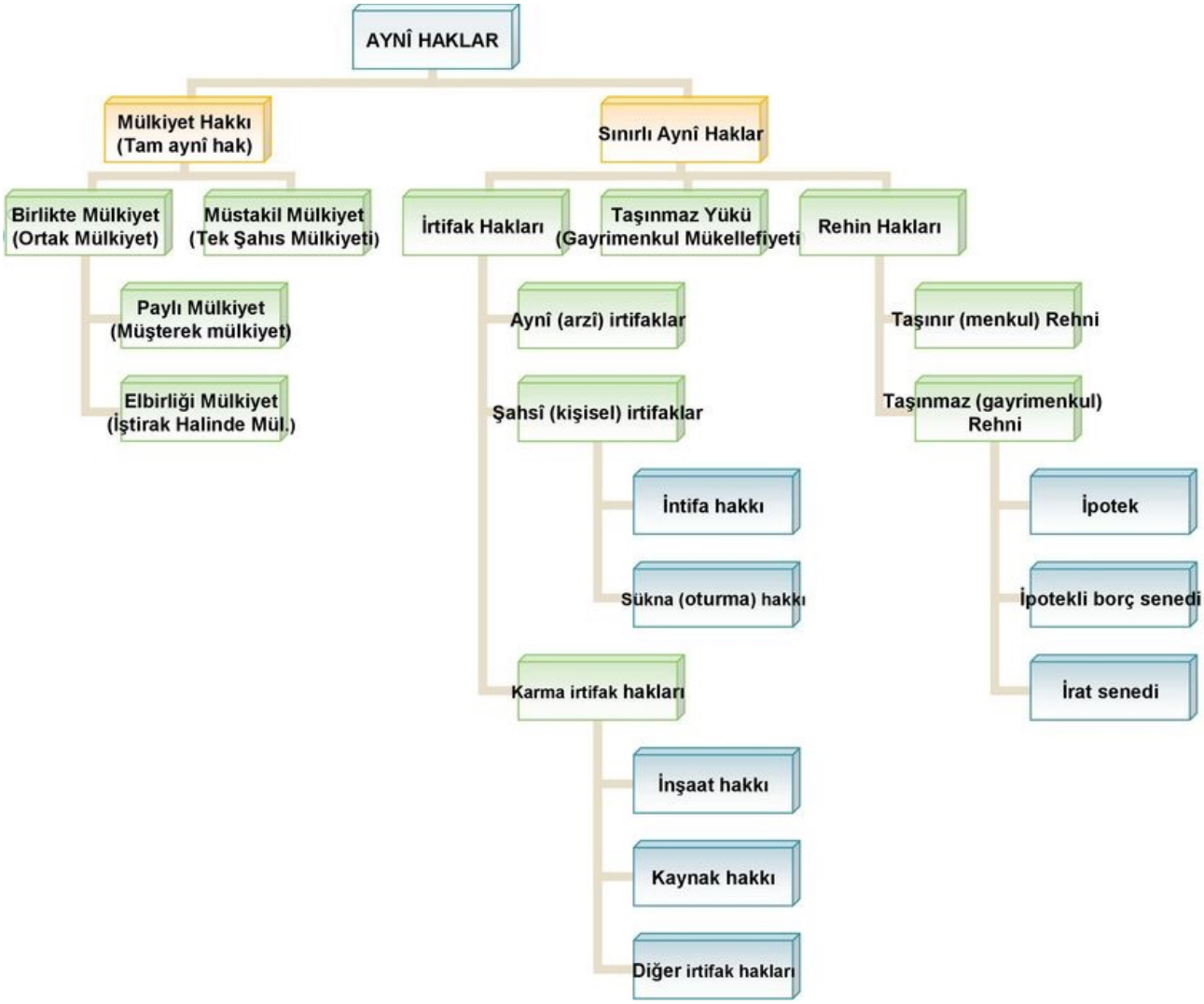
a) Real property rights *(Tam ayni (mülkiyet) hakları)*

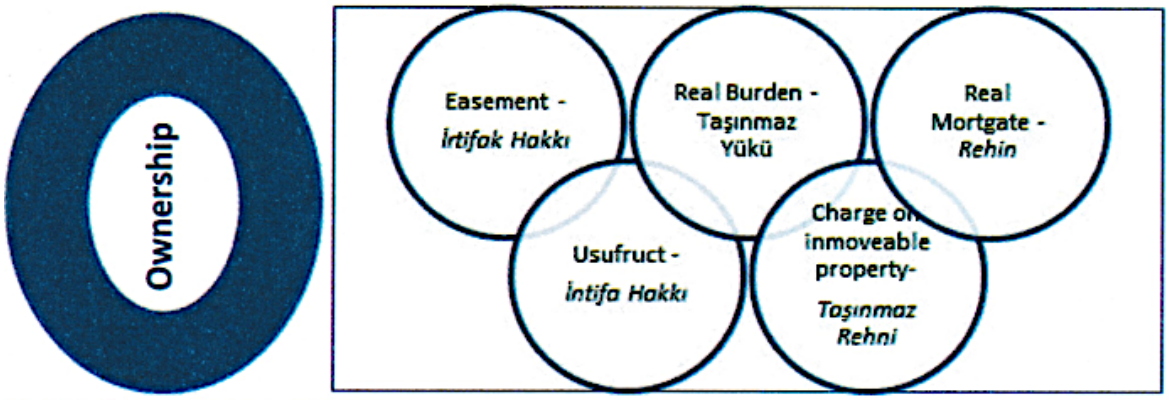
b) Limited rights in rem *(Sınırlı ayni haklar)*

2.2.2 Real property rights

Rights over tangible goods are called "**real-rem (*ayni haklar*)**" rights. The most important real right on the goods is the "**property**" right. This gives the right holder the broadest powers. The person who has the right of property can use the goods as he wishes, benefit from the products of the goods and make any savings on it. If he wishes, he can sell or consume the item.

Info notes: The subject of "property" rights is discussed in detail in Chapter 3.


AYNÎ HAKLAR
Mülkiyet Hakkı (Tam aynî hak)
Sınırlı Aynî Haklar
Birlikte Mülkiyet (Ortak Mülkiyet)
Müstakil Mülkiyet (Tek Şahıs Mülkiyeti)
İrtifak Hakları
Taşınmaz Yükü (Gayrimenkul Mükellefiyeti)
Rehin Hakları
Paylı Mülkiyet (Müşterek mülkiyet)
Elbirliği Mülkiyet (İştirak Halinde Mül.)
Aynî (arzî) irtifaklar
Şahsî (kişisel) irtifaklar
İntifa hakkı
Sükna (oturma) hakkı
Karma irtifak hakları
İnşaat hakkı
Kaynak hakkı
Diğer irtifak hakları
Taşınır (menkul) Rehni
Taşınmaz (gayrimenkul) Rehni
İpotek
İpotekli borç senedi
İrat senedi


Ownership
Easement - İrtifak Hakkı
Real Burden - Taşınmaz Yükü
Real Mortgate - Rehin
Usufruct - İntifa Hakkı
Charge on inmoveable property- Taşınmaz Rehni

2.2.3 Limited rights in rem

Apart from the right of ownership, there are other real rights as well. The authority given to the right holder by these real rights is not as wide as the right of ownership but is more limited. That is why they are called "**limited real rights (*sınırlı ayni haklar*)**". However, they are included in the category of absolute rights since they can be asserted not only against certain individuals but also against everyone.

Limited real rights give the right holder the right to use or benefit from the goods, or to dispose of them, or some of these. However, unlike the right of property, it does not give it all. For example, the owner of the easement can only use the item, benefit from it, but cannot sell the item.

According to the Turkish Civil Code, there are three ways in the limited rights. These:

a) Easement (İrtifak hakları)

b) Real mortgage (Rehin hakkı)

c) Immovable burden (Taşınmaz yükü)

a) Easement (İrtifak hakları)

Owning land means you have the right to exclude others. It also means you have the right to transfer your rights to others. Not only can you transfer your entire ownership of the land, but you can also transfer some of your specific rights in the land while keeping other rights. For example, you could agree to give up your right to exclude your neighbour from driving back and forth over a driveway that passes over your land and onto his. The right you would give your neighbour is called an easement.

An easement is a right a landowner intentionally or unintentionally gives to another to use or to control the use of her/his land in some way, without possessing it (which is why it's often described as a non- possessory interest in land).

Easements, along with covenants, are known as servitudes. Servitude is a general term for nonpossessory legal rights in another person's land. The land that is subject to an easement is called the servient tenement or servient estate; the owner may be called the servient tenant. The owner of the easement may be called the dominant tenant. If the easement serves other land in some way, the benefited land is called the dominant tenement.

Most easements are affirmative easements, meaning they give a non-owner the right to use the owner's land in some way. Here are a few examples of affirmative easements:

- *The right to cross the owner's land to get to and from neighbouring property (often called a "**right-of-way**")*
- *The right to install and maintain power lines, water pipes, and sewage systems on and under the owner's land*
- *To restrain development of the owner's property to preserve the easement holder's access to light and air on his nearby property*

Here are some examples of how easements may expire:

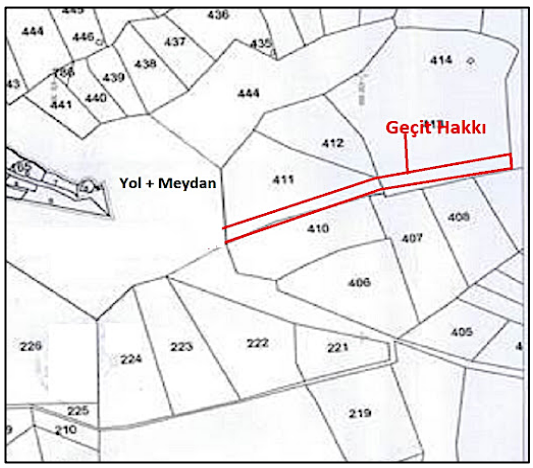
- *An easement agreement may say the easement lasts for a specific time or for the lifetime of the easement holder.*
- *An easement agreement may say the easement lasts only if it's used for a specific purpose, such as for a railroad. If the easement agreement specifies a purpose for the easement, the easement ends when that purpose can no longer be served, even if the easement agreement doesn't say so. For example, a grant of an easement for access to a specific public road end if the public road is closed.*
- *An easement in a building or a structure ends when the building or structure is destroyed.*
- *A personal easement in gross ends when the dominant owner dies. Even if an easement is permanent and will never naturally expire, the owner of the easement may terminate the easement in a variety of ways.*

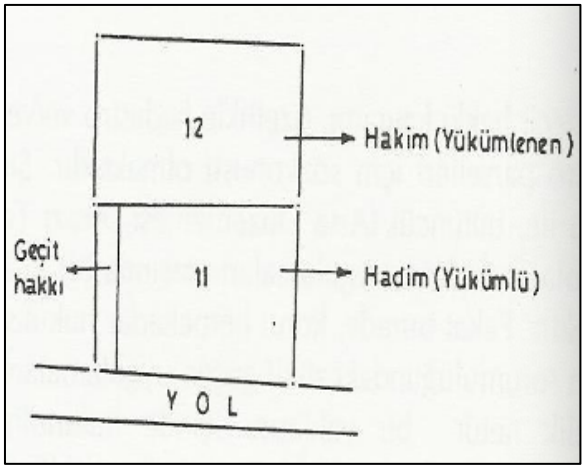
Types of Easements

i) Estate (Ayni-arzi) Easement

Estate easement, also known as immovable easement, is a type of easement established against an immovable in favour of another immovable. The immovable in favour of which an easement has been established is called the beneficiary immovable, and the immovable against which the right of easement has been established is called the responsible immovable. Since the right ownership depends on the fact of being the owner of the immovable, the beneficiary owner of the immovable also has the right of easement. In these servitudes, even if the owner of the beneficiary or responsible real estate changes, the owner must comply with this obligation. Such rights come in three forms. These; *a) right-of-way b) flowing rights* and *c) right of source*.

Right of way (Geçit hakkı): It is the right of the immovable owner who does not have a connection to the main road and does not have sufficient road to go to the general road, to pass through the neighbouring parcels, which can be obtained by agreement or by court decision. It can be established in favour of the person or in favour of the immovable. In addition, where this right will be used on the land and where it will be passed should be linked to a map (with the statement of change).





Especially in immovables required for public service, the right of way can be established for the administration to achieve its purpose, without affecting the property of the immovable and without expropriation. In particular, in matters such as energy transmission line, natural gas or oil pipeline, sewerage and water transmission lines that restrict the use of the immovable but do not require property expropriation, an easement right is established on the immovable and registered in the title deed.

Flowing right (Mecra hakkı): As a rule, the flowing refers to the technical installation for the purpose of transmission and distribution of watery things such as electricity, gas, water. According to the Civil Code, "Even if the flowing of water, gas, electricity and the like are outside the real estate where the business is located, they are deemed to be the annexes of that business and the property of the business owner, unless there is a contrary arrangement. The right of easement arises with the registration of the flow things in the land registry if the flows things is not visible from the outside, and by the construction of them, based on a contract to be drawn up by a notary public if it is visible from the outside.

Resource right (Kaynak hakkı): It is a right that provides the opportunity to benefit from a resource in someone else's land. According to the Civil Code, other users can also benefit from the water in someone else's parcel. Resources are an integral part of the land, and their ownership can only be gained by the ownership of the land from which they originate. The right on the resources in someone else's land is established by registration in the land registry as an easement right.

The resource right can be established as a land or personal easement. If this right is independent and permanent, it is registered as if it were not moved on a separate page in the land registry. Unless otherwise agreed by the parties in the contract, the resource right can be transferred to others and is inherited.

Groundwaters belong to the public interest. Owning the land does not result in owning the underground waters under it. Provisions of special law regarding the way and extent of use of groundwater by landowners are reserved.

ii) Personal Easement

Easement of use (*kullanma hakkı*): It provides someone to use and benefit property of another person. This right cannot be transferred to another person. However, the use of the right may be transferred. For example, it can be rented.

Easement of habitation (*oturma hakkı*): It is a limited right that gives you the authority to live as a residence in an independent section of a building of another person. Only real people have this kind of right. It cannot be transferred to someone else. Use of this right is also not transferable. For example, it cannot be rented. The right to inheritance is not passed on to the heir.

iii) Complex Easement

Construction rights for buildings (*üst hakkı*): is a kind of right that provides someone to build a construction on the property of another one. The right of superficies (*üst-hakkı*) can be transferred and transferred to the heirs by inheritance, unless otherwise agreed. The right of superficies can be established in two ways, namely the superficies and the independent-permanent superficies, in terms of the way it is established and registered. It can be registered as immovable in the Land Registry upon the request of the owner of the right of construction, which is independent and established for at least thirty years, that is, permanent.

Water- Resources rights (*kaynak hakkı*): is a kind of right that provides someone to use any resources/water on the property of another one

iv) Other Easement

Condominium rights: It is a type of easement which is established on the land depending on the land share, based on the independent section of the property to be planned before the construction is completed.

Periodically-use Property Right (*Devre Mülk Hakkı*): An easement right can be established on the structure that is suitable for residence by each of the common owners. The independent part can be shared in certain periods of the year based on the owner's fraction on the land.

b) Real mortgage (Rehin hakkı)

A mortgage is the limited right in which real property is pledged to secure money. If the property owner does not live up the terms of contract, then the lender has the right to recover any losses incurred by taking possession of the property. There may be more than one mortgage affecting a property and the right of recovery for losses will depend on the priority given to each mortgage.

In some jurisdictions, the lender actually acquires the title or ownership of the property at the time the mortgage contract is signed. In this case the property owner has the right of possession and use but the full ownership only transfers back when all terms of the contracts have been met. In other jurisdictions, the lender only receives the right to repossess the property if the property owner defaults on the mortgage.

Fixed Rate Rule in Mortgage Rights

Civil law in Turkey has accepted a principle called "fixed rate system" about mortgage rights (*taşınmaz rehin haklarında sabit derece sistemi)*. Accordingly, if the receivables at the upper level are not paid, the receivables at the next level are not paid. It is also possible to establish more than one mortgage for same property at the same time. The amount of value for empty level must be specified. Moreover, even if the right of mortgage at the top level is ending, the mortgage right at the low level does not automatically go to the top. Owner is able to create a new mortgage for level that has been discharged.

Right of freedom

The parties may make an agreement that is contrary to the stated rule above (fixed rate system. In this case, a creditor who has low level mortgage rights can be automatically go to the top level if the top-level mortgage rights have been discharged. It can be called as **"right of freedom (*serbest dereceden istifade hakkı*)"** This type of right must be recorded in ground book.

Types of Mortgages in Turkey

a) *Mortgage (İpotek)*
b) *Mortgaged Debt Bill (İpotekli Borç Senedi)*
c) *Income Bill (İrat Senedi)*

Mortgage is a record annotated in the land registry in favour of the creditor on an immovable presented by the debtor, if it is removed when the debt is paid, as a guarantee for the payment of a debt. If the person who is obliged to pay the debt as a result of the mortgage does not fulfil this responsibility, the person in the position of creditor has the right to collect his own debt by putting the immovable for sale.

Mortgaged debt securities are debt securities that allow the value of an immovable to be put into circulation under the guarantee of a mortgage. The mortgaged debenture constitutes a personal money claim based on the real estate pledge. To establish a pledge through mortgaged debt securities, the real estate is appraised on behalf of the state by the title deed administration. For the amount exceeding the appraised value, a pledge cannot be established through mortgaged debt securities. In a mortgaged debt note, the debtor is responsible for his own assets as well as the mortgaged real estate. If the immovable that is the basis of the mortgaged debt bond is in the ownership of another person, not the debtor, the mortgage rules apply to the owner of the immovable who is not personally liable for the debt.

The title deed officer and the person authorized on behalf of the Treasury are signed on the mortgaged debt note. Mortgaged debt securities can be issued in writing to the name or to the bearer. The writing in the land registry can only be reduced if the relevant parties or the court cancel the pledge.

Income bill *(İrat senedi)* is a debt note issued based on a security constructed in the form of an immovable burden on an immovable and constitutes a right to re-

ceive money. Apart from mortgage bill, income bill do not impose personal liability on the debtor; Only the real estate shown as security constitutes the guarantee of the receivable. Only agricultural land, residences and lands on which buildings can be built can constitute the security of the deed of income. Value determinations are made by the land registry administration on behalf of the state. The debtor of the bond is the owner of the loaded immovable. The person who acquires the loaded immovable becomes the debtor of the bond and the previous owner of the immovable is relieved of his debt without the need for any further action. The title deed officer and the person authorized on behalf of the Treasury are signed on the income bill.

c) Immovable burden (Taşınmaz yükü)

It is the obligation of the owner of an immovable to do or give something in favour of a person since he owns this immovable. The immovable burden is a debt relationship attached to an item secured by the immovable. The owner of the right has a right of receivable against the owner of the immovable, secured by that immovable.

Example: An example is that the owner, who is a cultivator, establishes an immovable burden on this immovable in favour of the wine factory in return for his debt to deliver a certain amount of grapes to a wine factory every year. If the debt is not fulfilled, the creditor sells the immovable and assures his receivables.

For example, Aykut, the owner of a tomato plantation, has agreed with Ümit, a manufacturer who wants to produce tomato juice. According to this agreement, Aykut took on the burden of delivering 5 tons of tomatoes to Ümit every September. Ümit, on the other hand, put the land belonging to Aykut under the burden of immovable as a guarantee of this receivable. As a result of being loaded with the immovable load; If Aykut does not fulfil his tomato delivery debt to Ümit, Aykut will have the opportunity to collect his receivables by converting the land into money, thus he will be able to cover his loss.

What would happen if the real estate sold does not cover all Ümit's losses? As stated in the definition, the immovable burden is only liable for the amount to be obtained from the sale of that immovable. In other words, the manufacturer Ümit will not be able to claim additional fees from the field owner Aykut for the remaining loss.

The burden of the immovable creates a debt relationship related to the goods. That is, whoever owns the immovable, that owner will be burdened with the burden of the immovable. In this respect, the date of establishment of the immovable burden is not important. After the establishment of the immovable burden, the owners are also burdened with the immovable's burden and are established by registration in the title deed.

If the performance debt within the scope of the immovable burden is not fulfilled, the creditor can convert the immovable into money, since the immovable itself is a “guarantee”.

What are the differences with mortgage?

Mortgage is a registration in favour of the creditor on an immovable to be determined by the debtor, if it is eliminated when the debt is paid, to secure the payment of a debt. The immovable burden, on the other hand, obliges the owner of the immovable to another person. For the immovable load to be in subject, there is a condition of registration in the land registry.

2.3 Gaining Rights

Gaining the right in original way (Hakkın aslen kazanılması)

In order to use and protect rights, first of all, there is a need to acquire rights. At the same time, the rights must not be lost. Rights are not self-acquired. In order for a right to be earned, certain things must happen. The right to vote is gained when the person reaches the age of eighteen. In order for the parents to gain custody, the child must be born. With the marriage of persons, certain rights arise between the spouses. In this way, the emergence of a right that does not belong to someone else for the first time and its direct acquisition is called "original" right acquisition. For example, a fish caught in the sea, a fox caught in the forest, the custody of parents over their born children are actually acquired rights.

Gaining of the right in transferring way (Hakkın devren kazanılması)

Sometimes, a new person gains the right that was previously owned by another person, and the right becomes a new owner. The person who buys a car belonging to a person has the right of ownership on that vehicle. In the event of death, the property of the deceased passes to the heirs. Thus, new owners of rights emerge, and these people use the rights that others previously had. The acquisition of rights in this way is called vesting through transfer. Rights are transferred to their new owners.

2.4 Protection of the Right

The right gives authority to the right owner. If there is an attack on the right, the right holder has the right to demand the protection of his right from the state. Exceptionally, the owner of the right may protect his right. The protection of the right can be in two ways. These are:

a) Protection by One's Own Power

In case of an attack on the right, a person can protect his/her right under certain conditions. An example of this is self-defence (*meşru müdafaa*). The Turkish Punishing Code states that "An unjust attack, which has taken place or is certain to

occur or recurs, directed against a right that belongs to itself or to another person, is obligatory to fight back in proportion to the attack, according to the situation and conditions at that moment, and the perpetrator is not punished for the acts committed." In order for a legitimate defence to be in question, the behaviour for the purpose of defence must be proportional to the attack. Otherwise, the legitimate defence will be exceeded, and punishment may be in question.

b) Protection by State Power

The right holder may request the state to protect or fulfil his right. For example, a landlord may file a lawsuit against a tenant who does not pay his rent to collect his debt and to evict the house. Before applying a lawsuit, there is often a need for the right holder to make a request from the other party to fulfil the right.

2.5 Use of the Right

Rights give authority to the person, but this authority is not unlimited. Even the broadest entitlement to property may be restricted for the public good. The Civil Law states that everyone has to abide by the rules of honesty while exercising their rights.

The principle of honesty is also called objective goodwill. Accordingly, the person exercising the right is expected to behave in a normal and reasonable manner. Normal and reasonable behaviours in each event is determined according to the way the event occurred and other conditions.

Misuse of rights can be called abuse. Abuse is also essentially against the principle of honesty. For example, the use of real estate on the basis of property rights just for the purpose of harming the neighbour or preventing its use can be called abuse. An example of this is when a person fertilizes the garden in which he plants vegetables, in order to interrupt the residents of the house on the neighbouring plot, in such a way that it gives bad smell every day.

2.6 Loss of Right

There is a bond (relation) between the right and the person. Dissolution of this relationship will result in the loss of the right. The person can no longer use that right. For example, if the person dies, the relationship is over. If the right is on an item and the item has disappeared, the right is lost again. The burning of the vehicle owned by the person removes the ownership right of the owner. The right to be a student ends when a student graduates.

Sometimes people can transfer their rights to others. While the right is acquired for the person who transfers the right, the right is lost for the previous owner of the right. When the person sells the immovable he owns, his relationship with the right of ownership has ended and he loses this right.

2.7 What is the Real Person and Legal Person?

Entities that can be entitled are called ***persons***. Individuals may also be under debt obligations. The law has specified who the persons can be. Accordingly, persons are divided into real persons and legal persons. Real persons are people. ***Legal persons***, on the other hand, are entities that do not have a physical existence, but are formed by the gathering of people or goods and are considered to have rights.

i) Real person (Gerçek kişi)

People are recognized as real persons by the legal order. People are real persons. It is not possible for living things or things other than humans to be considered as persons. True personality begins at birth.

To be accepted as a person, it is necessary to be born alive. It is understood that the new-born baby is born alive by breathing. Even if it has not been born yet, the rights of the baby in the mother's womb are in question. According to the Civil Code, "Children acquire their legal capacity from the moment they are conceived, provided that they are born alive" (Article 28). For example, if the father of the baby in the womb has died, the birth of the child is awaited in order to determine the heirs. If he is born alive, he becomes an heir.

People are people as long as they live. It is not possible to continue the personality after death. *True personality ends with death*. If a person is lost in circumstances that require certainty in his death, he is considered dead, even if his body has not been found. This is called the presumption of death. An example of this is the case of a person who is definitely known to be among the passengers of the crashed plane, but whose body could not be found or identified.

Absence (Gaiplik)

Apart from death, the personality ends with the decision of absence (*gaiplik*). If there is a strong possibility of the death of a person who is in danger of death or has not been heard from for a long time, the court may decide on the absence of this person upon the application of those whose rights are dependent on this death. One year must pass before a decision of absence can be requested for the person who disappeared in danger of death. A decision of absence can only be requested for a person who has not been heard from for a long time, after at least five years have passed from the date of the last news (The Civil Law, Art.32-35).

According to the laws in Turkey, there are two types of absence (Gaiplik):

a) It is thought to be lost due to not being heard for a long time. For example, a person who leaves the house saying he is going to work does not return even though years have passed and cannot be heard from.

b) It is lost in danger of death. For example, there is an avalanche in the place of someone who goes skiing and they cannot be heard from.

In both cases, the competent court may give a decision of absence for these persons.

According to article 32 of the Turkish Civil Code, if there is a strong possibility of death about a person who has not been heard from for a long time or disappeared in danger of death, the court applied by those whose rights are dependent on this person may decide on the absence of the person.

ii) Legal person (Tüzel Kişi)

Groups of persons and goods that have come together to realize certain purposes are called ***legal person (Tüzel kişi).*** According to the Civil Code, groups of persons organized as a stand-alone entity and independent property groups dedicated to a certain purpose acquire legal personality. Companies and associations are examples of legal person. They have rights and obligations. They also have rights like real persons. For example, they can acquire real estate. However, they do not have all the rights that real persons have. For example, they cannot marry. Legal entities are divided into two as private law legal persons and public law legal persons in terms of the law to which they are subject.

3 OVERVIEW OF PROPERTY LAW

"Property law" governs ***ownership***. Immovable property, sometimes called "real estate", refers to ownership of land and things attached to it. Personal property, refers to everything else; movable objects, such as computers, cars, jewellery or intangible rights, such as stocks and shares. A right in "**rem"** is a right to a specific piece of property, contrasting to a right in personal which allows compensation for a loss, but not a particular thing back. Land law forms the basis for most kinds of property law and is the most complex. It concerns *mortgages, rental agreements, licences, covenants, easements, and the statutory systems* for land registration. Regulations on the use of personal property fall under intellectual property, company law, and commercial law.

- Owning something means you can enforce legal rights concerning it. If you own property, you have the right to do the following with it:

  > Possess it >Use it >Exclude others from it >Transfer it to someone else

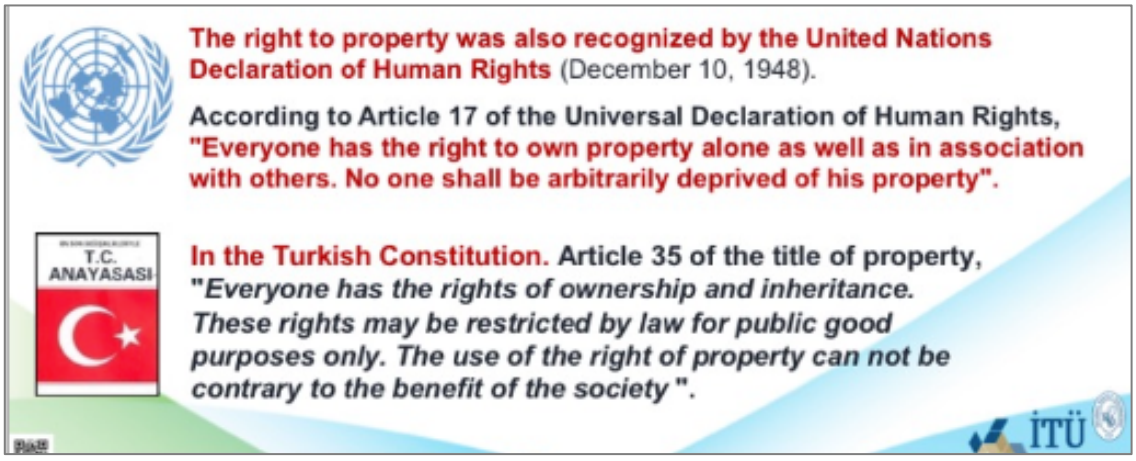
- The rights to possess, use, exclude, and transfer property sometimes conflict with other people's rights or the public interest. Property law attempts to reconcile competing rights and interests by means of default rules, contractual rules, and public regulations.

3.1 Property Concept

Property right: A right that gives the widest possible savings on an item, as limited by law or other regulatory rules. A person with a property owns the authority to use something that is in his possession, to transfer it to others, to take advantage of the product of this thing. In the broadest sense, property right; refers to the right granted to persons on *movable* or *immovable* properties.

Real or legal persons with private property will also be able to benefit from these opportunities, as they have the right to own, use and enjoy the right to property. This theoretically correct point has lost its "absolute" meaning in practice over time. As a matter of fact, in the constitution of many countries, the right of property ownership is seen to be limited in favour of the public good.

The right to property was also recognized by the United Nations Declaration of Human Rights. According to Article 17 of the Universal Declaration of Human Rights, "***Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property***".



3.2 Historical Development of Property Right

In *feudal* times private property is not *absolute*, with acceptability. The goods on land are created for the benefit of all of mankind. But there is a useful aspect of private ownership in terms of encouraging people to work harder. However, ownership has not only the right, but also the responsibility.

Since the personal interest is not in contradiction with the public interest as compared with the liberal views of the 18th and 19th centuries, the right to free ownership will also be a harmonious and orderly source for society. In contrast, socialist thinkers who lived in the same ages greeted private property with suspicion.

Marxism, described as scientific socialism, rejects private property for many reasons. Drawing attention to the fact that the means of production remain private property in the case of collective production due to technological developments, *Marx* claims that this is a cause of the capitalist system and argues that all means of production must be excluded from private ownership.

Different opinions on private property are now copyrighted by many constitutions and, as stated above, the right to property is granted to the fellow, provided that it is not contrary to public interest. On the other hand, it should be noted that the term private property is used in two relatively different meanings.

The first refers to the property right recognized by real and legal persons other than the state and other public entities. In the second, it means more individual property. However, private ownership is used more in the first sense, and it is accepted that associations, trade unions and commercial companies with legal personality can also have private property.

3.3 Private Ownership View

With the most general definition, *private ownership means* that the resources of production belong to the person. In another expression, the possession of a person by himself or herself, with his own interest and, means that the commodity has no relation with anyone else. Nowadays, private property is a limited right by law and does not contain absolutism in comparison with the old periods.

There is no human right, if there is not property right...

The freedom of individuals to use their knowledge and skills to accomplish their purposes different from other individuals depends on the private property agency. If the property is not privately owned, the aims of all individuals will be controlled by the state. *Property rights are not property-related rights, property rights are the human rights of property.* In reality, property rights constitute the basis of human rights, since the most basic human right is that one has his own body. Individuals have moral rights to the products of their labor. The rights of the writers of the American Declaration of Independence, such as the right to life, liberty and happiness, are all dependent on property rights, including our own. The right to own property is also recognized in Article 17 of the United Nations Declaration of Human Rights.

- *Universal Declaration of Human Rights*

Has been proclaimed by the Decision of the United Nations General Assembly dated December 10, 1948 and No 217 A(III). With the Council of Ministers dated April 6, 1949 and numbered 9119, it was decided that the publication of the Universal Declaration of Human Rights in the Official Gazette should be taught and interpreted in schools and other educational establishments after publication and appropriate announcement in radio and in newspapers about this Declaration. The Decree of the Council of Ministers was published in the Official Gazette dated May 27, 1949 and numbered 7217.

Article 17: Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.

Property is a Space of Freedom for Individuals ...

The unrestricted use of private property creates an area in which individuals can experience their identity and self-worth by increasing their emotions, making their own choices and determining their own destiny. Without this space, the individuals will be subject to the arbitrary will of the other persons and therefore will not be able to make certain plans for the future. The private property agency provides people on a planet with scarce resources living together without infringing on the rights of others. This unique institution makes it possible for society to exist simply by giving control over certain things to a specific person or group. In other cases it solves only those arguments that can be solved by obeying violence and the mighty.

The main legal basis of the ownership of our country, the Constitution of the Republic of Turkey Situated in Article 35. "**Everyone has the rights to property and inheritance**" is the phrase. This right is the most important independence of the modern societies, taking them locally and distinguishing them from slave societies. Because the existence of the state of law and as a sign of independence, the right to property is spread to the people and the freedom of property is provided to the individuals.

There is no justice where property does not exist...

The property principle expresses the opposite of the community where the strong one is right. A state that wants to provide social unity among people should make a justice judge; it is not possible for justice to exist without private property. Because it ensures that our rights on our property, our bodies, our labor and our possessions are accepted;

The attacking of these rights or their violation means injustice. These rights cannot be protected unless the rights of the individual to acquire, use and dispose of the property are respected.

Private Property Needed for Economic Development ...

Private ownership is the main actor in economic development because of the work and investment initiative it has created. For this reason, having confidence in property is a necessary condition for economic development. Scottish philosopher David Hume defines property laws as the engine of economic development. Hume's rules are "fulfilment of the promises" meant to mean "stability in property," "transfer based on property," and respecting contracts made. Therefore, strengthening of property rights is a key element in economic reforms that will increase economic performance. If Hume is recognized in three rules, property will be in the hands of the best rulers, not just the people whom the state transfers to its own property. By making the social work union a necessity for economic development, private ownership brings people closer to each other and shapes the work that people do, as well as the benefits of their neighbours.

Benefits are provided to non-owners as well as property owners…

Private ownership is often misunderstood as benefiting those who have it individually. In fact, the benefit of the society in private ownership of the property is far greater than that of the individual. In order for a landlord to earn income as a farmer, he must feed the people who live in cities without land and possibly in remote cities. At the same time, if you want to keep your income in the future, you need to manage the rural area and the natural environment well. A poor farmer will not be able to earn income and will have to sell his land to someone who will manage him better. Private ownership benefits those who own it; but the profit that

this institution collects is greater than the millions of people who do not have the means of shopping they are doing, making it possible to live and work. Private ownership allows individuals to build up their capital reserves and future jobs through the transfer of wealth through the community.

The role of the state to protect private property ...

In a society where private property is respected, it is not possible to transfer property from the state to the mafia. Because people who live by force cannot keep the property acquired in an unjustified way in a free society. The role of the state is not only to protect well-known objects, but also to protect private property in new areas of intellectual property in cyberspace. Private ownership is a human right that is necessary for democracy and vital to individual identity, constitutes the source of political stability, and is active in the production of wealth. The interests of property also mean the interests of civilization.

3.4 Public Benefit and Property Ownership

After the French Revolution of 1789, the concept of common good took its place. It is a concept exist in the UK as "***public interest (kamu yararı)***". The Turkish Constitutional Court defined the public interest as "providing peace and prosperity for the person and the society". The use of the public benefit concept as a public interest in the constitutional judgment and the academic environment is widespread. "The concept of public benefit is one that brings with it the authority of state bodies to appreciate. As a rule, in accordance with the general scheme followed by the decisions of the European Court, whether the public interest is applied in tandem with the Convention must first be determined whether the public interest is present in the concrete case and then whether a fair equilibrium has been achieved between the general benefit and the individual. In the absence of an objective definition of public interest, the notional concept is "time and place-specific".

Public benefit is a concept that can be expressed in public service. Public service defined as; "*Continuous and uniform activities which are carried out by the State or other public entities or their supervisors and supervisors under the control of them, to meet and satisfy public and collective needs, and to provide for the benefit of the public*". Public benefit is the top beneficiary of the individual and community interest contest. Essentially, public interest is a judicial choice in court decisions for the benefit of the individual or community in favour of the community, the society and the state, or in the case of community, community and state interests, which is also of great benefit.

Public benefit in constitutional guideline

Public benefit is a restriction in the limitation of fundamental rights and freedoms. First of all, there is an antagonism in the limitation of the right of ownership. Public restraints are the main limiting factor in limiting the right to property. Regarding the right of property ownership, it is possible to completely cut off the relation of the right of the property with the property through the expropriation and nationalization because of the public benefit. However, Article 35 of the Constitution orders that the right to property shall be restricted and that the right of property shall not be used contrary to public interest.

In the narrow sense, the public benefit is defined as "the legal measure that determines the use of the authorities and resources at the hands of public institutions for the well- being of the public, and the legal measure used to guarantee that the limit of ownership is used and the substance of this right is not touched." Broadly speaking, public benefit refers to "all political and intellectual values that determine the purpose of public transactions and actions." From here, the first definition is a technical term, while the second one is political and ideological.

The concept of public benefit is included in the Social and Economic Rights and Assignments section of the Turkish Constitution. In Articles 43 to 48 of the Constitution, the principles related to the utilization of the public interest in our country are laid down in the materials related to the utilization of the land, the ownership of land, agriculture, animal farming and the protection of the workers in these branches of production, expropriation, nationalization and work and freedom of association.

Public benefit in the Turkish Civil Code; Article 731 of the Law states that "*the restrictions arising from the law of immovable property shall be effective without being registered in the title deed registry. Removal or modification of these restrictions will depend on the formal arrangement of the contract concerned and the annotation of the title deed. The restrictions placed on the public interest cannot be removed and cannot be changed.*"

Article 754 under the heading of "Public Harmonization Restrictions" states that "Restrictions on property rights for immovable property, in particular for building, fire, natural disasters and health-related law enforcement services; forests and roads, maritime and lake shores on the main and secondary roads, border markings and landmarks; improving or subdivision of the land, consolidating agricultural lands or building-specific lands; ancient properties, natural beauties, scenic spots, viewing spots and rare nature monuments, as well as restrictions on property rights for the preservation of lakes, mines and spring waters, are subject to the provisions of the special law".

The 756th article under the heading "Property and Easement" states that "*The sources are an integral part of the estate, and their property can only be earned along with the ownership of the land on which they are born. The right on the resources of someone else's land is established by registration in the title deed as an easement right. Underground waters are water for public interest. Being a landowner does not result in having underground water beneath it. The provisions of the special law concerning the form and extent of utilization of landowners by underground waters are reserved.*"

As it can be seen, the constitution and the related articles of the Civil Code are the sources of the legislation on the protection of social life, cultural and natural assets, forests, the whole environment and residential areas, as well as disaster protection. The result of careful reading of these items can be said to be the restriction of the public interest to the interests of the public and the environment, for the rights of all persons on movable and immovable property. It would be possible to say that the laws are the public benefit principle of one of the sources of the protection of the general welfare of the people and the relations of the people with each other and their environment to the highest level and the limitation of the property rights on the immovables due to this principle.

The public benefit is mainly a matter of maintaining the existence of the community that people have formed by living together, not the person. The direct and indirect protection of the interests of the people who form the basis of society's order constitutes a public order. The inclusion of public interests of the public interest requires the limitation of the rights of persons and their powers over their property. In democratic political processes a linear relationship is established between the interests of the public. To maximize the benefit of the majority, limiting the interests of the individual in order to ensure social justice is the basic principle of public interest.

3.5 "3R-Rule" in Property...

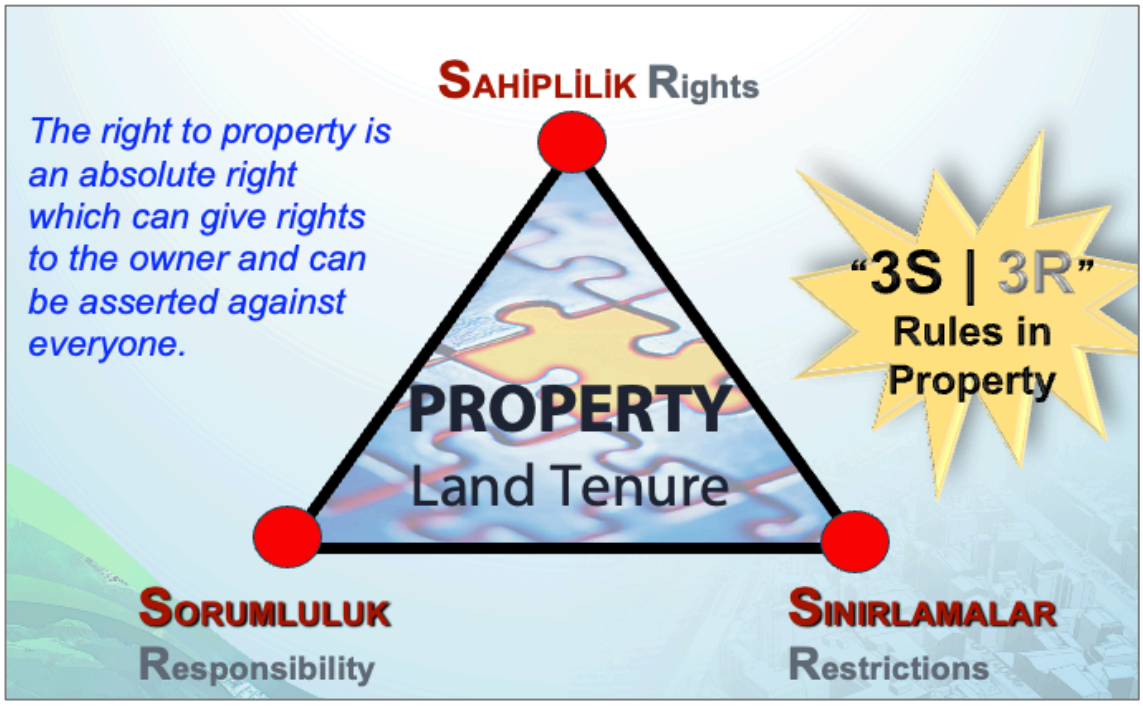
In addition to the above-mentioned concerns on property, rights in land property mainly consists of three main components. These; ***a) Rights, b) Responsibilities, and c) Restrictions.*** These basic principles can only be referred to as "Land Tenure" for an immovable when used together. The coexistence of these basic principles is known as "**3R-Rule**" in property. According to this;

The principle of "**rights**" emphasizes that everyone can have the right to ownership on a stand-alone or joint (common) immovable property, and to save and use the immovable property as he wishes. T. C. Article 35 of the Constitution points directly to the existence of the right to property. The immovable property may have the right to share property with others in a consensual manner, to inherit property, and to exercise commercial rights according to all kinds of supply and demand procedures in immovable property.

However, even if the immovable owners have the right to own property, some "**responsibilities**" arising from these rights must also be fulfilled. For example, the most important responsibility for immovables is the fulfilment of the "real-estate tax" or other tax duties arising from the immovable property. In addition, elements such as the liabilities arising from land use plans, the use of the property in accordance with the purposes of the owned properties, the respect for the general life rights of the neighbouring immovable owners and the community, and the lack of such rights shall be included in the scope of the "responsibility" evaluated.

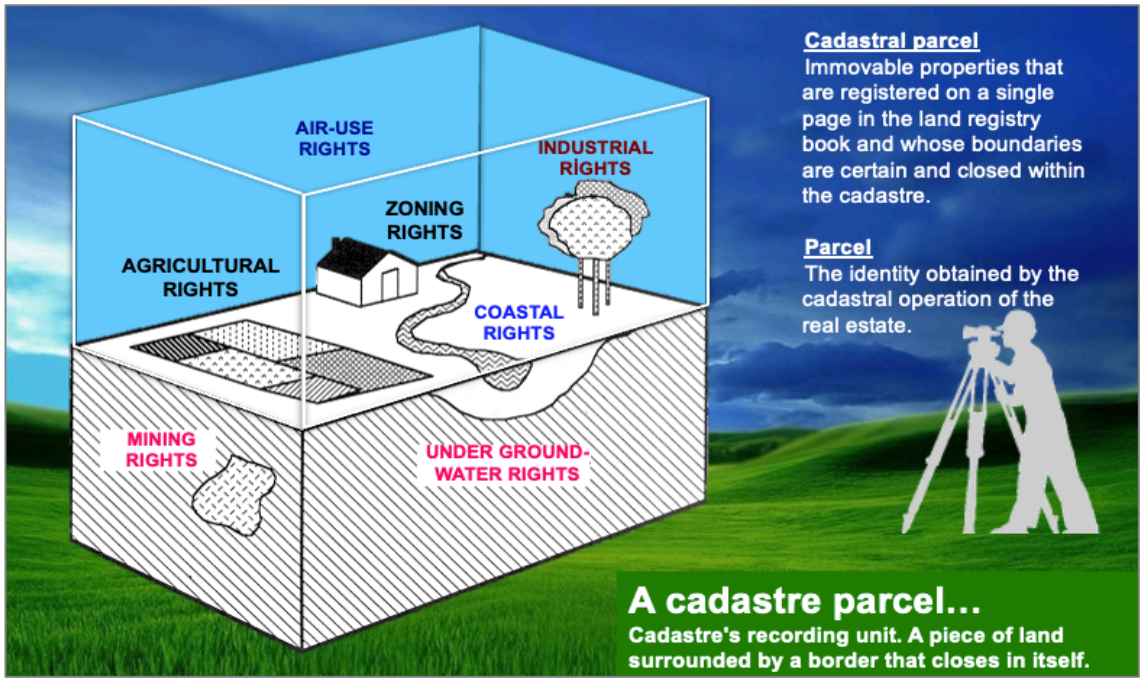
Another fundamental principle of property is "**restrictions**" and should be known that the right of property is infinite and not limitless. It is also possible to limit or otherwise restrict the right of land ownership. These restrictions may sometimes be through direct legislation or through schemes. As a matter of fact, Article 35 of the Constitution points out that the right of property can be restricted when public benefit is concerned. Especially in terms of immovables, while the rights on the land are determined by parcel borders, underground and aboveground rights can also be restricted by zoning plans and laws. For example, while the permitted number of floors for a parcel with the zoning plan limits the right to use for that parcel, the number of basements allowed also sets the floor depth limit. Sometimes it limits these rights directly to the law. For example, laws such as "mine law", "zoning law", "coastal law", "forest law", "pasture law", "expropriation" etc. can directly limit the right to property.

The provision, use and fulfilment of the consequences of these rights, which are known in the property as 3R rule, can only be provided by laws.

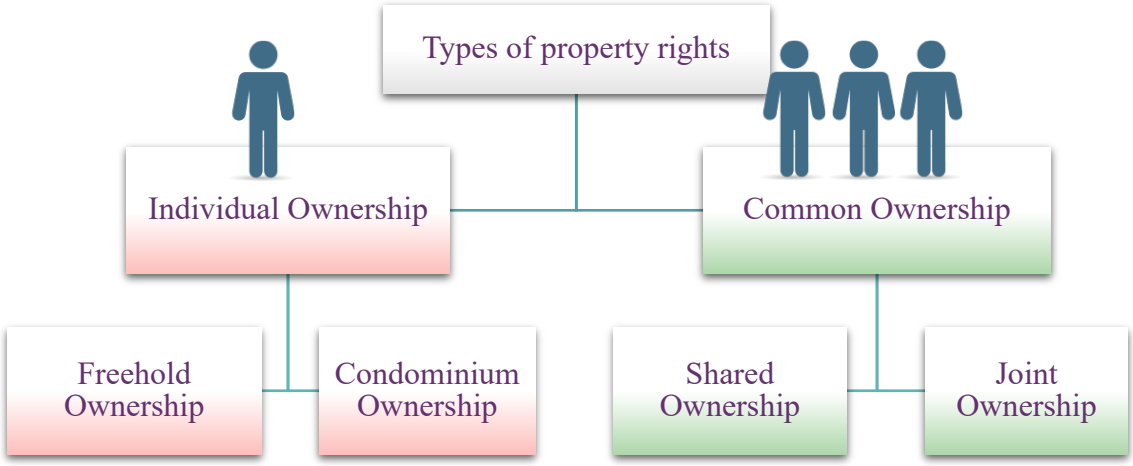


3.6 Content of the Property Right

Ownership over land includes the air layers above it and the supply layers below it, to the extent that it is beneficial to use. The scope of this property includes buildings, plants, and resources, with respect to legal restrictions (MK. 718). The content of the property right; It forms integral parts (eg: a house's roof, door, pipe, steps), natural products (eg: crops on the field), and add-ons (eg: parking lot, shelter).



3.7 Types of the Property Rights



An item can be owned by only one person, or it can be shared by two or more people. There is the right of "*individual property*" for a person with this right, and the right of "*common-property*" for more than one person. Accordingly, the right to property takes two forms.

3.7.1 Individual ownership

The form of ownership on an item in which a person is the single owner is called "*individual (personal)"* ownership. A person can use of that item alone as he wishes. It can be said that the main form of ownership is *individual* ownership.

Individual ownership can be two forms. These.

a) ***Independent ownership:*** *it is the individual ownership of a property without being with others, within the scope of Civil Law.*

b) ***Condominium ownership:*** *it is a form of private property owned by a person, according to the Condominium Ownership Law (Kat Mülkiyeti Kanunu) No. 634. In fact, in this form of ownership, the person is not completely independent, but is a part of a whole with its land share. There are more building types in immovables. For example, condominium is valid for the independent parts of the building on a plot.*

3.7.2 Common ownership

Joint ownership: two or more people can share ownership of a property. When they do, each of them has the right to jointly use and enjoy all the property they own. There are essentially two synchronised forms of ownership:

a) Shared ownership (Paylı-Müşterek-Hisseli Mülkiyet)
b) Joint ownership (El-birliği ya da İştirak halinde Mülkiyet)

Shared ownership

Each partner has an equal right to use the entire property. However, they may own different partial shares (not physically divided) of the property. E.g.

Ulvi KORKMAZ	: Veli oğlu	3/20
Ali KORKMAZ	: Veli oğlu	3/20
Ayşe KIRMIZI	: Veli kızı	5/20
Ayla DOĞAN	: Murat kızı	6/20
Selim EMRE	: Hüseyin oğlu	3/20

Each person holding a share is also known as a "**shareholder**". Shareholder (joint, shareholding) owner can transfer his share of the shares during his lifetime or at death by will. Each shareholder can also mortgage his own share.

In addition, each joint owner can completely terminate the joint ownership by a judicial act called "division (*taksim*)". In the case of division, the court will try to physically divide the property among the joint owners in proportion to their shares. If this is not possible, the court decides to sell the immovable and the income from the sale is shared proportionally between the joint owners.

The shareholder cannot give any right to another person for the physical use of the property. For example, a tenant cannot give a right-of-way to a land parcel.

If a shareholder wishes to sell some or all his share to a third party, other stakeholders in the same property preferably have the right to purchase this share first. This purchasing procedure arising from the Law (MK. 732) is called "***pre-emption (önalım)***" or "***pre-emptive right (Şufa hakkı)".*** The type of the immovable is not important for pre-emptive right. The immovable property in question may be land, residence or any other type. The important thing is that there is shared ownership.

Joint ownership

In accordance with the law or the contracts stipulated in the law, the ownership of the goods jointly owned is called joint ownership. In this form of ownership, the partners do not have a defined share. The right of each partner applies to all the goods entering the partnership. That is, the right of each owner covers the entire property. Provisions such as "your share, my share" are invalid in unanimous ownership. Therefore, any of the partners cannot use of the entire property or its own share (such as selling, pledge, lien).

The rights and obligations of the partners are determined by the provisions of the contract. Management and savings transactions require a unanimous decision. Unless otherwise stated in the contract, no sharing can be made, and no savings can be made on a share. E.g.

Pınar KORKUT	: Bedri kızı
Bilal KORKUT	: Bedri oğlu
Hülya ÇAKIR	: Hulusi kızı
Orhan KORKUT	: Hulusi oğlu
Rıza KORKUT	: Hulusi oğlu

Joint ownership arises through inheritance or in the form of a contractual partnership. This form of ownership comes to an end if the property in question is destroyed because of a disaster, the heirs sell by agreement, expropriation, the contract disappears or a transition to shared ownership is made.

3.8 Subject of Land Property Ownership

According to the Civil Code (Art.704), the subject of land property is as follows:

(1) *Land,*
(2) *Free and permanent rights recorded on a separate page in the land registry,*
(3) *Independent sections registered in the condominium registry.*

The gaining of real-estate property is done by registration only (MK. 705).

Ownership is gained before registration in cases of inheritance, court decision, forced execution, occupation, expropriation and other cases stipulated in the law. However, in these cases, the owner's ability to make savings depends on the fact that the property is registered in the land registry book.

(1) Land,

It is the part of the earth whose horizontal and vertical boundaries are determined by suitable means. Ownership over land includes the sky above and the ground (earth) layers below it, to the extent that it is beneficial to use. The scope of immovable property includes plants, structures, and resources, without prejudice to legal restrictions (MK. 718).

Article 719- The boundaries of the land parcel are determined by the land title plans and the border marks on the ground (earth).

If the land title plans and the signs on the ground do not match, the boundary in the cadastral map is valid. This rule does not apply in regions designated as landslide areas by the authorities.

Boundaries such as walls, railings, fences that separate two real estates from each other are considered the common property of two neighbours unless the contrary is proven (MK. 721).

The registration of the land in the land registry is done within the framework of the special law (Cadastre Law and Land Registry Law) regulations (MK. 998).

(2) Free and permanent rights recorded on a separate page in the land registry,

These rights, which are created by legal regulations and writing in the land registry book due to the difficulties of social and especially economic needs, and which take their immovable type from the Civil Code, are actually “personal easement” rights for the benefit of the person. They can be separated from the personality of the right holder, transferred to others through legal proceedings and passed on to heirs. Although they should be included in the scope of immovable property, they are the property of the right holder, regardless of the ownership of the land, above or below the land to which they belong, as a departure from the principle of integral part (*mütemmim cüz*). These are over-pass rights and resource right.

(3) Independent sections registered in the condominium registry

According to the Condominium Ownership Law (Kat Mülkiyeti Kanunu) No. 634, the parts of the main real-estate that are subject to free ownership are written on separate pages in the condominium registry as separate immovables. According to Article 1 of the Law; free property rights on the parts of a finished building, such as floors, flats, business offices, shops, stores, cellars, warehouses, which are suitable for use separately and on their own, by the owner or co-owners of that immovable property, according to the regulation of the Condominium Ownership Law can be installed. Easement rights can be established by the owner of the land or the co-owners of the land on the parts of a building that is under construction or to be built in the future, in order to form the base of the condominium to be passed after the building is completed.

3.9 Gaining of Land Property Ownership

The gaining of land property is achieved by registration in the land registry.

However, in case of inheritance, court decision, enforced execution, occupation, expropriation and other cases stipulated in the law, the person who get the ownership of an immovable gain the ownership before registration. However, in this way of gaining, the real-estate must be registered in the land registry book in order for the owner to make savings.

The validity of contracts aiming at the transfer of ownership of immovable depends on their being formally drawn up (MK. 706). Testamentary dispositions and property regime agreements are subject to specific forms. Gaining of land property ownership can be in three ways in general. These

a) conveying, b) primarily c) other forms of gaining

3.9.1 Gaining land property ownership by conveying

Conveying of land property are based on contracts. This form of gain can be defined as the transfer of property right from the previous owner. Conveying forms; *sale (temlik), replacement (trampa), donation (hibe), sale of inheritance shares and donation with the promise of looking after until death (ölünceye kadar bakma).*

a) Sale (Temlik): It is a legal act that transfers the property of the owner to someone else, in return for a certain price, by his own will. It is regulated according to the Code of Obligations. In particular, contracts that transfer ownership cannot be valid unless they are formally concluded. It is essential that the buyer and seller have the license to use civil rights. The official deed regarding the sale of the immovable is drawn up by the land-title manager. A contract of sale is a contract in which the seller transfers his property with the buyer, and the buyer undertakes a price in return. Unless otherwise stated, the seller and the buyer are obliged to fulfil their debts at the same time.

Figure x. Forms of gaining of land property ownership

b) Replacement (Trampa): It is the exchanging of a property with a property belonging to someone else. In exchange, the exchange of property is not money, but another property. In the process, the parties' license to use civil rights is sought.

c) Donation (Hibe): It is the giving of one's property to another person without expecting anything in return. Giving up a right or rejecting an inheritance that has not yet been gained is not a donation. In the donation process, as in every contract, the parties' license to use their civil rights is sought.

d) Sale of the inheritance share: Inheritance is the transfer of all rights and debts to the persons designated as a result of the death of the inheritor, either legally or through a testamentary disposition (inheritance contract). If the deceased left more than one heir, the remaining rights and debts will be subject to the joint ownership provisions until the division is made. This situation prevents the heirs from use of the common goods on their own. In case of possible economic problems, heirs have the right to sell their inheritance share.

e) Donation with the promise of caring until death: It is the process of donating some or all of his property to the person who will take care of him, on the condition that he will take care of himself until he dies. In such a transaction, both parties, that is, both the person to be looked after and the person to be looked after, will be in a debt burden. With the registration of the immovable, which is the subject of taking care, to the land title, the ownership of the immovable passes to the maintenance debtor and he uses his property right as he wishes. The permission of the person being cared for is not required. Since the parties expect a return, such applications are never perceived as a donation. The person responsible for the care has the obligation to meet all the needs of the person to be cared for throughout his/her life.

Rights restricting the transfer of immovable ownership

a) Pre-emption right (Şufa hakkı)

The right of pre-emption entitles other stakeholders to purchase the sold share first, in case any stakeholder in an immovable subject to the provisions of shared ownership sells part or all of its share to a third party. This right arises with the establishment of shared ownership and becomes available in case of sale of shares.

Pre-emption right is divided into three as "legal pre-emption right, contractual pre-emption right and pre-emption right of neighbouring agricultural landowner". Legal pre-emption right in Article 732 of the Turkish Civil Code; contractual pre-emption right, in article 735 of the Turkish Civil Code and article 240 of the Turkish Code of Obligations and its following; The pre-emption right of the adjacent agricultural landowner is regulated in the Soil Conservation and Land Use Law No. 5403.

In accordance with the Law No. 5403, if a family property partnership or a profit-sharing family property partnership is established, in case one of the partners sells their share to a third party, the other partners have the right of pre-emption. With this regulation, to prevent the division of agricultural lands by merging neighbouring agricultural lands, in case of sale of an immovable that is an agricultural land to third parties, the legal pre-emption right of the owner adjacent to the immovable is provided.

b) Right to purchase (İştira hakkı)

It is a right that enables the right owner to purchase an immovable from the owner for a certain price, if desired. For the right to purchase to be established, a contract must be concluded and the terms, duration, price, and other conditions of the right to purchase must be determined in this contract. The right to purchase, unless annotated in the land registry, binds only those who made the contract, and is an ineffective right against third parties.

The right to participate is a personal right. The negotiation agreement includes the owner and the right owner and the goods in question and the sale price. With the participation agreement, the parties can determine the sales period by themselves. However, according to the law, the surrender period can be up to 10 years. Unless there is an agreement to the contrary, the contractual right to purchase cannot be transferred, but is inherited.

c) Right of re-purchase (Loyalt- Vefa hakkı)

It is the right of the person selling an immovable to re-purchase the immovable with the conditions under which he sold it. In other words, the right to purchase the immovable is primarily given to the former owner. To establish the right of repurchase, a contract must be made and the duration, cost and other conditions of the repurchase right must be determined in this contract. Unless annotated in the land registry, the right of redemption binds only the contracting parties and is an ineffective right against third parties.

The establishment of the right of redemption does not restrict any right of use of the new owner of the immovable. They can use the immovable or benefit from income such as renting. The validity period of the right of redemption is 10 years at the most. If 10 years have passed since a sale, the right of loyalty loses its validity. In addition, the right of redemption cannot be transferred to another person, unless otherwise stated in a contract. However, it can be transferred by inheritance.

3.9.2 Gaining land property ownership by primarily

If the ownership of the immovable is gained directly, regardless of whether the ownership right has previously belonged to someone else, there is “primarily gain”. Expropriation, legal execution, gaining statute of limitations are the cases where the real property is acquired.

a) Expropriation: It is the process of transferring immovables owned by real and private law legal entities to public property with a one-sided use, that is, regardless of the permissions of the owners and by paying their real values, when the public interest requires it. Provisions regarding expropriation are regulated by Article 46 of the Turkish Constitution and the Expropriation Law No. 2942.

b) Occupation: It is when a person establishes his possession of an immovable that he does not own, with the desire to own it. In other words, it is an action based on a one-sided will, which does not require the transfer of the immovable from the former owner through a legal transaction. The gain of immovable property prior to registration by occupation is a type of primarily gain, and the primarily gain of the property does not affect their rights if there are limited real rights holders on the immovable.

The gaining of ownership of an immovable registered in the land registry through occupation only depends on the abandonment of the registration at the request of the owner. Ownership cannot be acquired through occupation on immovable properties that are not registered in the land-title and are not subject to title deed. With this act, the occupant acquires the ownership of the immovable before registration. However, the registration of this acquisition to the land registry is made upon the written request of the occupant. Since occupation is an act asserted with one-sided will, the registration request based on the reason for gain must be made to the court of first instance and registered by the land registry directorate after court decision.

c) Legal fulfilment (cebri icra): It is a legal way applied to have the debts paid by the debtor's own will, by the state organs. In enforced fulfilment, the desire and will of the debtor is out of question. In other words, it is the state's seizure of the situation in cases where the debtors do not pay their debts.

d) Court decisions: Court decisions ensure the acquisition of immovable property before registration. If a property right has been gained with a finalized court decision, the registration process is made when applying to the land registry directorate with this decision. In accordance with Article 138 of the Turkish Constitution, the administrations are obliged to implement the court decisions without any examination. Administrations cannot change court decisions. For the land registry office to implement the court decision, there must be a judgment "registration" decision.

e) Inheritance: The ownership of the immovables in the estate passes to the heirs without the need for any action with the death event. The heirs jointly own the immovables in the estate and must prove their title of heirship and that there is no other heir with the heir certificate.

3.9.3 Gaining land property ownership by other forms

a) Beneficial timeout: In general, the expiry of the periods specified in the laws regarding the gaining or loss of a right is called timeout. According to the Civil Code, the gainful statute of limitations can be in two ways.

i) Ordinary timeout statue: If, without a valid legal reason, the person registered as the owner of the land register continues his possession of the immovable for ten years without a lawsuit and uninterruptedly and in good faith, the property right of the person gained in this way cannot be objected to. To occur for the ordinary timeout statue, the immovable must be registered in the land registry in the name of the owner and must have held this immovable for ten years. The beginning of the period is the date on which the name of the owner is registered in the title deed.

ii) Extraordinary timeout statue: The person who has held an immovable that is not registered in the land registry for twenty years without a lawsuit and uninterruptedly, in the capacity of owner, may request from the court to decide on the registration of the ownership right on the whole, part or a share of that immovable to the land registry.

b) Creation of new land: According to the Civil Code (Art. 708), the land suitable for use in derelict places due to accumulation, filling, landslide or change in the bed or level of public waters belongs to the State. If there is no public objection, the state may first transfer this land to the person whose land is lost or to the adjacent landowner. The owner, who proves that the pieces of land have been detached from his own land, can take them back within one year starting from the date he learned the situation, and probably within ten years starting from the date on which the formation took place.

c) Places filled by seas, lakes and rivers: In accordance with Article 7 of the Coastal Law No. 3621 and Article 14 of the Regulation on the Implementation of the Coastal Law; In cases where the public interest requires it, it has been decreed that land can be obtained by filling and drying, taking into account the environmental characteristics of seas, lakes and rivers, with the implementation zoning plan decision. To carry out these procedures, the relevant administration must submit its request to the provincial governorship. The governorship submits the request to the Ministry of Environment and Urbanization for approval. Coastal Law states that the lands acquired by filling and drying in seas, lakes and rivers cannot be subject to private property and will be under the rule and disposal of the State.

d) Lands acquired by draining the wetlands: If, due to public health, it is necessary to drain the wetlands on the owned lands, the owners are requested to dry these lands within a suitable period to be given by the governorship. Otherwise, that wetland will be drained by the State. The land of those who subsequently participate in the drying costs is given to them. The land of those who do not participate in the cost becomes the property of the person who dries it. There is no need for a court order for the registration process. The registration process is carried out by adding the technical feature map to the letter of the governorship on this subject and sending the documents to the land registry directorate.

e) Possession (Zilyetlik): A person who has actual dominion over something is the possession of that thing (MK. 973). * *Possession subject is discussed in more detail in the following sections.*

3.9.4 Possession

Possession *(Zilyetlik)* is the legal situation that begins with the volitional capture of the de facto dominance over the goods and lasts until the de facto dominance is lost deliberately or un-deliberately way. The person who has the possession is also called a ***possessor***.

Ownership means to a person's right to a good. However, possession indicates a state of dominance that exists only over goods, free of this right. For this reason, possession is not dependent on the right of ownership. It is not necessary for the

possessor to be the owner. For example, the person who owns a car is both the owner and the owner of that car. But other people, such as the driver who drives this car, the mechanic if the car is left in a repair shop, or even the parking worker, to whom the car is delivered only to be parked, are considered possession while the car is under their control. Another example: in the case of theft, the thief is considered a possession because he has the de facto dominance over the stolen goods. However, he is not entitled to the stolen goods. A person who has an item until proven otherwise is the owner of that item. The burden of proof does not belong to the possessor.

In the easement rights on immovables and immovable burden, the actual use of the right by the right owner is considered possession. Possession can only be established on tangible assets. In this context, ***possession can be defined as "executing actual dominion and disposition in order to gain any interest, benefit and use on movable or immovable goods"***. There are two basic elements for possession.

- ***De facto dominance (Fiili egemenlik):*** To have de facto dominance over something. It is the authority to keep an asset away from foreign influences, either in fact or legally, to derive economic benefit from and use it. E.g., If items such as money, clothes, jewellery are located far from the person, it means that this possession is abandoned.
- ***Will of possession (Zilyet olma iradesi):*** To have the will of possession in the possession of the property. In other words, it is the establishment of de facto dominion knowingly and willingly. E.g., A person cannot be considered the owner of a soccer ball thrown into his garden without his knowledge, or a pen put in his pocket.

Types of possession

a) Primary and Secondary Possession (Asli Zilyetlik- Fer'i Zilyetlik): "If the possessor provides the thing to someone else to establish or use a limited-real right or a personal right, both become possession. Primary possessor, who is the owner of the thing, other is the secondary possessor (MK. 974)." E.g., While the usufruct owner is the original owner, the tenant is the secondary degree owner.

b) Direct Possession- Indirect Possession: "A person who maintains his actual dominance in something directly is a direct possessor, and a person who maintains it through another person is an indirect possessor." E.g., When A leases his immovable property to B, it becomes an indirect possession. Because A continues his possession now through B.

c) Single Possession – Joint Possession: "The possession of a person who uses his actual dominance in a thing alone is called individual possession, and the possession of more than one person on the asset is called joint possession. If the joint possessions can use the dominion over the property independently, there is common possession, but if they can use it together, there is joint possession. E.g., If both people have the key that can open the bank safe, there is a common possession; if both can open it by using the key together, there is a joint possession.

Gaining of possession

a) Essential gaining: If the possession of something is gained freely without trusting on the previous possession, it is essentially gaining. In fact, the role of will is important in gaining. In the actual domination of the fisherman over that thing, there is essentially the will of possession.

b) Gaining by conveying of possession: In case the possession of something is based on the permission of the previous possessor, the transfer of possession is in question. For possession to convey, the right that forms the basis of it does not necessarily have to convey together.

c) Gaining by inheritance: "Without the exceptions stipulated in the law, the heirs directly acquire the real rights, receivables, other property rights of the legator, their possessions on the movable and immovables, and are personally responsible for the debts of the legator (MK. 599/2)."

In accordance with the provisions of the law, the heirs acquire the possession of the goods in the possession of the legator upon the opening of the inheritance, due to the law. In this case, neither the de facto dominance nor the will of possession of the heirs is required.

Protection of possession

a) Protection of Possession by Using Force: Possession can ward off all kinds of usurpation or attack by using force. According to this, possession is only protected against human action, there is no possibility to use force in situations arising from animals and nature. Extortion means the seizure of the possession without the consent of the current possessor, and attack means preventing the actual domination of the possessor. For example, stealing a property is extortion, destroying it is an attack. There is no requirement for fault or damage for the use of force. Even if they are not, force can still be used because the current order is wanted to be preserved. Defence by force is only possible provided that it is immediate. If the usurper has seized the property or the attack has ended, it is no longer possible to use force. Since the use of force can only be made at the time of usurpation and attack, the possessors can benefit from this opportunity directly.

b) Protection by Lawsuit (Possession Cases): Possibility to protect the possession through lawsuit is given to the possessor whose possession has been usurped or attacked. This protection is provided by the return of possession and compensation cases in case of usurpation, and in case of attack, stopping and preventing the attack and compensation cases. The person whose possession has been usurped can demand the return of the property through a lawsuit. The lawsuit for restitution can be filed directly, as well as a person who has indirect possession but whose

possession has been usurped from the intermediary. However, indirect possession will demand that the goods be returned to the direct possession in this case. Extradition proceedings may be brought against the usurper and his entire successors.

c) Protection of Possession by Administrative Way: It is intended to protect possession only in case of encroachments on immovable properties. In case of infringement of the immovables, an application is made to the local administrative authority. This application must be made within 60 days from the date the property learned of the attacks, but in any case, no application can be made after 1 year has passed from the date of the attack. There is no time limit for immovables subject to public law. Decisions given are final, with an open administrative jurisdiction. Those who claim that they have a right that can be considered superior to the immovable property, reserve the right to apply to judicial proceedings.

Loss and termination of possession

There is no regulation in the Civil Code regarding the loss of possession. Considering the nature of the work, the possession may be terminated with or without the desire of the possessor.

Ending with the desire of the possessor occurs during the period of possession or at the abandonment of possession. It is possible to define this situation as the termination of the will of possession.

Termination against the will of the possessor occurs with the loss of actual control over the property. If another person establishes de facto dominance over the property and does not recognize the previous possessor's tenure, the previous possessor's tenure ceases. However, according to MK.976, the inability to use the de facto dominance for temporary reasons or the disappearance of the possibility of using it does not end the possession. For example, this is the case with the car left on the street, the ring left in the closet.

3.9.5 Special circumstances in the ownership of immovable

Land slide and landslide: Article 709 of the Civil Code regulates land slide in general. This article states that "*Land shift does not require boundary change. Provisions regarding drifting and mixing are applied to pieces of land and other objects that have passed from one immovable to another due to landslide.*"

With the provision of the law, it has been accepted that the principle that landslide will not cause a change in the border will not be applied in the regions determined by the competent authorities to be landslide areas. Thus, boundary changes may occur as a result of landslides in areas determined as landslide areas.

In determining an area as a landslide zone, the structure of the land must be taken into account. If an area is determined to be a landslide zone, it is obligatory to show the real estate in that area in the declarations section of the land registry. If the border does not reflect the reality due to landslide, the relevant immovable owner may request that the border be re-determined. Extra and absences are compensated.

Flood construction (Building): It is a form of abuse (*tecavüz*) that occurs as a result of the owner doing the construction on the land, not staying within its own borders, and overflowing the building to the neighbouring land or public road. Building foundations, garden walls, terraces and balconies can also cause flooding.

A person whose land has been violated due to flood construction has no obligation to endure such abuse. The person who built the flood also, if the conditions are suitable, has the right to demand that the infringed part be given a right in return for a suitable compensation. In this case, the person who built the flooded structure in good faith may request the establishment of an easement right in return for a suitable price or the transfer of the ownership of the overflowed part to him.

3.10 Legislative Infrastructure for Property

The basic legal basis of property rights is Article 35 of the Constitution of the Republic of Turkey. "**Everyone has the rights of property and inheritance**" is called in the constitutional as a reference.

The basic legal basis of the Modern Title Deed Registry is the Civil Code of 4 October 1926. The Civil Code points to the title deed registration with the statement "**Possession of immovable property will become a register**" (Md.705), and Md.997 also describes the main purpose of this process with the title of "**Land register to show the rights over immovable property**". Similarly, Article 719 of the same law states that "**the boundaries of the land property, title plans and demarcation on the field will be determined**", and "**CADASTRE**" is indicated with regard to determining the parcel boundaries.

The implementation of the cadastral procedures aiming at the creation of the land register records and the registration of the boundaries of the land is ensured by the Land Registry Law No. 2644 dated 22.12.1934, and Cadastre Law No.3402 dated 21.06.1987.

According to the Cadastre Law No. 3402, the aim of the cadastre is **"to establish the ownership rights of the immovable properties in accordance with the provisions of the Turkish Civil Code and to make cadastral maps"**. As a result of these studies, the geometrical positions, and legal statuses of the parcels on the supply are determined and a modern title deed is created under the responsibility of the state.

Therefore, first, technical measurements and mapping operations on the ground, namely called "**cadastre**" are made. Then, the other legal rights on the piece of land whose boundaries are determined, namely called "**parcel**", are recorded and the documenting process of ownership is completed with "**title deed**".

"**Land Registry and Cadastre General Directorate (TKGM)**" was established on 29.05.1936 with Law No.2997, for the purpose of carrying out cadastral transactions besides land registry transactions. Finally, the establishment and duties of the General Directorate have been rearranged with the Law No. 3045 dated 26.09.1984 on "Acceptance of Decree Law on the Establishment and Duties of the TKGM".

TKGM, relating to immovable property; they question the legal and similar situations determined by the query "**who and how?"** with "**Title Deed**". In similar, the question "**Where and How Much?"** is asked by "**cadastre**" depending on the location. Both activities are integrated under the umbrella of the TKGM.

However, it would be a great mistake to see the cadastre as merely producing grounds and a title document. Because land registry and cadastre activities are the most important legal and technical land infrastructure required for the development of a country, providing guarantee of ownership property. In this respect, cadastral activities are economic, social, legal, planning, environmental and even cultural and sociological dimensions. For this reason, the cadastre can be seen as a social engineering application. Ultimately, it is a matter of great precision and responsibility, of course, to identify the boundaries of the land property of a kind that has a sacred significance for the citizen, and to provide their security with the title deed. For this reason, the surveying and cadastre sector have heavy responsibilities and duties.

4 LAND REGISTRATION SYSTEMS

Land registration is the official recording of legally recognized interests in land. As well as supporting conveyancing and property taxation, registration systems are often a source of government revenue through the collection of fees and transfer taxes.

Most jurisdictions have some form of registration of legal documents, ownership, or use rights, but worldwide there have been major efforts to improve land registration systems to meet new demands for information, land transactions, and cost reduction. In some cases, a new system of land registration may be introduced to replace existing systems or informal arrangements.

There are many types of systems based on legal, organizational, procedural, and information management distinctions. From a legal perspective, the major types are divided between ***deed registration (senet kaydı)***, where the documents filed in the registry are the evidence of title, and ***registration of title (tapu tescili)***, in which the register itself serves as the primary evidence. Title registration systems are often further classified (e.g., European, Torrens, English) by the way boundaries are delimited and recorded, as well as other differences.

Cadastral maps are, for example, an important basis of most European systems. Although these distinctions can be useful, in reality there are as many variations as there are jurisdictions. For example, some deed registration systems today include important elements of title registration, such as cadastral mapping, parcel-based indices, and examination of documents to ensure compliance with laws and regulations. With computerization and the development of modern land information systems, the distinctions among specific systems have become even less important.

Deed registration systems can generally be implemented more quickly and with less expense than title registration systems. Deed registration can also be linked to a system of title insurance as in the USA where the private sector provides the security found in a title registration system, however such a system does not usually provide land related information for broader economic, social and community purposes.

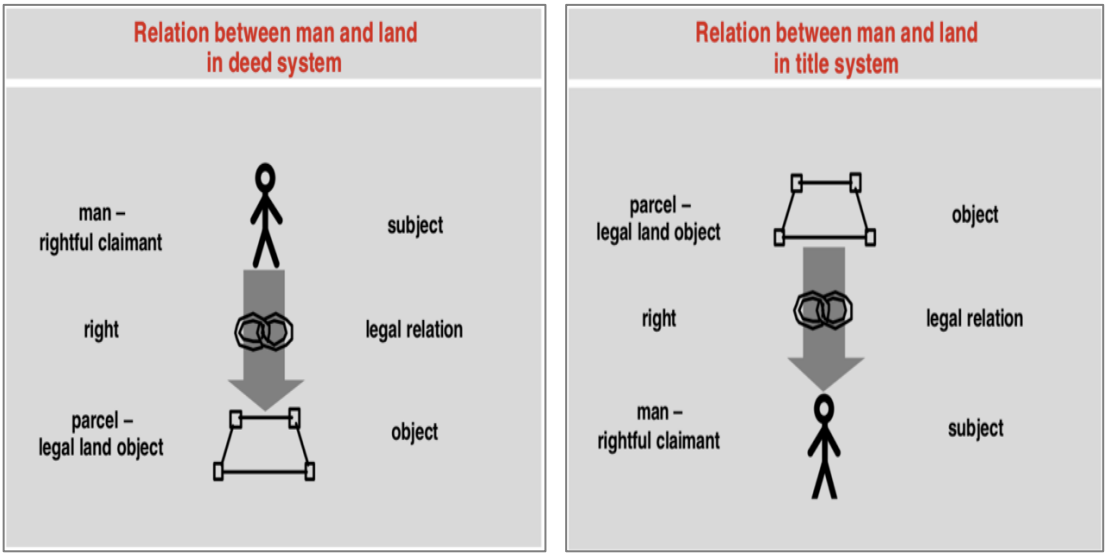
The laws and procedures of title registration systems (including examination of documents and cadastral plans) are more complex, but in principle, title registration systems have benefits in terms of greater security of tenure and more reliable information. Furthermore, users do not have to search through old documents to find information on ownership; they can rely on the information on the title register.

4.1 Land Registration Systems in The World

There are two basic different approaches in the world as an indicator of the property relationship between man and land. In fact, this property relationship is related to the traditional land use understanding of the countries from the past and these experiences have taken place in the existing legal structures.

This declaration can be called "**Land Registration or Deed System (Senet Sistemi)**". A legitimate right holder has a document indicating that a part of the land is the owner and has the authority to delegate this right to someone else. The land registration indeed system is **man-related** (Fig.a).

Another documentation format is the "**Land Recording or Title System (Tapu-Tescil)**" approach. In the land recording system, a deed is not the registered. As in Turkey, first of all, the rights corresponding to the land on the field surface are recorded together with the evidence and their relations with the land. A land-title document is prepared to document all this in legal terms. Land recording in title system is **land-related** (Fig.b). ***In this sense, the system known and applied in Turkey is "land recording (tapu tesscil)" based on title system.***



*a) "**land registration systems (senet sistemi)**" based on "**man-land**" relations, **who**? and **how**? questions are answered.*

*b) **"land recording systems (tapu-tescili)"** based on the "**land-man**" relations, **where**? and **how much**? questions are answered.*

Fig x. Basic approaches of land registration systems in the world

4.2 Land Rights Recording Systems in the World

The three systems for recording rights in land are: (a) private conveyancing; (b) the registration of deeds: and (c) the registration of title.

a) In ***private conveyancing***, documents agreeing to the transfer of ownership are passed between the "seller (vendor)" and "purchaser (vendee)", usually with the guidance of a lawyer. The State merely provides; legal framework within which this process takes place. Private conveyancing is generally regarded as inefficient and potentially dangerous since it can be subject to fraud as there is no easy proof that the vendor is the true owner.

b) Under a system of ***registration of deeds***, a copy of the transfer document is deposited in a deeds registry. An entry in the registry then provides evidence of the vendor's right to sell. In parts of the United States of America, private registers are operated by insurance companies that underwrite any losses that may arise through defects in the title. *This is known as title insurance*. Under title insurance, the purchaser pays a premium to obtain the necessary guarantee. If fraud takes place and a purchaser of land finds that the title is invalid, the insurance company will pay compensation. The system does not however support general land management.

If there is a national *deeds registration* system, the registry is under the control of the State. A copy of all agreements that affect the ownership and possession of the land must be registered at the registry offices and one copy of all documents is retained. Each document will normally have been checked by a notary or authorized lawyer and its validity ascertained. Inspection of the register will show how the vendor obtained the property and the conditions under which it was acquired. While such registries do not actually guarantee title, they provide the most important evidence of ownership that can be assumed to be correct unless proved otherwise in the courts.

c) An ideal system would reflect perfectly the legal position on the ground. Therefore, an alternative to the registration of documents is the ***registration of title*** to land. In this system each land parcel is identified on a map and the rights associated with it are recorded on the register. In addition, the name of the owner is recorded. When the whole of the land is subject to transfer, only the name of the owner need be changed. When part of the land is transferred, the plans must be amended, and new documents issued. Although; copy of the certificate of title for each land parcel is held by the landowner. Under such a system the ownership of land can be guaranteed. Anyone who is dispossessed of land through the functioning of the registers will be compensated even though the mistake was not made by the registry but rather was a fraud.

4.3 Cadastre

Cadastre is a comprehensive land administration system that records information about real estate in a country and all kinds of property rights belonging to those real estates. In most countries, administrative systems have developed around legal systems and use the cadastre to describe the area and location of land parcels described in legal documents. The cadastre is a major source of data in disputes and lawsuit between landowners and generally includes the ownership rights of the land and the precise legal status on the ground.

A cadastre is normally a parcel-based and up-to-date land information system that includes full records of land rights (e.g., rights, restrictions and responsibilities). It generally includes a geometric description of the land associated with the ownership or control of these rights and other records that often describe the value of the parcel and its developments. Cadastre can be established for financial purposes (e.g., valuation and fair taxation), legal purposes (transfer transactions) to assist in the management of land and land use (e.g., planning and administrative purposes) and provides support for sustainable development and environmental protection.

On land, each parcel has a unique code or parcel identifier. Examples of these codes include addresses, co-ordinates, or parcel numbers shown on a scale plan or map. The cadastral maps show the geometrical status of these parcels and their positions relative to all the parcels in a particular region.

A cadastral map is a map showing the boundaries and ownership status of land parcels. Some cadastral maps show local names of surveyed areas, uniquely identifying parcel numbers for parcels, title deed numbers, locations of existing structures, block and parcel numbers, and additional details such as street names, boundary lengths, and references to which they relate. Cadastral maps are commonly in the scale of 1:10,000 to 1:500. Based on geodetic measurements on the ground or remote sensing and aerial photographs, large-scale sketches or maps can be produced for each parcel showing more precise parcel dimensions and features (e.g., buildings, irrigation units, etc.).

Cadastre is a land information system usually managed by one or more government departments. Traditionally, Cadastre has been designed to assist with land taxation, property transfer, and regulation and redistribution of land. The cadastre is the primary tool for providing information on property rights. More specifically, the Cadastre provides the private and public sectors:

- Provides detailed descriptive information about the parcel to people who are interested in the lands.
- Information on the ownership structure of land areas,
- Provides information about parcel (e.g., location, area, improvement, value).

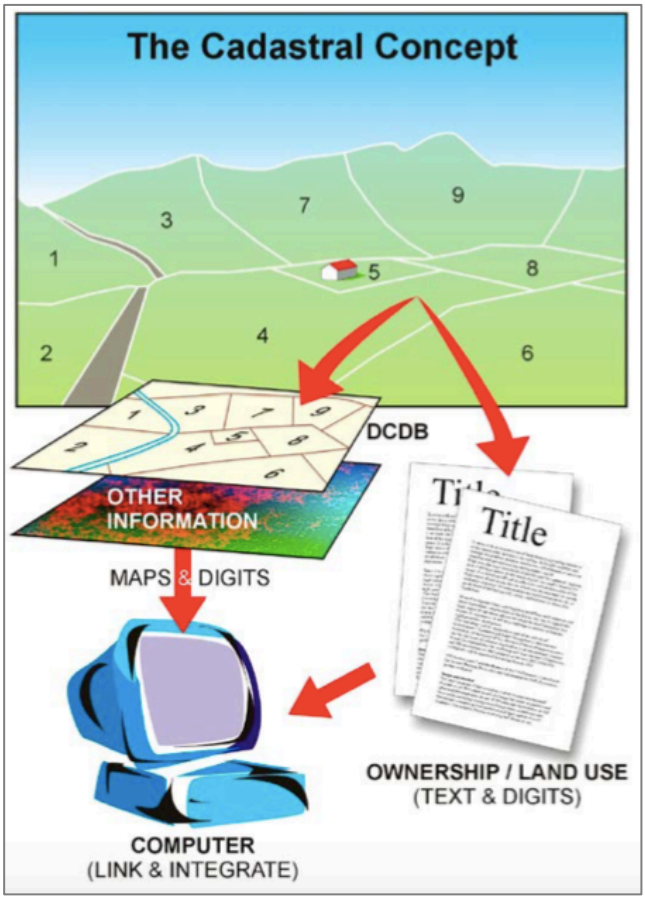


Fig x. General cadastral concept with map and land recording relationships

Fig x. Example of old-cadastral map with land parcels (graphic)

4.4 Purpose and Scope of Cadastre

Cadastre is an essential formal process in Turkey. In this sense Cadastre, It is the whole of the process of issuing the title deed documents to the right holders by registering the legal status of the immovable properties within the borders of the country on the land and map and by registering it in the land registry in accordance with the Turkish Civil Code as a result of the finalization of the transactions.

These duties were given to the General Directorate of Land Registry and Cadastre (TKGM) under the law. The main task of TKGM; To determine the basic principles for the realization of the land registry, to determine the legal and technical status of the real estates and to keep them up to date. All these activities are carried out under the Cadastre Law No. 3402.

According to the Cadastre Law No. 3402, **the aim of the cadastre is to establish the property rights of immovable property and to perform cadastral maps in accordance with the provisions of the Turkish Civil Code**. As a result of these studies, the geometric positions and legal conditions of the parcels on the supply are determined and a modern title deed is created under the responsibility of the state. Therefore, "**cadastre**" is carried out with technical measurement and mapping procedures on the ground, then the other legal rights on the "**parcel**" with the boundaries determined, by registering "**title deed**" and the certification process of the property is completed.

"**Cadastre"** shows the legal and similar situations determined by the questions "**Who and how?"** for real estate. "**Title Deed**" answers "**Where and how much?"** questions with the position, is seen as a unified whole the technical situation under one roof of activities.

The Cadastre helps to provide those involved in land transactions with relevant information and helps to improve the efficiency of those transactions and security of tenure in general. It provides governments at all levels with complete inventories of land holdings for taxation and regulation. But today, the information is also increasingly used by both private and public sectors in land development, urban and rural planning, land management, and environmental monitoring.

4.5 Components of Cadastre

Information in the textual or attribute files of the Cadastre, such as land value, ownership, or use, can be accessed by the unique parcel codes shown on the cadastral map, thus creating a complete Cadastre. Examples of the functional data of general interest to a wide user community, that is usually considered part of the Cadastre, include:

- *Land parcels (e.g., location, boundaries, co-ordinates)*
- *Land tenure (e.g., property rights, ownership, leases)*
- *Land value (e.g., quality, economic value, tax value, value of improvements)*

However, in order to be able to set a fitting cadastre structure, ***at least three basic components must exist and be linked with each other***. These are;

a) Cadastral parcel,
b) Cadastral records,
c) Cadastral parcel number (PID).

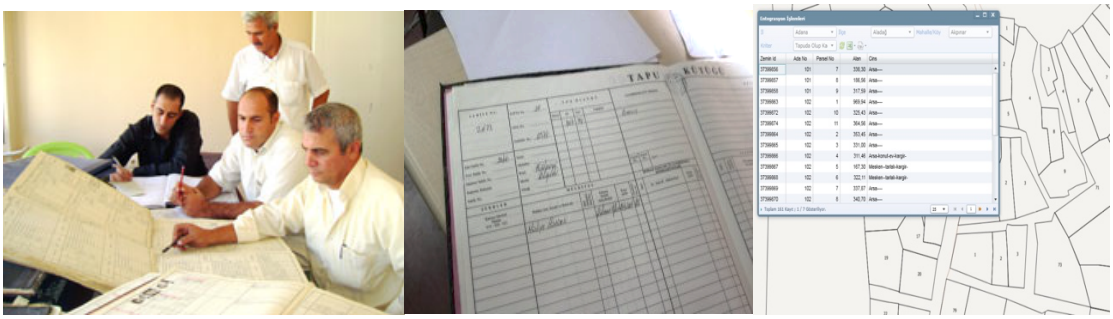
a) Cadastral parcel

The cadastral parcel is a volumetric bounded area of land, where homogeneous relations or property rights are assumed to exist. In the three-dimensional structure of the earth, a parcel covers the rights of the down and upper use in addition to the rights above the ground. As long as the rights are spread to all three dimensions of the parcel as homogeneous, the relationship of property is directly related to the spatial definition (location of the parcel). How to determine the structure of the parcel in a particular cadastral system is determined by the institutions responsible for the cadastral legislation in the country.

b) Cadastral records

Cadastral records may consist of one or more graphical and textual parts. The integrity of a cadastral system is provided by a descriptive code (**PID**) that is singular for each parcel in a given region; all parcels are linearly linked to the cadastral map. The map layers establish the relationship of the property relationship to the other parcels, a coordinate system and other graphical information in the system (e.g., roads or zone boundaries). This graphical representation, which is accepted as a legal record for the definition of the property or as an index only to other legal records, depends on the objectives of the cadastral system, the standards for the construction and maintenance of the cadastral system and the institutional environment in which the transactions are made.

In addition to the cadastral map, a significant cadastral record is a land registration book. The map, which can display the boundaries of the parcel graphically, cannot show many other property rights. For this reason, these rights are registered in the title-deed registry. In the land registry, *there are legal information including parcel and block number, location, size, owner, share status, legal rights, reason of obtaining, annotation, mortgage and similar restrictive rights.*



c) Cadastre parcel number (PID)

The relationship between attribute information (land registers) in the written records and spatial information (cadastral maps) in graphical records; the parcel codes, which serve as the access and connection mechanism and which are singular for each parcel, are set up with parcel numbers (**PID**). Not only the cadastre's own records, but also the relations of property information with other spatial map layers can only be linked with parcel numbers.

The parcel number representation may be different in countries that they choose it according to their cadastral systems. For example, the parcel number used to describe any parcel in Turkey; ***province name, district name, village/neighbourhood name, map sheet no, block number and parcel no***. As regards the display of PIDs; examples such as sequential numbers, parcel/block and sheet numbers, coordinates of the parcel centre (*called as geocodes*) and/or landowners' names, address of the parcel, postal code, street and street name.

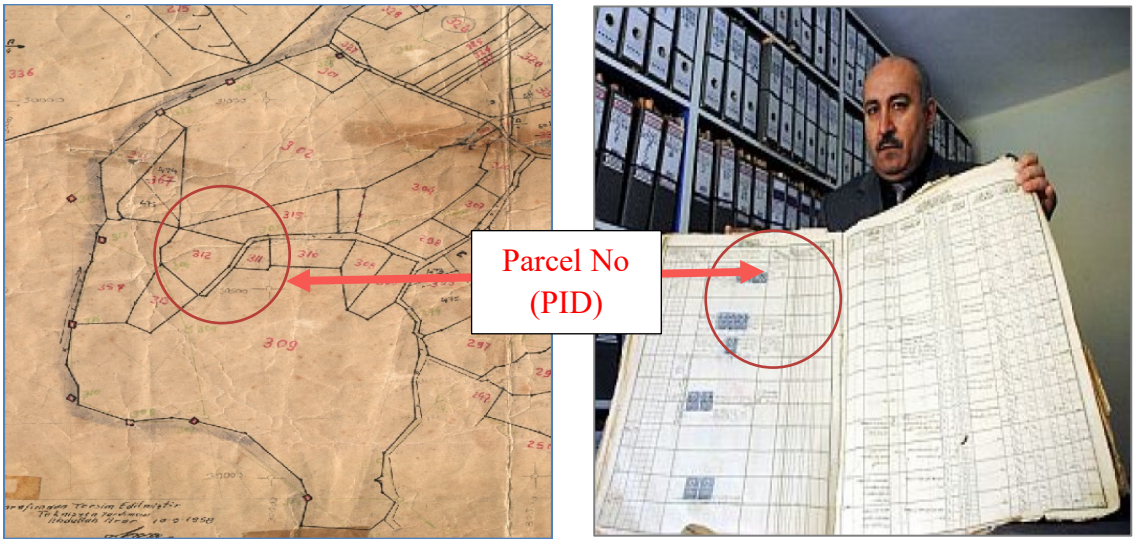
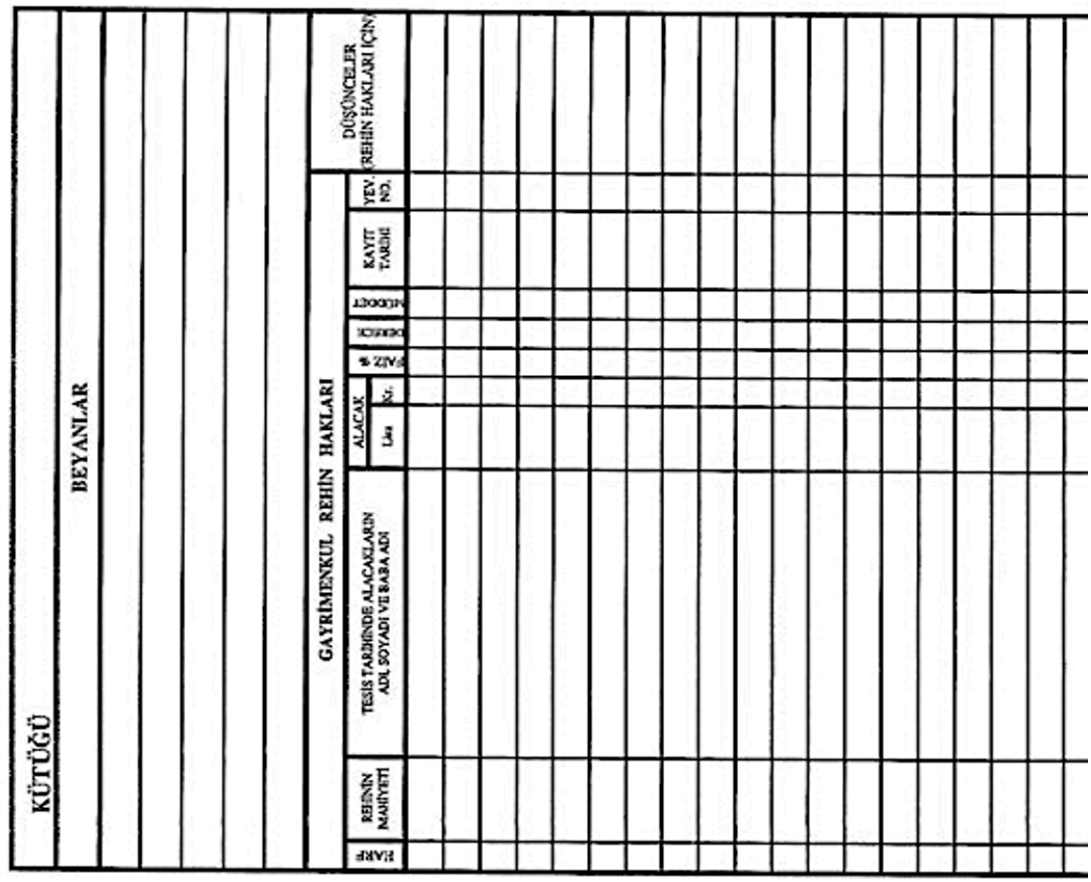
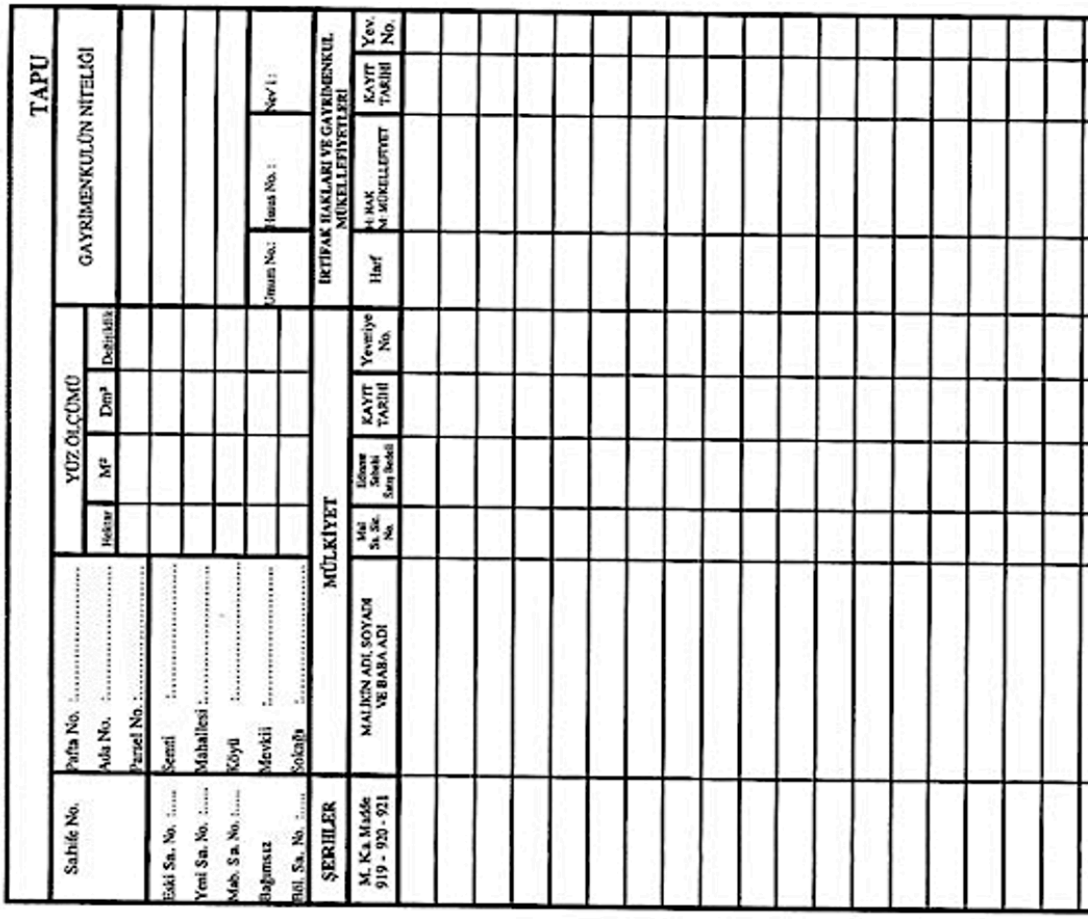
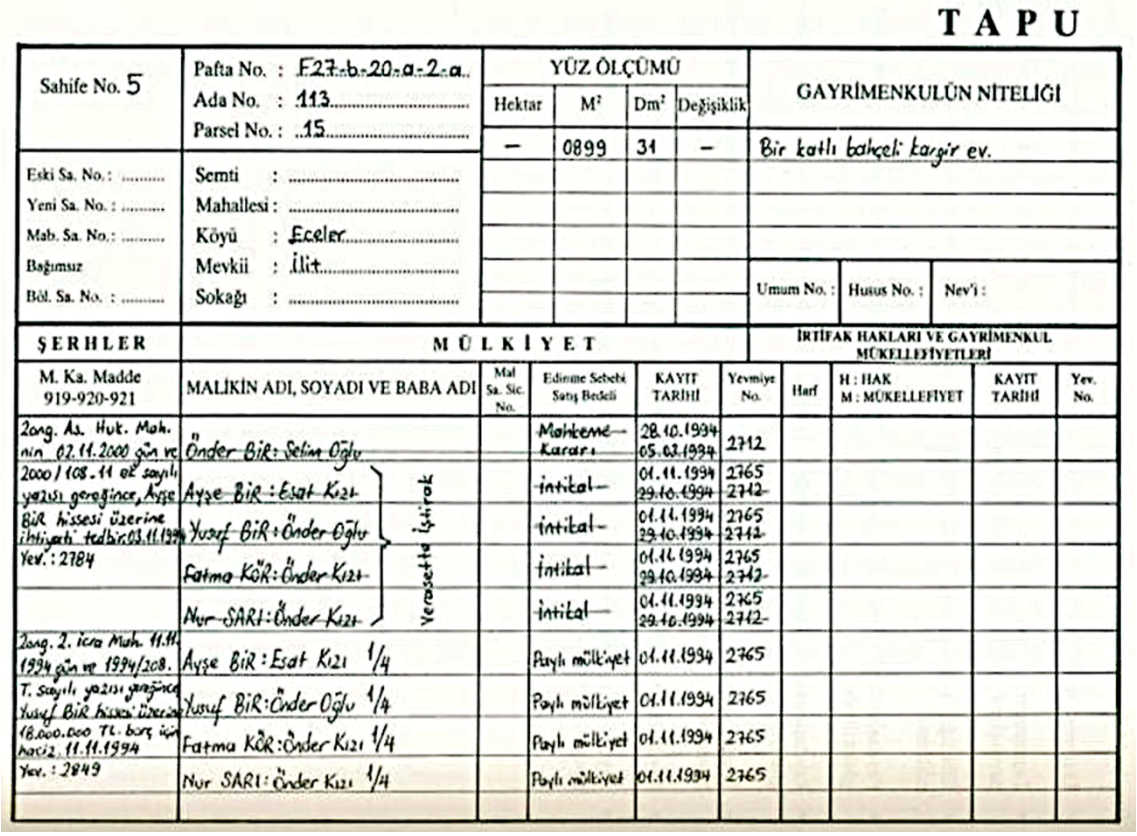


Fig x. Linkage of cadastral map and land registration book with parcel number (PID)

Examples from land registry book pages …







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Mevkii : İlit
Sokağı : .....

YÜZ ÖLÇÜMÜ

Hektar	M²	Dm²	Değişiklik	GAYRİMENKULÜN NİTELİĞİ
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Umum No. : Husus No. : Nev'i :

ŞERHLER | **MÜLKİYET** | **İRTİFAK HAKLARI VE GAYRİMENKUL MÜKELLEFİYETLERİ**

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	Yusuf BİR: Önder Oğlu (Veraseten iştirak)		intikal	01.11.1994 29.10.1994	2765 2712				
	Fatma KÖR: Önder Kızı (Veraseten iştirak)		intikal	01.11.1994 29.10.1994	2765 2712				
	Nur SARI: Önder Kızı (Veraseten iştirak)		intikal	01.11.1994 29.10.1994	2765 2712				
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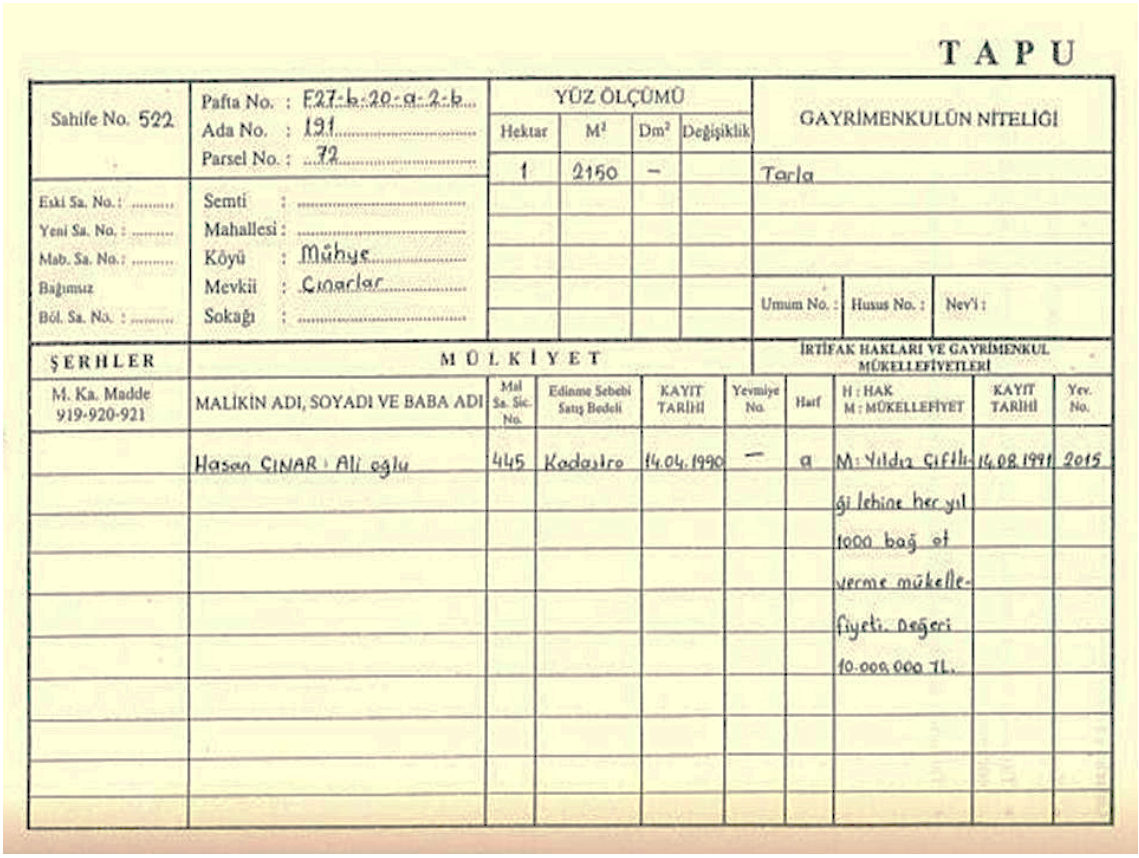

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Köyü : Mühye
Mevkii : Çınarlar
Sokağı : .....

YÜZ ÖLÇÜMÜ

Hektar	M²	Dm²	Değişiklik	GAYRİMENKULÜN NİTELİĞİ
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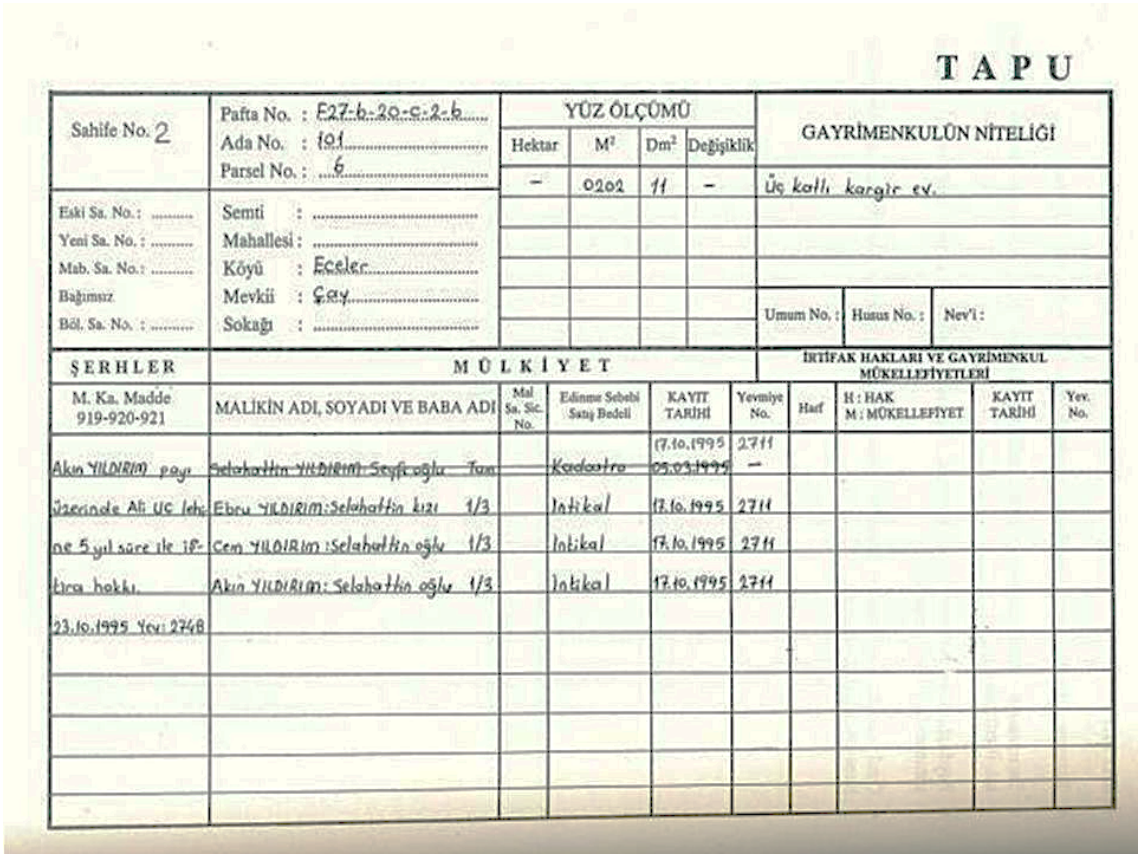
Umum No. : Husus No. : Nev'i :

ŞERHLER | **MÜLKİYET** | **İRTİFAK HAKLARI VE GAYRİMENKUL MÜKELLEFİYETLERİ**

M. Ka. Madde 919-920-921	MALİKİN ADI, SOYADI VE BABA ADI	Mal Sa. Sic. No.	Edinme Sebebi Satış Bedeli	KAYIT TARİHİ	Yevmiye No.	Harf	H : HAK M : MÜKELLEFİYET	KAYIT TARİHİ	Yev. No.
	Hasan ÇINAR - Ali oğlu	445	Kadastro	14.04.1990	—	a	M: Yıldız Çiftliği lehine her yıl 1000 baş ot verme mükellefiyeti. Değeri 10.000.000 TL.	14.08.1991	2015



TAPU

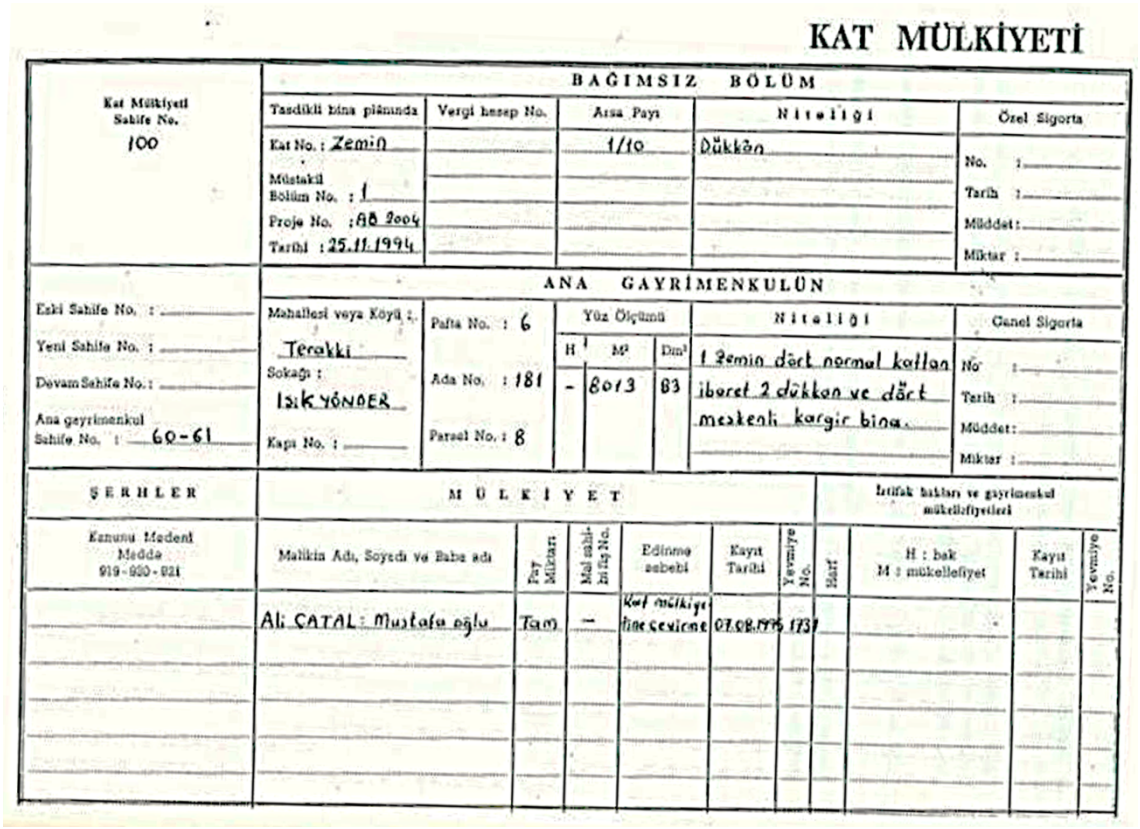
Sahife No. 2	Pafta No. : F27-b-20-c-2-b Ada No. : 101 Parsel No. : 6	YÜZ ÖLÇÜMÜ Hektar	M²	Dm²	Değişiklik	GAYRİMENKULÜN NİTELİĞİ
		–	0202	11	–	Üç katlı kargir ev.

Eski Sa. No. : .....
Yeni Sa. No. : .....
Mah. Sa. No. : .....
Bağımsız Böl. Sa. No. : .....

Semti : .....
Mahallesi : .....
Köyü : Eceler
Mevkii : Çay
Sokağı : .....

Umum No. : | Husus No. : | Nevi :

ŞERHLER	MÜLKİYET					İRTİFAK HAKLARI VE GAYRİMENKUL MÜKELLEFİYETLERİ			
M. Ka. Madde 919-920-921	MALİKİN ADI, SOYADI VE BABA ADI	Mal Sa. Sic. No.	Edinme Sebebi Satış Bedeli	KAYIT TARİHİ	Yevmiye No.	Harf	H : HAK M : MÜKELLEFİYET	KAYIT TARİHİ	Yev. No.
Akın YILDIRIM payı	Selahattin YILDIRIM: Seyfi oğlu Tam		Kadastro	(7.10.1995 05.03.1996	2711 –				
üzerinde Ali UÇ leh-	Ebru YILDIRIM: Selahattin kızı 1/3		İntikal	17.10.1995	2711				
ne 5 yıl süre ile iş-	Cem YILDIRIM: Selahattin oğlu 1/3		İntikal	17.10.1995	2711				
tira hakkı.	Akın YILDIRIM: Selahattin oğlu 1/3		İntikal	17.10.1995	2711				
23.10.1995 Yev: 2748									



KAT MÜLKİYETİ

Kat Mülkiyeti Sahife No. 100

BAĞIMSIZ BÖLÜM

Tasdikli bina planında	Vergi hesap No.	Arsa Payı	Niteliği	Özel Sigorta
Kat No. : Zemin Müstakil Bölüm No. : 1 Proje No. : 88 2004 Tarihi : 25.11.1994		1/10	Dükkân	No. : Tarih : Müddet : Miktar :

Eski Sahife No. :
Yeni Sahife No. :
Devam Sahife No. :
Ana gayrimenkul Sahife No. : 60-61

ANA GAYRİMENKULÜN

Mahallesi veya Köyü :	Pafta No. : 6	Yüz Ölçümü H	M²	Dm²	Niteliği	Genel Sigorta
Terakki Sokağı : IŞIK YÖNDER Kapı No. :	Ada No. : 181 Parsel No. : 8	–	8013	83	1 Zemin dört normal katlan iberet 2 dükkan ve dört meskenli kargir bina.	No : Tarih : Müddet : Miktar :

ŞERHLER	MÜLKİYET					İrtifak hakları ve gayrimenkul mükellefiyetleri			
Kanunu Medeni Madde 919-920-921	Malikin Adı, Soyadı ve Baba adı	Pay Miktarı	Mal sahibinin Sıra No.	Edinme sebebi	Kayıt Tarihi	Yevmiye No.	Harf	H : hak M : mükellefiyet	Kayıt Tarihi	Yevmiye No.
	Ali CATAL: Mustafa oğlu	Tam	–	Kat mülkiyetine geçirilme	07.08.1996	1737				

4.6 Land Registry

The land registry system has been accepted by the Turkish Civil Code-Swiss Civil Codes and the German Civil Code. In this system, the land registry is a system that reflects the geometric and legal status of real estate in all its details.

The legal basis of the modern land registry in Turkey is the **Turkish Civil Code**.

The registries, which are kept and monitored according to the principles of registration and clarity, under the responsibility of the state, to show the rights on the immovables and to ensure the establishment, protection and modification of the rights are called **the land registry**.

The conditions and procedure for keeping the land registry records stipulated by the Civil Code are determined in the **Land Registry Regulation**.

The owner of an immovable property, cadastre, land title, judicial remedy, etc. may have been determined by a method. The document given under the guarantee of the State for a determined property is called "**deed**". The title deed is the official document showing who owns a property.

The title deed is a public document issued by the land registry office, showing the owner of a certain part of the land or an independent section built on it. In a sense, the title deed is like a registry summary that contains the important features of the registry on which it is based.

The following are recorded as immovable in the land registry;

1) *Land*
2) *Independent and permanent rights on immovables*
3) *Independent sections subject to condominium*

The administrative boundaries of each county are a land registry region. The land registry is prepared separately for each neighbourhood or village within its region. The immovables are registered in the land registry of the region in which they are located.

The immovables are given the immovable number of the Republic of Turkey by the General Directorate. Places under the jurisdiction and disposal of the state and immovables that are not privately owned and reserved for public use are not registered in the land registry unless a real right to be registered is established. If an immovable registered in the deed turns into an immovable that is not subject to registration, it is removed from the land registry.

In the land registry system, an independent page is opened for each real estate while the real estate is registered. This is called the "*Ayni Yöntem*". On this independent page reserved for immovables, all the features of that immovable, the surface area of the immovable, its borders, the owner, and the limited real rights on the immovables are written.

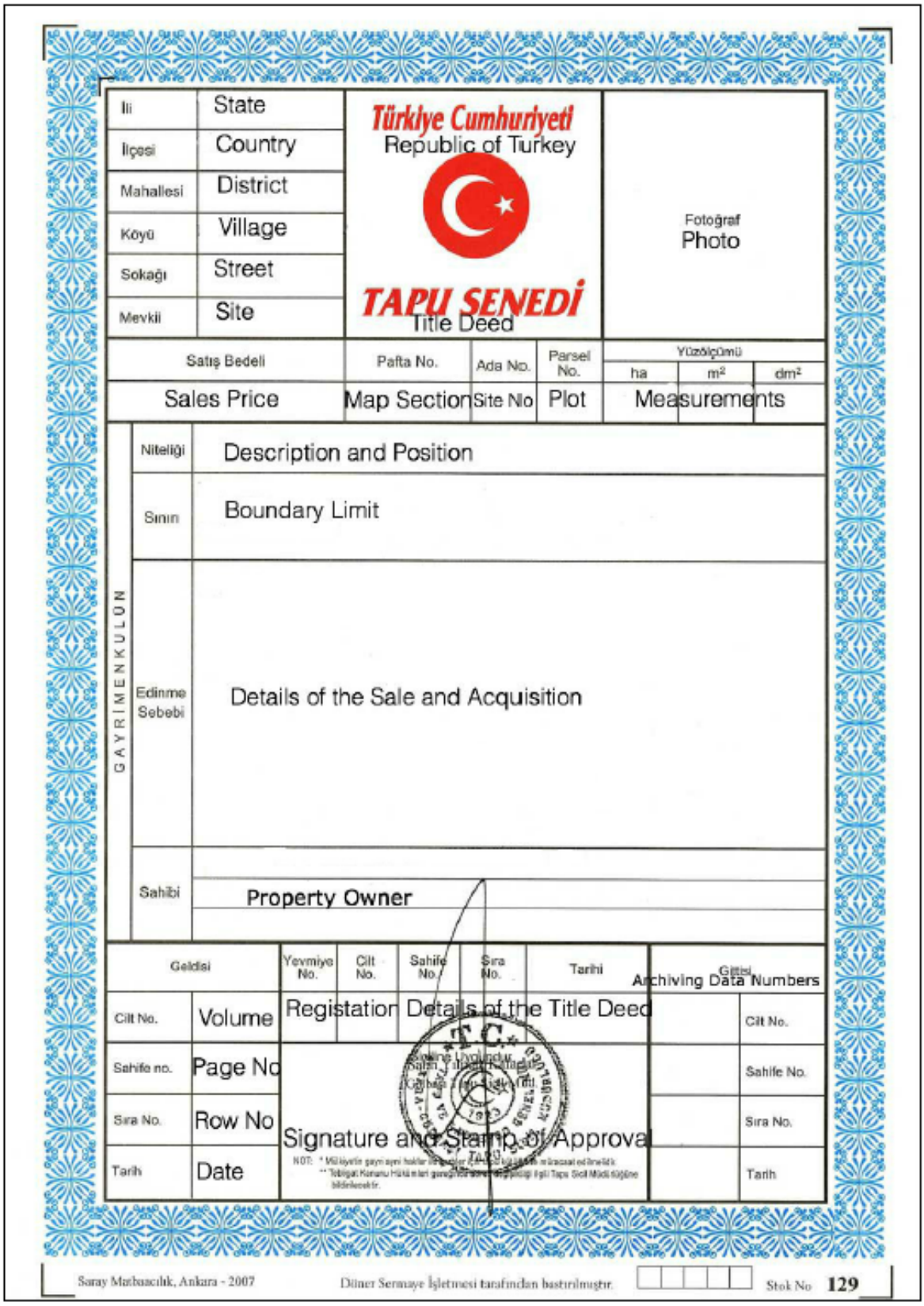


Fig x. An example of land title deed

4.6.1 Duties of the Land Registry

First, the land registry gives the property of immovable objects in terms of property law. The second duty of the land registry is to make the real rights on immovables open (*aleni*) as the possession of movables does. Likewise, the gaining, transfer and elimination of the same right on immovables can be realized by a registration process to be made in the land registry as a rule.

4.6.2 Principles Dominating the Land Registry

a) Principle of Publicity: The land registry is open to anyone who is interested. Anyone who makes his interest believable may request that the relevant page and documents in the land registry be shown to him in front of the land registry officer, or that copies of them be given. However, those who claim to be related and want to examine the land registry and take copies of records must prove their interest.

b) Registration Principle: Gaining of immovable property, establishment of the same right on immovable other than ownership, etc. The fact that it requires a formal transaction in the land registry is the principle of obligation of registration. It is obligatory to register a real right in the land registry for the birth, acquisition, modification or cancellation of a right in rem.

c) Principle of Causality: The fact that a registration made in the land registry can have legal consequences depends on the validity of the legal reason underlying the registration as a rule. The registration, which is not based on a valid legal reason, is only formal. However, it is illegal registration that is not legally valid. Anyone whose rights have been damaged due to corrupt registration can demand the removal of this registration.

d) Trust Principle: Everyone can trust the accuracy of the records in the land registry. This right of a person who acquires property or a real right other than ownership in good faith, based on a record in the land registry, shall be valid. Anyone whose rights have been damaged due to corrupt registration may demand the removal of this registration.

e) State Responsibility Principle: The state is responsible for all damages that may arise due to the keeping of the land registry. The state has the right to recourse these damages to the civil servants due to their faults. The title deed registry directorates responsible for the damages arising from the keeping of the land registry; It includes all damages arising from the transactions made by not complying with the provisions of the Civil Code, Land Registry Regulation and other relevant laws, statutes and regulations.

Loss arising from keeping the land registry; It is the loss of a right due to the mistakes and omissions of the officials authorized to keep these records, knowingly or unknowingly. If the damage is not related to keeping the land registry, the responsibility of the State cannot be in question.

4.6.3 Sections of Land Registry System

Tapu sicili aşağıda belirtilen ana ve yardımcı sicillerden oluşur:

A) Ana siciller	*B) Yardımcı siciller*
• *Tapu kütüğü,* • *Kat mülkiyeti kütüğü,* • *Yevmiye defteri,* • *Plan,* • *Resmî belgeler (resmi senet, mahkeme kararı vd.).*	• *Mal sahipleri sicili,* • *Aziller sicili,* • *Düzeltmeler sicili,* • *Kamu orta malları sicili.*

A) Main Registers

a) Land Registry (Tapu Kütüğü)

It is the main book in which an immovable is recorded on each page, and it is the most important part of the land registry. The easement rights established on the immovable or established on another immovable in favour of that immovable, the immovable burden, the pledge rights on the immovables, and all the rights and obligations that require annotation and registration in accordance with the provisions of the law and regulation have been secured by the land registry. Land registers are kept separately for each village and neighbourhood. No scraping, erasure or protrusion can be made on the land registry.

There are 3 main parts on each page separated by an immovable in the land registry

- *Right of Ownership*
- *Easement Rights – Real Estate Liability*
- *Mortgage Rights*

Note: Office Book (Zabıt defteri): These are the books that are kept instead of the land registry in places where cadastre has not been done yet. These registers, unlike the land registry, were arranged on a district basis, not on a village or neighbourhood basis. Each registry has a volume number. In these books, the borders of the immovables are shown by explanation the neighbouring immovables.

b) Condominium Register (Kat Mülkiyeti Kütüğü)

The independent sections subject to the condominium are recorded in the condominium register. Without prejudice to the provisions of the special law, the provisions regarding the land registry shall apply to the transactions to be made in the condominium registry. According to the Condominium Ownership Law (*Kat Mülkiyeti Kanunu)* No. 634; The owner or joint owners of the real estate are registered, which is established in connection with the land share and independent places on the sections of a completed building, such as floors, flats, business offices, shops, stores, cellars, warehouses, which are suitable for use separately and alone.

Before the registration to the condominium registry, the statement "The ownership of this immovable has been converted into condominium ownership" is written with the date and journal number in the ownership column of the land registry where the main immovable is registered, and the page is closed. A separate page is opened for each independent section in the condominium registry.

c) Journal Book (Yevmiye defteri)

It is a very important book in determining the order of real rights registered in the land registry. Before the necessary action is taken on the land registry, the requests regarding the transfer of ownership, establishment, modification or leaving of the same rights are recorded in the journal according to the application date and order.

Requests for registration in the land registry are immediately written in the journal, in the order of the request, by specifying the identity of the requester and the subject of the request. The documents on which these transactions are based are carefully put in order.

d) Official Documents

Although the land registry is a book that provides clarification of real rights, it is not possible to find the details of existing rights in this book. Official documents containing the reasons and details of these rights are the most important elements of the land registry, as they provide the legal basis for the records recorded in the land registry.

- *Official Bill*
- *Plan*
- *Court Decisions*
- *Other Documents*

B) Auxiliary Registers

a) Owners Registry (Karteks)

The name, surname, place of residence, name, parcel and page numbers of the immovables they own, as well as the neighbourhoods or villages of the immovable owners in a region are recorded in the landlord's registry. A separate book is opened for each letter according to the initials of the surnames of the owners. If the person has more than one immovable property, it is shown in the same column.

b) Registry of Dismissals (Aziller sicili)

This registry provides the opportunity to check whether the proxy (vekil) has been dismissed in the transactions made through the proxy. Those giving power of proxy are written in the section reserved for each letter in the registry, according

to the initials of their surname. When the dismissal document is received, the date, hour and minute it was received by the manager or the officer to be appointed is written immediately and recorded in the dismissal register. When a transaction will be made based on the power of proxy, the situation is checked from this registry.

c) Registry of Corrections (Düzeltmeler sicili)

It is a book that is used to correct the registration errors made in the land registry without the fault of the person concerned, if they are noticed during the control, and to explain the reason for the correction.

d) Public Common Goods Registry (Mera, yaylak ve kışlak kütüğü)

According to paragraph B of Article 16 of the Cadastre Law No. 3402, which entered into force in 1987, the public goods registry is kept by region. The writing works made in this registry are not in the nature of registration, but in the nature of information.

e) Other notebooks

- *Table cellar notebook (Tablo mahzen defteri)*
- *Correspondence Book (Yazışma defteri)*
- *Administrative border registry (İdari sınır kayıt defteri)*

4.6.4 Transactions on the Land Registry

a) Registration (Tescil)
b) Remarks (Şerhler)
c) Declarations (Beyanlar)
d) Disuse (Terkin)
e) Corrections (Düzeltmeler)

a) Registration: On an immovable registered in the land registry or the office book; It is a registration made for the birth, acquisition, modification and disuse of a real right. In the registration process, the sequence number in the journal is taken into account. The registration is made upon the written declaration of the owner of the real estate subject to the disposition.

The person who gains the immovable; If it is based on a law, a final court decision or an equivalent document, this statement is not required. A person who gains a real right before registration can request registration by submitting the necessary documents.

The realization of savings, such as registration, cancellation and change, depends on the requester documenting the power of disposition and legal reason. If the documents regarding the power of disposition and legal reason are not complete, the request is rejected.

b) Remarks: in the annotation's column of the land registry; personal rights, annotations restricting the power of disposition, temporary annotations on registration and matters stipulated by the law; It is written by showing the subject, duration, date, journal number and value, if any.

- *Rental contract*
- *Contractual pre-emption right*
- *Real estate premise contract for sale*
- *Court decisions*
- *Foreclosure and precautionary foreclosure decisions*
- *The deadlines for bankruptcy and concordat*
- *Donation promise agreement*
- *The right to benefit from the free degree established by the right of mortgage*
- *Notarized contract, etc., for the right to build on the land in return for flat.*

c) Declarations: Some legal and actual situations concerning immovables are written in the declarations section of the land registry in order to be known by everyone. In general, matters that cannot be written in other columns of the land registry page are written in the declarations section.

- *Additions (Eklentiler)*
- *Timeshare right (Devre mülk hakkı)*
- *Expropriation decisions made according to article 7b of the expropriation law*
- *Restrictions required to be shown in the register pursuant to special laws. For example, restrictions on immovable properties in the Hard Coal Basin, etc., given in accordance with the Law No. 3303.*

d) Disuse (Terkin): is the opposite of registration. Disuse is the name given to the process of drawing the annotations in the official books or land registry. According to the Land Registry Regulation, if an immovable registered in the title deed turns into an unregistered immovable, it is cancelled from the registry.

In order to terminate a right in rem and correct the land registry, the process of cancellation is made. In addition, the deed registries that have become corrupt with the cancellation process can also be corrected.

e) Corrections: is the process of correcting a wrongly written record in the land registry in accordance with its documents. In practice, wrong or incomplete spellings are made on issues such as the owner's name, surname, father's name, gender, share, date and journal number, and the area of the real estate. Such mistakes, contrary to the document, can be corrected by the land registry directorate, upon the request of the relevant parties.

According to the amendment made in the Land Registry Regulation, in case of a simple misprint in the registry, journal book and auxiliary registers, contrary to the document, it is allowed to make corrections by the manager. The reason for this is described in the correction book.

5 CONDOMINIUM PROPERTY LAW

5.1 Introduction to condominium property

A condominium (*also called condo*) is a type of living space which is similar to an apartment, but which is independently sellable and therefore regarded as real estate. It is where the condominium building structure is divided into several units that are each separately owned, surrounded by common areas that are jointly owned.

Residential condominiums are frequently constructed as apartment buildings, but there has been an increase in the number of "detached condominiums", which look like single-family homes but in which the yards, building exteriors, and streets are jointly owned and jointly maintained by a community association.

Unlike apartments, which are leased by their tenants, condominium units are owned outright. Additionally, the owners of the individual units also collectively own the common areas of the property, such as hallways, walkways, laundry rooms, etc.; as well as common utilities and amenities, such as roof, corridors, elevators, and so on. Many shopping malls are industrial condominiums in which the individual retail and office spaces are owned by the businesses that occupy them while the common areas of the mall are collectively owned by all the business entities that own the individual spaces. The common areas, amenities and utilities are managed collectively by the owners.

The difference between an "apartment" complex and condominium is purely legal. There is no way to differentiate a condominium from an apartment simply by looking at or visiting the building. What defines a condominium is the form of ownership. A building developed as a condominium (and *sold* in individual units to different *owners*) could actually be built at another location as an apartment building (the developers would retain ownership and *rent* individual units to different *tenants*).

Technically, a condominium is a collection of individual home units and common areas along with the land upon which they sit. Individual home ownership within a condominium is construed as ownership of only the air space confining the boundaries of the home (Vertical Property Right). The boundaries of that space are specified by a legal document known as a Declaration (İskan Belgesi), filed on record with the local governing authority. Typically, these boundaries will include the wall surrounding a condo, allowing the homeowner to make some interior modifications without impacting the common area. Anything outside this boundary is held in an undivided ownership interest by a corporation established at the time of the condominium's creation.

5.2 The Condominium Law

The emergence of condominium has resulted from rapid urbanization. However, the fact that the legal status of the apartments and independent sections (apartment flats) has not been determined has led to different judicial decisions, and this situation has led to serious problems in practice. In this context, the Condominium Law dated 1965 and numbered 634 was established in order to respond to this need in our country. Before the Law No. 634, an easement right was established in favour of each of the stakeholders of the shared immovable, to benefit independently from a floor, flat or section of the building. However, with the Law No. 634, each independent section is considered a separate immovable. In addition, with the Law No. 634, condominium ownership, condominium servitude and the right of "time-share property" added with the Law No. 3227 were regulated.

Condominium ownership is the ownership of separate independent sections in a completed building, for example, on each flat in an apartment building. In other words, everyone still has a share of the land on the building. However, the right arising from this land share has become the property of the relevant independent section (a flat in an apartment) in accordance with the Condominium Law. In other words, if the building is demolished in some way, the property rights of all owners continue over their land shares. However, the process of existence of the structure continues as the property right of all owners as condominium ownership. Likewise, independent ownership can be established on the parts of a completed building, such as a shop, warehouse, floor or apartment, which are separate and suitable for use alone.

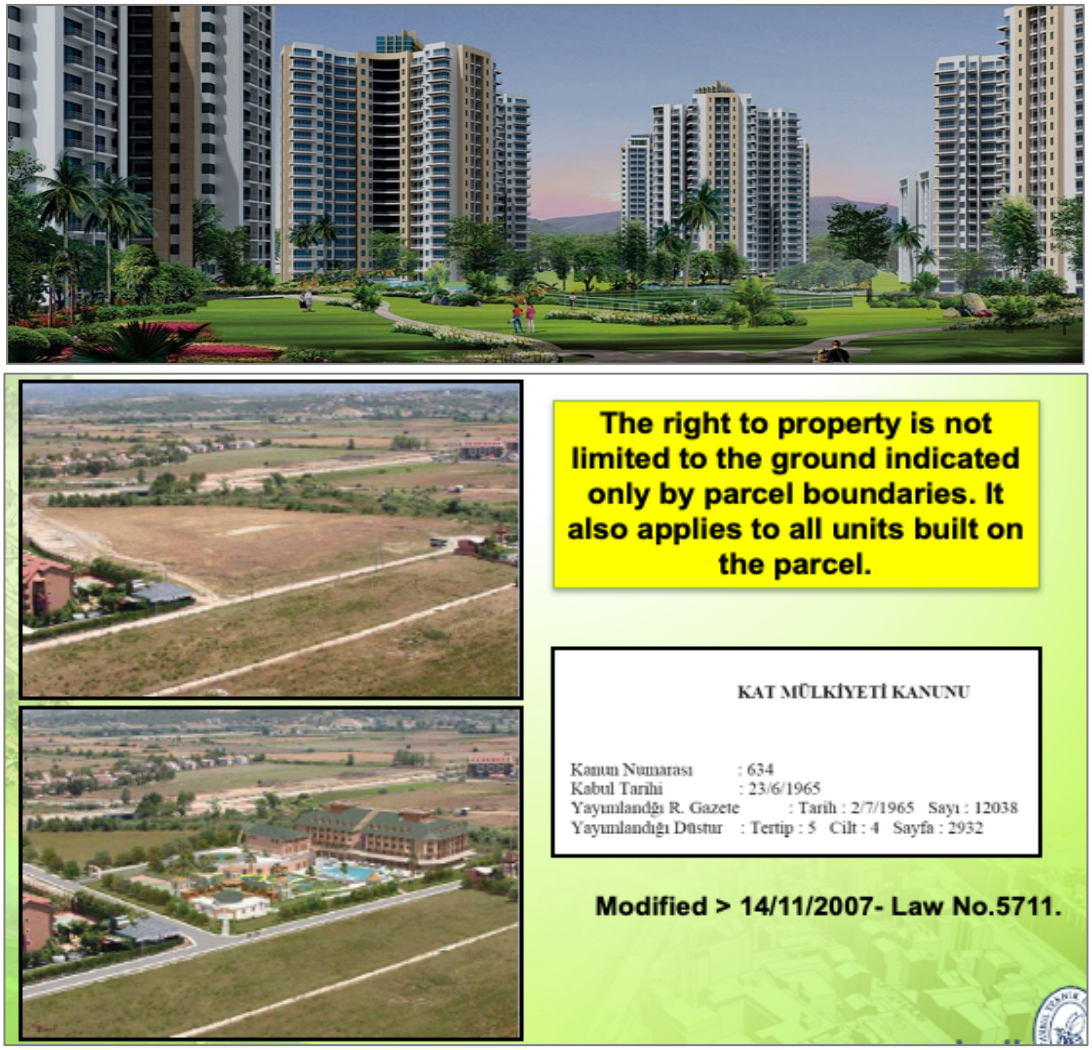
Land shares are determined according to the value of each independent section. The value of the independent sections, on the other hand, is determined by looking at what floor it is located on, whether it faces the street, whether it gets the sun or not, and whether it faces south. Likewise, the property rights of the flat owners on the common areas are in proportion to their land shares. The land share is also considered in terms of the floor owners' participation in the common expenses. The higher the share of the land, the more it participates in the expenses. Flat owners, who are of the opinion that the land share is not correct due to the wrong valuation of the independent section, may file a lawsuit for the correction of the land share.

The definition of condominium units and common areas and any restrictions on their use are set out in a document commonly referred to as the "Management Plan". The governance rules of the building are generally handled as a separate set of statutes with this plan report that governs the internal affairs of the condominium. The Management Plan usually sets out the responsibilities of the owner association; voting procedures to be used in management meetings, qualifications,

powers and duties of the board of directors, such as the powers and duties of civil servants, the obligations of owners regarding the evaluation, maintenance and use of units and common areas. Thus, a set of rules and regulations are established that provide specific details of restrictions on the behaviour of independent section owners and occupants.

According to the law, free property rights can be established by the owners of the real estate according to the provisions of the Floor Ownership on the ones that are suitable for being used separately from the departments such as floor, apartment, office, shop, store, cellar, warehouse (Law no.634 / Art.1).

The right of provisional use can be established on the parts of the structure that is being constructed or to be made in the future. After the completion of the building to be passed on the basis of the ownership of the floor, landowners or common owners of the land, according to the provisions of this law easement rights (*irtifak hakkı*) can be established.



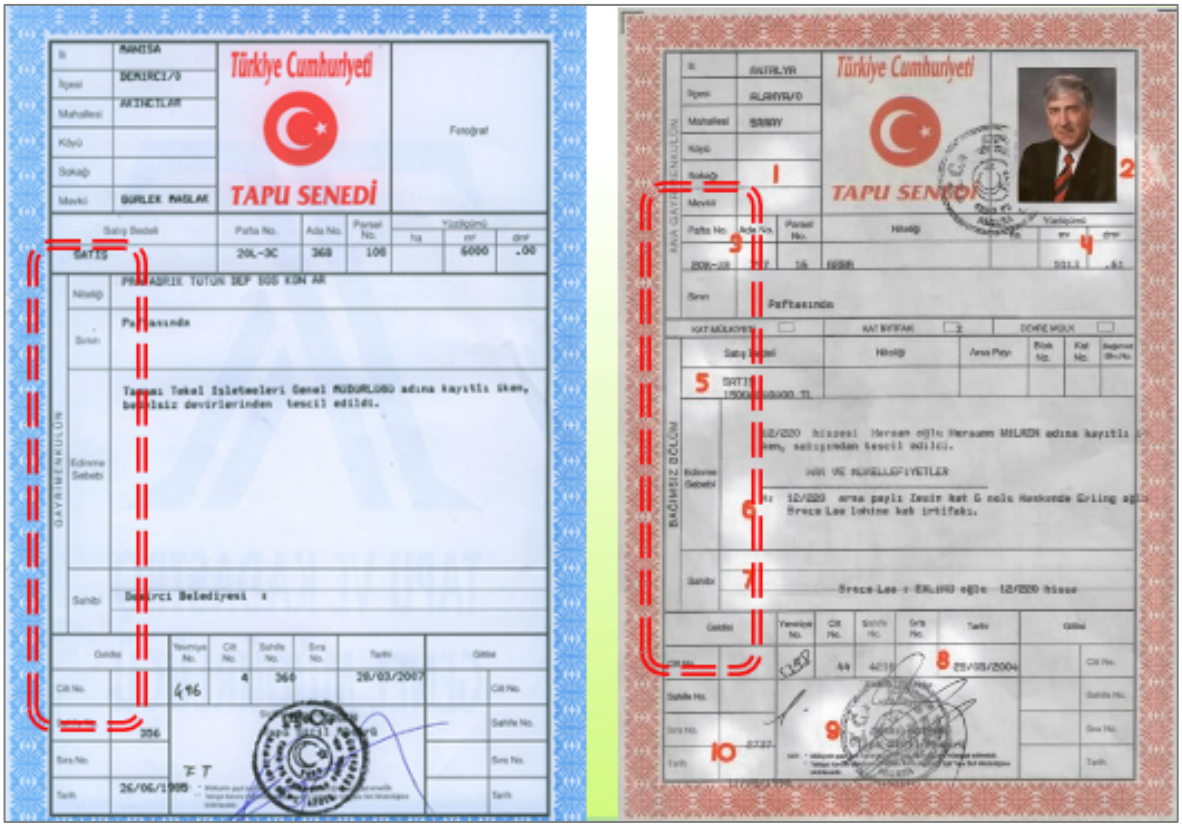
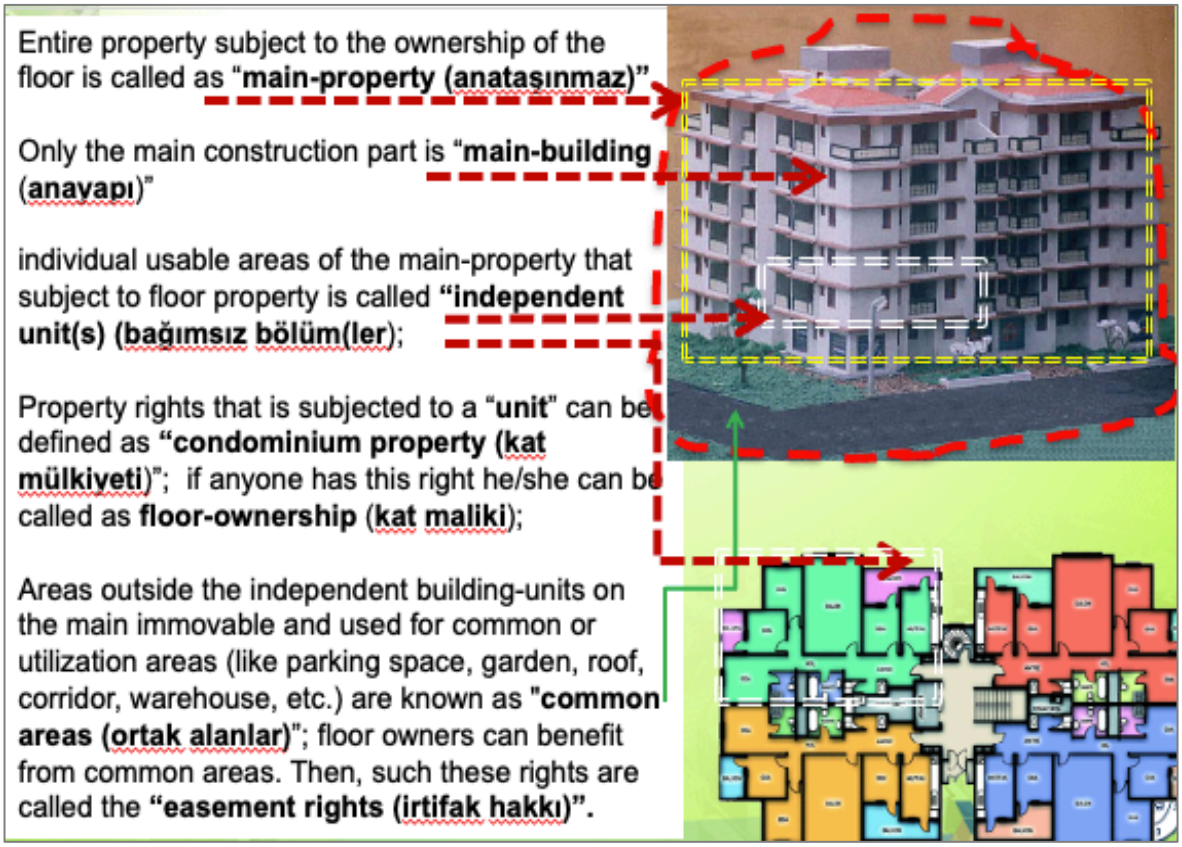


Figure x. Examples: Land title deed (left), condominium title deed (right)

5.3 Condominium unit descriptions



5.4 Conditions to the setup of a condominium right

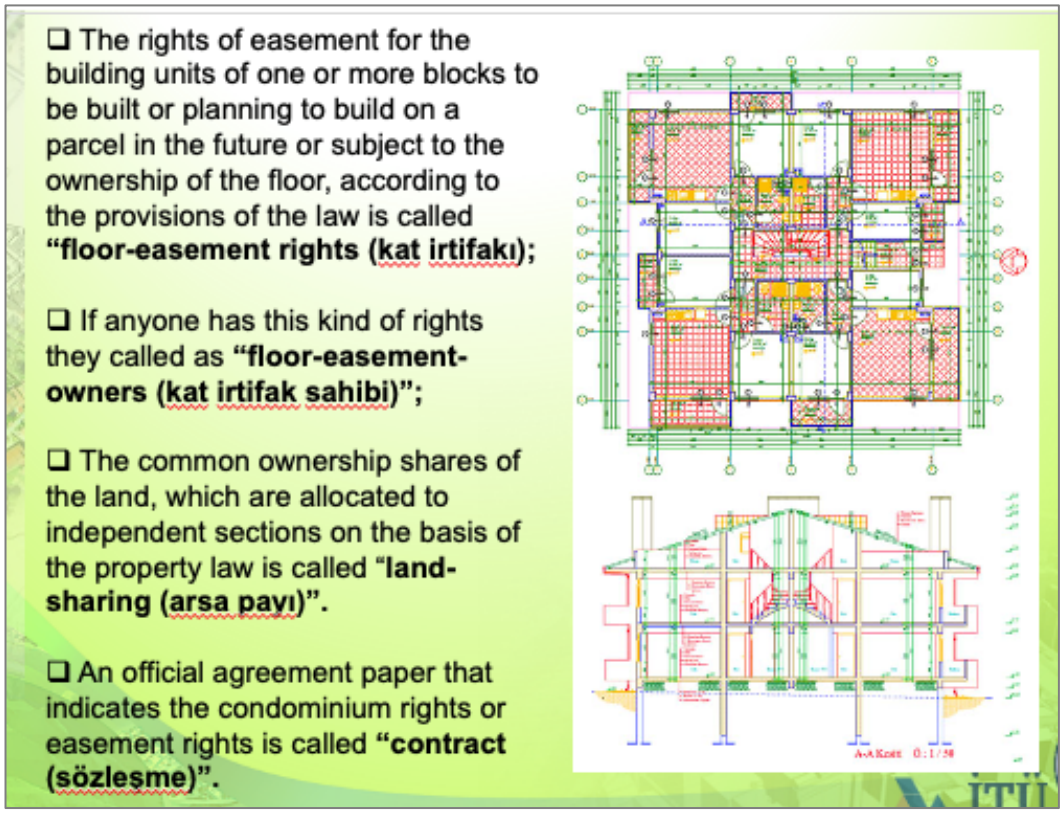
1) All the independent unit parts of the building which is present in the plan and project should be completed.

2) The entire structure on the main immovable must be masonry (*kargir*). Condominium ownership is not concerned in a wooden building.

3) In the case of more than one structure on a plot, in case of completion of 40% of all independent units according to the site plan, floor ownership can be transferred to the finished parts.

4) The "certificate of settlement (***iskan belgesi-yapı kullanma***)" document should be presented that the independent unit area suitable for use.

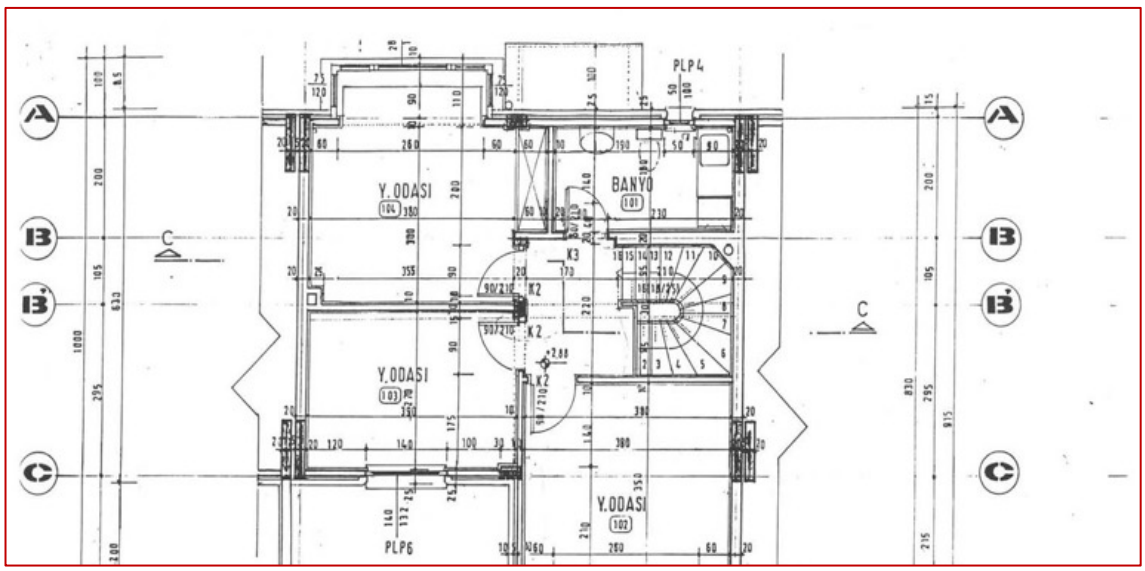
5) An application to the Land Registry Office.



5.5 Documents needed for the condominium

General Construction Project

This is an architectural project showing the whole structure. In this project, the exterior facades and inner part of the project, the size of the independent units, the plug-in and the common places are clearly visible. This project created by architect and signed by all landowners and approved by the municipality



Site Plan

If more than one block of flats or houses are built on the plot, the location of each building is shown on the plot and the scaled plan is prepared.

This plan is signed by the municipality and owners.

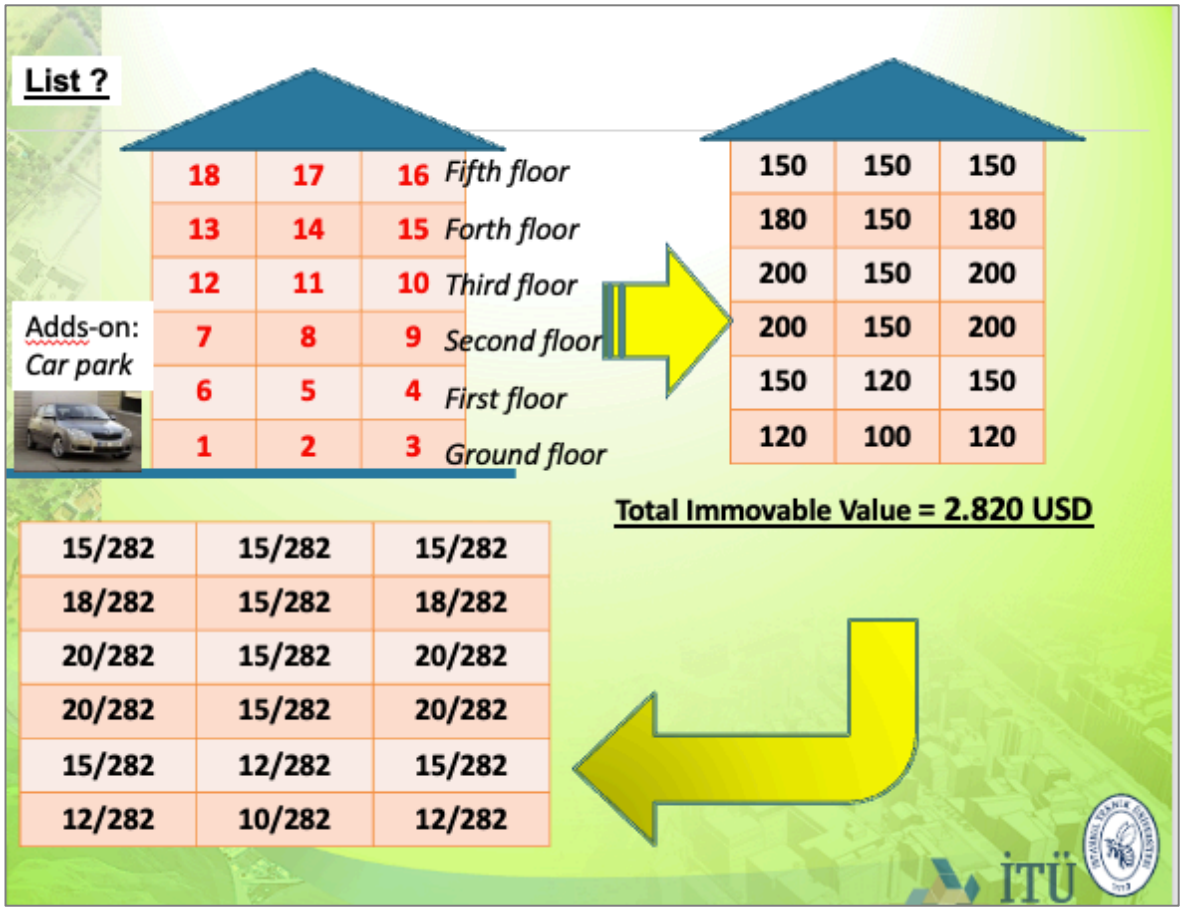
List:

A list shows; each land share percentage of independent unit, floor, such as the type of apartment, and their number starting from (1), the owner names list approved by all the land owners and notary.

It is essential for **all landowners to agree** on the determination of the land shares for the independent units as well as for the ownership of the independent sections.

In order for this agreement to be made, first of all the independent units are valued and their total value is calculated. Each independent unit is evaluated by taking into consideration the current real-estate costs with its add-ons. This value is the sum of the land value and construction cost. The total value of the building is proportional to each individual section value. This rate is the share of the plot for that independent units.

The owners of this property share their own shares over the share of the independent units of the agreement among themselves. Especially in cooperative work, these shares are made by lottery method. The differences in the value of the share result can be converted into money and the partners can be exchanged. In this case, in order to eliminate the differences between the unit's values, the value differences are converted into cash and the shareholder who is subject to "**goodwill (*şerefiye*)**" loss is paid.



Floor No.	Unit No.	Land share	Atribute	Adds-on	Owner name
Ground	1	12/282	Store	Garden	Ali Bey
Ground	2	10/282	Store	No	Ziya Bey
Ground	3	12/282	Store	No	Osman Efendi
First	4	15/282	Apartment	No	Ayşe Hanım
First	5	12/282	Apartment	No	Ayşe Hanım
First	6	15/282	Apartment	No	Ali Bey
Second	7	20/282	Apartment	No	Metin Ay
Second	8	15/282	Apartment	No	Recep Efendi
Second	9	20/282	Apartment	No	Osman Efendi
Third	10	20/282	Apartment	No	Ali Kemal
Third	11	15/282	Apartment	No	Fatma Hanım
Third	12	20/282	Apartment	No	Ali Bey
Forth	13	18/282	Apartment	No	Fatma Hanım
Forth	14	15/282	Apartment	No	Fatma Hanım
Forth	15	18/282	Apartment	No	Ali Kemal
Fifth	16	15/282	Apartment	No	Cemal Bey
Fifth	17	15/282	Apartment	No	Cemal Bey
Fifth	18	15/282	Apartment	No	Ziya Bey

Photo

A photo in the size of at least 13x18, showing the front and back facades of the building, and the facades of the building. The municipality is approved.

Management Plan

A plan of the management of the main structure system with explained rules and method signed by all owners who has the floor ownership only. This plan includes the use of common places, block care and management, participation in costs, special considerations.

Certificate of settlement (iskân belgesi-yapı kullanma)

When the main structure is completed and ready to use; then a document is provided and approved by municipality, based on the requirements of the Law No. 3194.

An application

An application attached with a list signed by all landowners must be given to the land registry office. In this application, the separate values of the units and the share of the plots of land will be shown.

YAPI KULLANMA İZİN BELGESİ

1. Belgeyi veren kurum

2. Belge verilen yapının adresi

İl : İlçe :

Bucak : Köy :

Belediye :

Mahalle : Mahalle tanıtım kodu :

Meydan, bulvar, cadde, sokak, kume adı :

Cadde/Sokak tanıtım kodu : Dış kapı no :

Site adı : Mevki adı :

3. Pafta no | 4. Ada no | 5. Parsel no | 6. Blok no

7. Kısmi kullanma izni ise belge verilen bağımsız bölüm | 8. Daha önce kısmi kullanma izni alınan bağımsız bölüm no

9. Belgenin veriliş amacı : ☐ Kısmi Kullanma İzni ☐ Yapı Kullanma İzni ☐ Geçici

10. Belgenin onay tarihi : ...../...../20.....

11. Belge no.

12. Belgeye esas ruhsat : ☐ 1.Yeni yapı ☐ 2.Yenileme ☐ 3.Yeniden ☐ 4.Ek bina ☐ 5.Kat ilavesi ☐ 6.İlave ☐ 7.Geçici ☐ 8.Tadilat ☐ 9.Değişiklik ☐ 10.Restorasyon ☐ 11.Güçlendirme ☐ 12.Kullanım değişikliği ☐ 13.Fosseptik ☐ 14.Mekanik ☐ 15.Elektrik tesisatı ☐ 16.İsim değişikliği ☐ 17.İstinat duvarı ☐ 18.Bahçe duvarı ☐ 19. .....

13. İlk yapı ruhsatı tarihi : ...../...../.....

14. İlk yapı ruhsatı no.

15. Son yapı ruhsatı tarihi : ...../...../.....

16. Son yapı ruhsatı no.

17. Yenileme ruhsatı tarihi : ...../...../.....

18. Yeniden ruhsat tarihi : ...../...../.....

19. Tadilat ruhsatı tarihi : ...../...../.....

20. İmar planı onay tarihi : ...../...../.....

21. İmar durumu tarihi : ...../...../.....

22. İmar durumu no.

23. Zemin etüdü onay tarihi : ...../...../.....

24. ÇED raporu onay tarihi : ...../...../.....

25. Tapu tescil belgesi tarihi : ...../...../.....

26. Tapu tescil belgesi no.

27. Tapu tescil belgesi veren kurum

28. Parselasyon planı onay tarihi : ...../...../.....

29. Parselin kullanma amacı

30. Parselin alanı (m²)

Yapı Sahibinin

31. Adı soyadı, unvanı, TC kimlik no : ☐ Özel ☐ Kamu ☐ Yabancı

32. Bağlı olduğu vergi dairesi adı

33. Vergi kimlik no.

34. Adres | 35. İmza

Yapı Müteahhidinin

36. Adı soyadı, unvanı, TC kimlik no

37. Oda sicil no | 38. Oda sicil durum belge no

39. Bağlı olduğu vergi dairesi adı | 40. Vergi kimlik no.

41. Sigorta sicil no. | 42. Sözleşme tarihi | 43. Sözleşme no. | 44. Yapı müteahhidi yetki belge no.

45. Sicile esas adres | 46. İmza

Şantiye Şefinin

47. Adı soyadı, unvanı

48. TC kimlik no

49. Oda sicil durum belge no

50. Sigorta sicil no. | 51. Sözleşme tarihi | 52. Sözleşme no.

53. Adres | 54. İmza

Belge Düzenlenen Kısımla İlgili Özellikler

55. Kullanma amacına göre yapının bağımsız bölümleri ile ortak alanları	56. Bağımsız bölüm sayısı	57. Yüzölçümü (m²)
Toplam		

Yapı İle İlgili Özellikler

58. Benzer yapı sayısı	59. Yapıda bağımsız bölüm sayısı	60. Yapıda konut birimi (daire) sayısı	61. Yapının taban alanı (m²)	62. Yapı inşaat alanı (m²)
63. Toplam yapı sayısı	64. Toplam bağımsız bölüm sayısı	65. Toplam konut birimi (daire) sayısı	66. Toplam taban alanı (m²)	67. Toplam yapı inşaat alanı (m²)
68. Yapının yol kotu altı kat sayısı	69. Yapının yol kotu üstü kat sayısı	70. Yapının toplam kat sayısı	71. İlave kat sayısı	
72. Yapının yol kotu altı yüksekliği (m)	73. Yapının yol kotu üstü yüksekliği (m)	74. Yapının toplam yüksekliği (m)	75. İlave kat yüksekliği (m)	

76. Yapının sınıfı	77. Yapının grubu	78. 1 m² maliyeti (YTL)	79. Yapının maliyeti (YTL)	80. Yapının arsa değeri (YTL)	81. Arsa dahil yapının maliyeti (YTL)	82. Form düzenlenen kısmın maliyeti (YTL)

Yapının Teknik Özellikleri

83. Isıtma Sistemi : ☐ 1. Merkezi ısıtmalı kaloriferler ☐ 2. Bina içi kaloriferler ☐ 3. Kat kaloriferleri ☐ 4. Soba ☐ 5. Doğal gaz sobası ☐ 6. Klima ☐ 7. .....

84. Isıtma Amaçlı Kullanılan Yakıt Cinsi : ☐ 1. Katı yakıt ☐ 2. Fuel-oil ☐ 3. Doğalgaz ☐ 4. LPG ☐ 5. Elektrik ☐ 6. Güneş ☐ 7. Termal ☐ 8. Rüzgar ☐ 9. .....

85. Sıcak Su Temin Şekli : ☐ 1. Termosifon ☐ 2. Şofben ☐ 3. Güneş kolektörü ☐ 4. Kombi ☐ 5. Müşterek ☐ 6. .....

86. Sıcak Su Yakıt Cinsi : ☐ 1. Doğalgaz ☐ 2. LPG ☐ 3. Fuel-oil ☐ 4. Elektrik ☐ 5. Katı Yakıt ☐ 6. Termal ☐ 7. .....

87. İçme Suyu : ☐ 1. Şehir suyu ☐ 2. Kuyu suyu ☐ 3. Pınar suyu ☐ 4. Taşıma suyu

88. Atık su : ☐ 1. Kanalizasyon ☐ 2. Fosseptik

89. Tesisatlar : ☐ 1. Arıtma ☐ 2. Baz istasyonu ☐ 3. Doğalgaz ☐ 4. Elektrik ☐ 5. Haberleşme ☐ 6. Pissu ☐ 7. Temiz su ☐ 8. Hidrofor ☐ 9. Jeneratör ☐ 10. Paratoner ☐ 11. Yangın tesisatı ☐ 12. .....

90. Ortak Kullanım Alanları : ☐ 1. Asansör ☐ 2. Bekçi kulübesi ☐ 3. Açık otopark ☐ 4. Kapalı otopark ☐ 5. Kapıcı dairesi ☐ 6. Kömürlük ☐ 7. Ortak depo ☐ 8. Sığınak ☐ 9. Su deposu ☐ 10. Yangın merdiveni ☐ 11. Yüzme havuzu ☐ 12. .....

91. Yapının Taşıyıcı Sistemi : ☐ 1 İskelet (Karkas) → ☐ 1.1. Betonarme → ☐ 1.1.1. Çerçeveli sistem ☐ 1.1.2. Perdeli sistem ☐ 1.1.3. Çerçeveli+Perdeli sistem ☐ 1.2. Ahşap ☐ 1.3. Çelik ☐ 2 Yığma (Kagir) ☐ 3. Prefabrik ☐ 4 Yarı prefabrik ☐ 5 Karma ☐ 6. .....

92. Duvar Dolgu Maddesi Cinsi : ☐ 1. Briket ☐ 2. Tuğla ☐ 3. Taş ☐ 4. Ahşap ☐ 5. Kerpiç ☐ 6. Gazbeton ☐ 7. Beton blok ☐ 8. Hafif panel ☐ 9. .....

93. Döşeme : ☐ 1. Plak Kiriş ☐ 2. Mantar döşeme ☐ 3. Asmolen ☐ 4. Ahşap ☐ 5. Hazır yapı elemanı ☐ 6. .....

Yapının kısmen kullanılması mümkün olan kısımlarına Kısmi Kullanma İzni düzenlenebilmesi için, bu bölümlere hizmet veren ortak kullanım alanlarının tamamlanmış ve kullanılabilir olması şarttır. Kullanma İzni düzenlenmeyen yapılar ve/veya bağımsız bölümler elektrik, su, kanalizasyon, haberleşme, doğalgaz vb. hizmetlerinden faydalanamaz. Toprağa gömülü bodrum katlar, yapının kapıcı dairesi hariç ortak alanları ile projesinde belirlenmeyen alanlar ikametgah olamaz. Bağımsız bölümlere bağlı depolar, kömürlük, bağlı olduğu bağımsız bölüm ile birlikte elektrik, su vb. hizmetlerden faydalandırılır. Mekanik ve elektrik tesisatının inceleme ve denetimi yapılmak kaydı ile aşağıda yazılı ..... adet daire, ... adet dükkan veya ..... adet (diğer kullanımlar) tamamı belediye hizmetlerinden faydalanır.

Yapının Biten Kısımları İçin Verilen Yapı Kullanma İzin Belgesinin

94. Belge tarihi	95. Belge no	96. Blok no	97. Bağımsız bölüm no
...../...../.....			
...../...../.....			
...../...../.....			
...../...../.....			
...../...../.....			

Konut İle İlgili Özellikler

	98. Konutun salon dahil oda sayısı 1	2	3	4	5	6	7+	TOPLAM
99. Daire sayısı								
100. Parke olan daire sayısı								
101. Bir dairenin yüzölçümü								

6 THE INHERITANCE LAW

"Family" is regulated by Article 41 of the Turkish Constitution. According to this, "Family is the foundation of Turkish society and is based on equality between spouses. The state takes the necessary measures for the peace and welfare of the family, and especially for the protection of the mother and the children".

Family Law constitutes an important part of the Turkish Civil Code. The branch of law that deals with the family relations of the person is Family Law. The family generally consists of husband, wife and children. Issues such as engagement, marriage, spouses' rights and property regimes, divorce are handled by family law.

The rules regarding how the inheritance will be shared in the event of the death of the individual are included in the Inheritance Law. The rights of the person are called his estate and how this will be transferred to heirs is regulated by the law.

Inheritance Law consists of the legal rules regulating what will happen to all the rights and debts that can be measured in money, that is, the property, in the event that a real person dies or is decided to be absent (*gaib*).

In other words, the Law of Inheritance is the rules regulating the transfer of the movable and immovable properties, rights, receivables and debts of the legator while he was alive, to whom and in what proportion. Inheritance of property is only possible for real persons. It is a generally accepted rule that if no clear provision has been made by the deceased, the heir will go to his close relatives upon his legal death. Those who have such inheritance rights are the "heirs".

However, individuals are free to bequeath or otherwise leave their property to persons other than their relatives, within the limits permitted by law. They can make a will to leave their property to real or legal persons as they wish. This is called a "testamentary inheritance (vasiyet veraseti)".

6.1 Turkish Inheritance Law

In Turkey, the Islamic heritage system was applied until the Republican period. With the adoption of the Turkish Civil Code in 1926, the Turkish inheritance system came into force. Although there are similarities between both systems, there are also some fundamental differences.

In Islamic inheritance law, heirs and inheritance shares are determined in detail in the Qur'an. In Islam, the law of inheritance is a fundamental subject of science and is called "***feraiz***".

Feraiz is the plural of the word *farz* and means the shares of the inheritance assigned to the heirs. The sources of inheritance in Feraiz can be defined as blood ties and marriage ties.

The Turkish inheritance system is a human-sourced inheritance system as a synthesis of Roman and Germanic laws. In Turkish Inheritance Law, the idea of protecting and inheriting the family is dominant. Turkish Law is applied in matters related to the inheritance of Turkish citizens. This situation is regulated in the law as "Inheritance is subject to the national law of the dead person". Turkish Inheritance Law is regulated between Articles 495 and 682 of the Civil Code.

Turkish Inheritance Law is regulated in the third book of the Turkish Civil Code. Inheritance provisions of the Turkish Civil Code were arranged respectively in 1967, 1973, 1990 and finally on 13 July 2002 and took their final form.

TÜRK MEDENİ KANUNU

Kanun No: 4721 **Kabul Tarihi: 22 Kasım 2001**
Yürürlük: 1 Ocak 2002 **Resmi Gazete: 8 Aralık 2001 / 24607**

- **3. KİTAP: MİRAS HUKUKU (Md. 495-682)**
  - **Mirasçılar (495-574)**
    - **–Yasal Mirasçılar (495-502)**
      - **Kan Hısımları (495-498)**
      - **Sağ Kalan Eş (499)**
      - **Evlatlık (500)**
      - **Devlet (501)**
    - **– Ölüme Bağlı Tasarruflar (502-574)**
      - **Tasarruf Ehliyeti (502-504)**
      - **Tasarruf Özgürlüğü (505-513)**
      - **Ölüme Bağlı Tasarruf Çeşitleri (514-530)**
      - **Ölüme Bağlı Tasarrufların Şekilleri (531-549)**
      - **Vasiyeti Yerine Getirme Görevlisi (550-556)**
      - **Ölüme Bağlı Tasarrufların İptali ve Tenkisi (557-571)**
      - **Miras Sözleşmesinden Doğan Davalar (572-574)**
  - **Mirasın Geçmesi (575-682)**
    - **–Mirasın Açılması (575-588)**
    - **–Mirasın Geçmesinin Sonuçları (589-639)**
    - **–Mirasın Paylaşılması (640-682)**

Şekil x. Türk Medeni Kanunu'nda miras hukukun yeri

6.2 Basic Terms of Inheritance Law

Before examining the Law of Inheritance, it is necessary to explain some of the terms used by law. Inheritance Law has given birth to the following descriptions:

Heritage (Miras)

Inheritance refers to the transfer of the movable and immovable properties, rights, receivables and debts of the persons acquired during their health to the heirs. The rights to be inherited are only the rights related to the goods. Personal rights (guardianship, association membership, etc.) are not inherited. In addition, personal benefit and residence rights are not inherited.

Tereke

Tereke is the sum of the movable and immovable properties, which are the subject of the inheritance, and the rights, receivables and debts. The passing of these to heirs is called inheritance. In this case, inheritance and estate are synonymous with a slight difference. The property, which consists of the rights and debts acquired by the person in his life, takes the name of inheritance at his death.

Muris

The heir (decedent) is the person whose property passes to the so-called heirs upon death. In other words, it is the real person who leaves the estate. Every person can be an inheritor. Rich, poor, small, big etc. there is no difference between them. There is no difference inherited goods, the same rules apply.

Heir and Inheritance (Varis ve mirasçılık)

The heir is the real or legal person to whom the inheritance (tereke) of a deceased person has been decided to be absent. Inheritance arises either from the law or from the will of the inheritor. Those who acquire the title of heir according to the provisions of the law are called legal heirs. The legal heir who dies before the decedent (inheritor) is replaced by the descendant, if any.

Those who gain the title of heir according to the will of the inheritor are also called volitional (*iradi)* heirs. In other words, they are appointed as heirs by testamentary disposition (will and inheritance contract) made by the inheritor. If the willed heir dies before the inheritor, the inheritance does not pass to his descendants.

Testamentary disposition

The legal process that includes the last wishes of the inheritor to be effective after his death is called testamentary disposition. There are two forms of death-related savings, "material" and "form".

6.3 Heritage Systems

There are three inheritance systems that are generally applied. These:

a) **Class (*Sınıf*) system:** Heirs are divided into classes according to the closeness of their blood relatives to the deceased, and different shares are determined for each class (Example: French Inheritance Law).

b) **Individual (*Ferdi*) system:** The closeness of relatives to the deceased is examined separately (Example: Islamic Inheritance Law).

c) **Parental (*Zümre*) system:** It is the system in which the heirs are divided into parental (4 groups) and their shares are calculated at certain rates according to each group (Example: Turkish, Swiss, German Inheritance Law).

** In the Turkish Civil Code, inheritance has adopted the "**parental**" system.*

6.4 Parental System in Inheritance

A parental (*zümre*) is the name given to the community formed by people who are descended from a person together with that person. Blood relatives, which are the method of *the usül (up-parents)* and *füru (down-parents),* are divided into three groups in terms of being heirs. The lower parent of the heir is the 1st zümre. The upper parent of the heir can be as the 2nd and 3rd zümre. The following principles apply to the determination of heirs within the parental management.

- Relatives in a close parents can exclude inheritance from the other away relatives. For the inheritance to pass to the next zümre, there must be no heirs from the previous zümre.
- The relatively close to the inheritor within the group excludes the more distant relatives. For example, if the child of the inheritor dies, his grandchildren cannot be heirs.
- Inheritance is divided equally among blood relatives who are legal heirs within each zümre.
- In the event that a blood relative dies before the descendant, the heir of the deceased takes his place. For example, if the child of the heir dies before the heir, the heirs of the dead child become heirs together with the other brothers.
- If the child of the inheritor does not have an heir, the inheritance right of the deceased child passes to the heirs with him. For example, if the child of the inheritor dies before the decedent, the right of inheritance passes to other brothers if the dead child has no heirs.

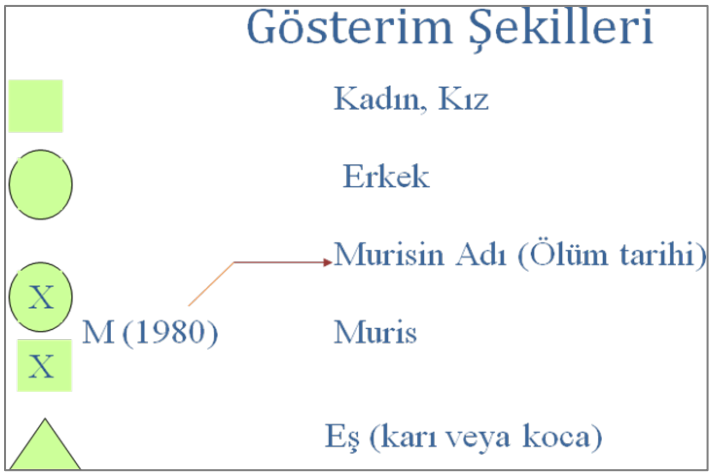


Figure x. Representation of people in the group system

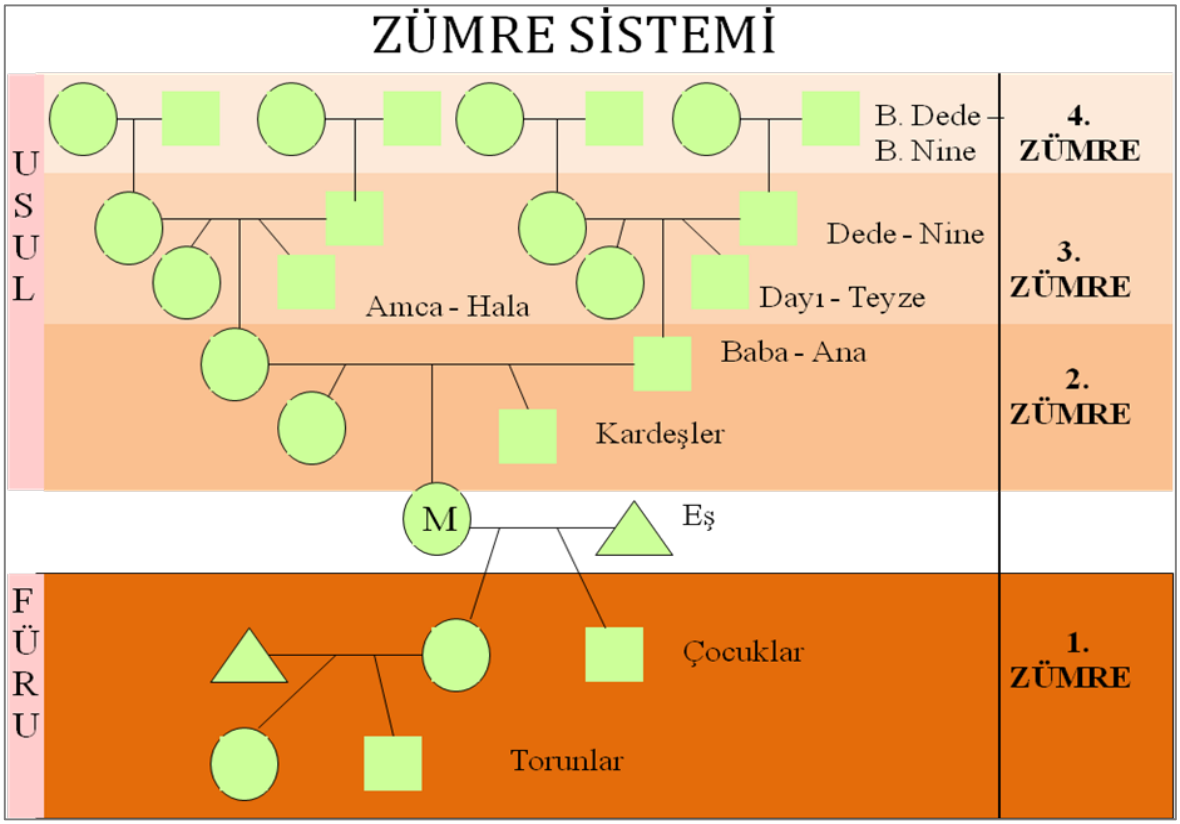


Figure x. General structure of the group system

I. Zümre (degree) legal heirs

The first-degree heirs of the inheritor are *füru (down-parents)*. Furü; children, grandchildren, great-grandchildren. To be an heir to a person in the capacity of a füru, it is not enough to be link by nature and de facto. It is also necessary for the füru to be connected to that person by ancestry (blood ties between parents and children), which has legal consequences. Children who are not recognized or whose paternity has not been dictated cannot be heirs.

In cases where the mother is single, the father is separated or vice versa, the child cannot inherit from the inheritor that he is not descended from. He gets a share with the other heirs from the person whose blood he comes from.

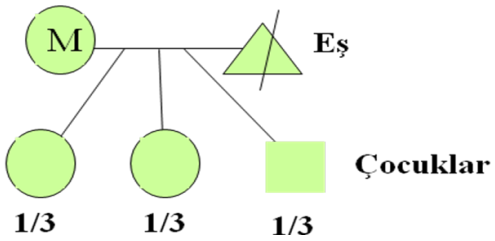


Figure x. Children's inheritance shares

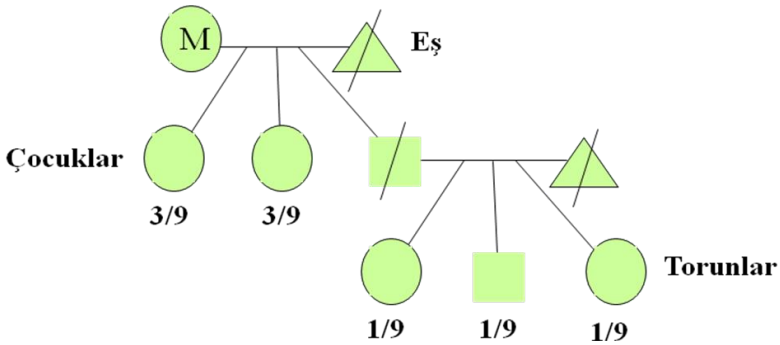


Figure x. Grandchildren's inheritance shares

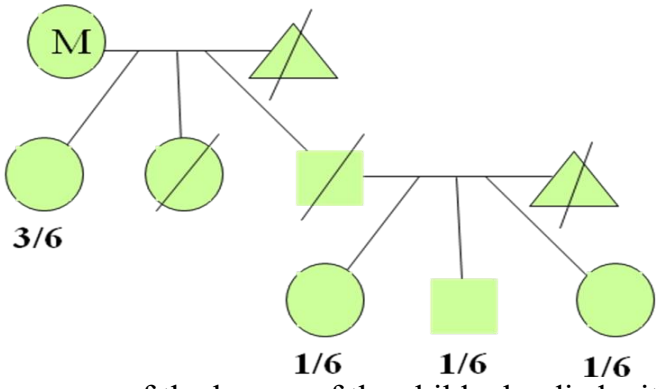


Figure x. The passage of the legacy of the child who died without a down-parents

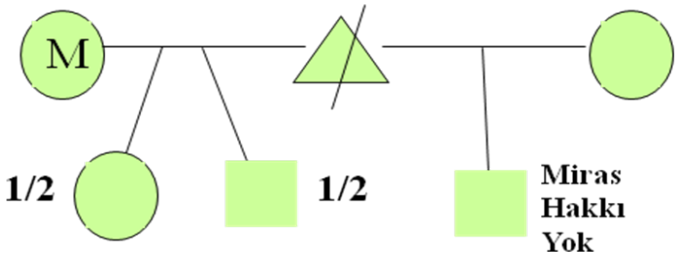


Figure x. Status of the legacy of the subgenre that is not of the same blood

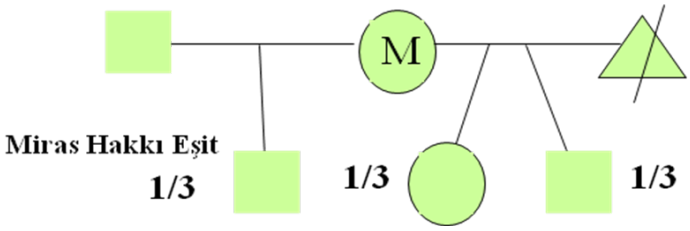


Figure x. State of the legacy of the descendants of the same blood

II. Zümre (degree) legal heirs

These are the mother and father of the descendant and their down-parents. It means, like brothers, brothers' children, grandchildren. They inherit equally. The parents who died before the inheritor are represented by their heirs through their successors. That is, their descendants (brothers and their descendants) replace them. If there is no heir on one side, the entire inheritance passes to the other side.

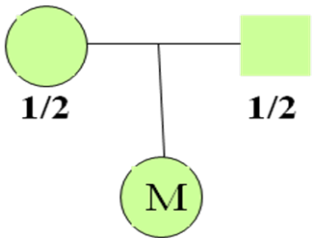


Figure x. The state of the inheritance of the surviving parents

III. Zümre (degree) legal heirs

These are the grandparents of the descendants and their down-parents. In other words, they are still uncles, uncles and aunts and their children and grandchildren. They also inherit equally.

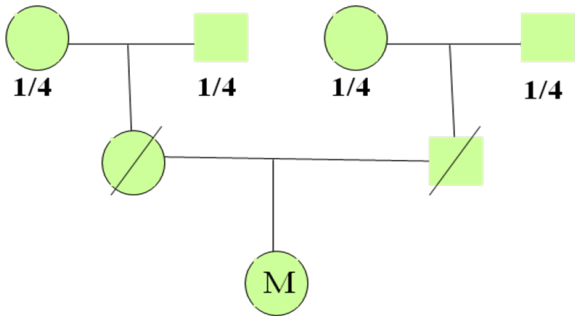


Figure x. Inheritance share of surviving grandparents

6.5 Legal Heirs

The heirs are the people who will pass the resources of the inheritor to them. They can be natural persons as well as legal persons. Apart from the heirs stipulated by the law, the inheritor may appoint an heir for the whole or a certain proportion of the inheritance, which can be from among the person, legal persons and his own legal heirs. These are called designated heirs. In addition, he may request that his property be given to the people he has previously determined in the event of his death. The heirs stipulated by the law are the legal heirs. Legal heirs are:

a) Blood relatives (parents),
b) Surviving spouse,
c) Adoption,
d) State.

6.5.1 Blood relatives (Parents)

If the deceased did not fulfil his will (*vasiyet*) at the time of his death or did not provide for the distribution of his estate in any other way, his estates are transferred to his relatives at the rates specified in the law. For this purpose, the blood relatives of the deceased are divided into groups called “parents”. Not all blood relatives are heirs. Who will be heirs from blood relatives and their share of inheritance are regulated by law? According to this:

- **First-degree heirs (Down-parents):** First-degree heirs of the inheritor (*Muris*) are his descendants. Children are equal heirs. Children who died before the inheritor are replaced by their descendants through successors in all degrees.

- **Second-degree heirs (Parents):** The heirs of the inheritor who has no descendants are his parents. They are equal heirs. Parents who died before the inheritor are replaced by their descendants through successors at every level. If there is no heir on one side, all the inheritance goes to the heirs on the other side.

➢ **Third-degree heirs (Grandparents):** The heirs of the inheritor who do not have descendants, parents and their descendants are his grandparents. They are equal heirs. Great-grandparents who died before the inheritor are replaced by their descendants through successors at all levels. If one of the grandparents from the mother or paternal side died before the inheritor without any descendants, his/her share goes to the heirs on the same side. If both maternal and paternal grandparents died before the inheritor without descendants, the entire inheritance goes to the heirs on the other side.

6.5.2 Surviving Spouse

First, for the surviving spouse to be an heir, there must be a valid marriage with the deceased and this marriage must continue at the time of death. While the divorce cases continue, the spouses become the heirs of each other until the decision is finalized. The surviving spouse shares the estate, if any, with the living blood relatives of the deceased. The inheritance share varies according to the proximity of other successors with whom the deceased must share the estate. If there are close relatives, such as children, the surviving spouse receives less; if there are only distant relatives, it takes more. For example, if the surviving spouse inherits with descendants (children, grandchildren) of the deceased, he will receive 1⁄4 of the property. If the surviving spouse inherits together with the second parent (parents, siblings), he gets the property of the estate.

- If the spouse is alone, he or she receives the entire inheritance.
- The spouse receives the first estate heirs [descendants of the descendants, children, grandchildren] and the heir receives 1/4 of the inheritance.
- If the spouse is the heirs of the second estate [parents of the testator or their descendants (lower lineage)], the heir receives 1/2 of the inheritance.
- If the spouse is the heir with the grandparents who are the heirs of the third class or their children, he receives 4/3 of the inheritance.

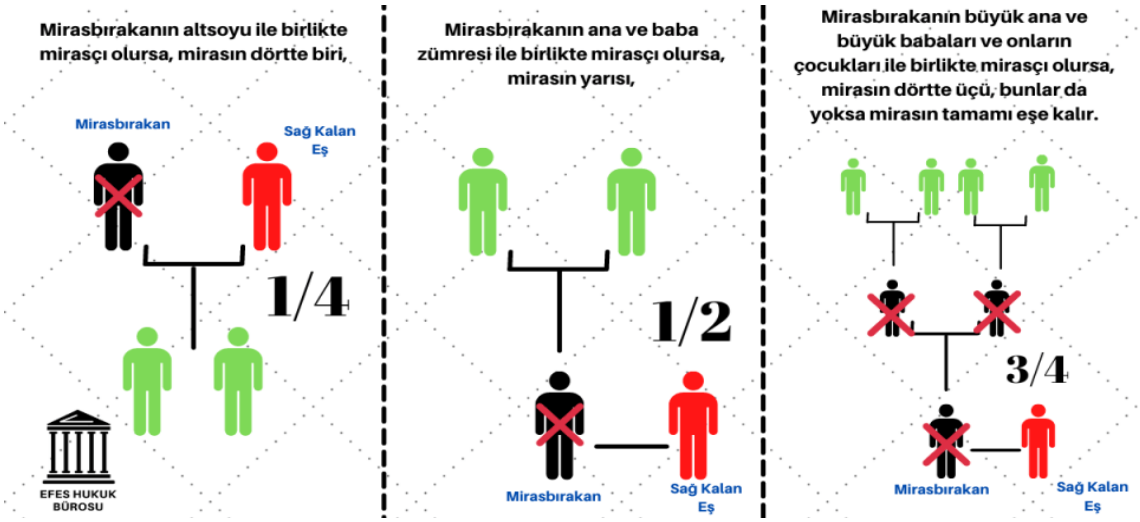


Figure x. Inheritance share of the surviving spouse

6.5.3 Adoption

Adoption (*evlatlık*) and descendants (*altsoy*) become heirs to the adopter like blood relatives. The inheritance of the adopted child in his own family also continues. The adopter and his relatives do not inherit the adoption. Adopted children are treated as legitimate natural children of the deceased and thus receive the same amount as their other children. However, an adopted child can inherit only from his adoptive parents and cannot be a successor to relatives of his adoptive parents. Also, the inheritance relationship works only one way: adoptive parents cannot inherit the adopted child if the child loses them first. Adopted children can inherit from both their adoptive and natural parents, as they are heirs of their real parents.

Illegitimate (gayrimeşru) children

Illegitimate children (i.e., children born to unmarried parents) have the same inheritance rights from their mothers as legitimate children. Illegitimate children who are recognized by their fathers or whose paternity has been determined by the court can inherit from their father as much as the legitimate child. For example, when an heir leaves two legitimate children and one illegitimate child, each will receive 1/3 of the inheritance.

6.5.4 State inheritance

The last legal heir of the testator is the state (Treasury). If the testator has no heirs in the first three groups, if his wife also died before him, and if the deceased did not appoint any heir, the inheritance remains with the state. In short, the inheritance of the person who dies without leaving an heir passes to the state. For the state to be an heir, the inheritor must not have any legal heirs and must not have been appointed an heir with testamentary dispositions.

If the inheritor has an heir or not, if all the heirs are not known, the judge makes an announcement twice with appropriate means and at one-month intervals and invites the right holders to declare their title of heir within one year at the latest, starting from the last announcement. If no one applies during the announcement period and the magistrate has not identified any heirs, the inheritance passes to the state, without prejudice to the right to file a claim for reparation due to inheritance.

The state can also be the heir appointed by the legator. Legal and appointed heirs can reject the inheritance. The state also has the right to reject the inheritance. When the state refuses the inheritance, the estate, which is rejected by all the closest heirs, will be liquidated by the bankruptcy office, and the bankruptcy office will start the liquidation procedures here as well. The state has the rights of other legal heirs and can file lawsuits for compensation and annulment due to inheritance.

6.6 Inheritance Based on the Will of the Heir

Inheritance arising from the will of the decedent and resulting from his death is called "voluntary heirship or heirship arising from death-related disposition".

Assigning an heir: The law allows the deceased to appoint any person or persons as heirs with a testamentary disposition. This can be a natural or legal person.

Certain property will: The heir may also request that a certain property be left to him from his estate without appointing an heir. For example, real estate in a certain place or gold watch.

Testamentary dispositions: Testamentary dispositions are the decedent's notification of the matters that he wishes to be done by considering his death, with a legal action. These; will and inheritance.

Testamentary disposition

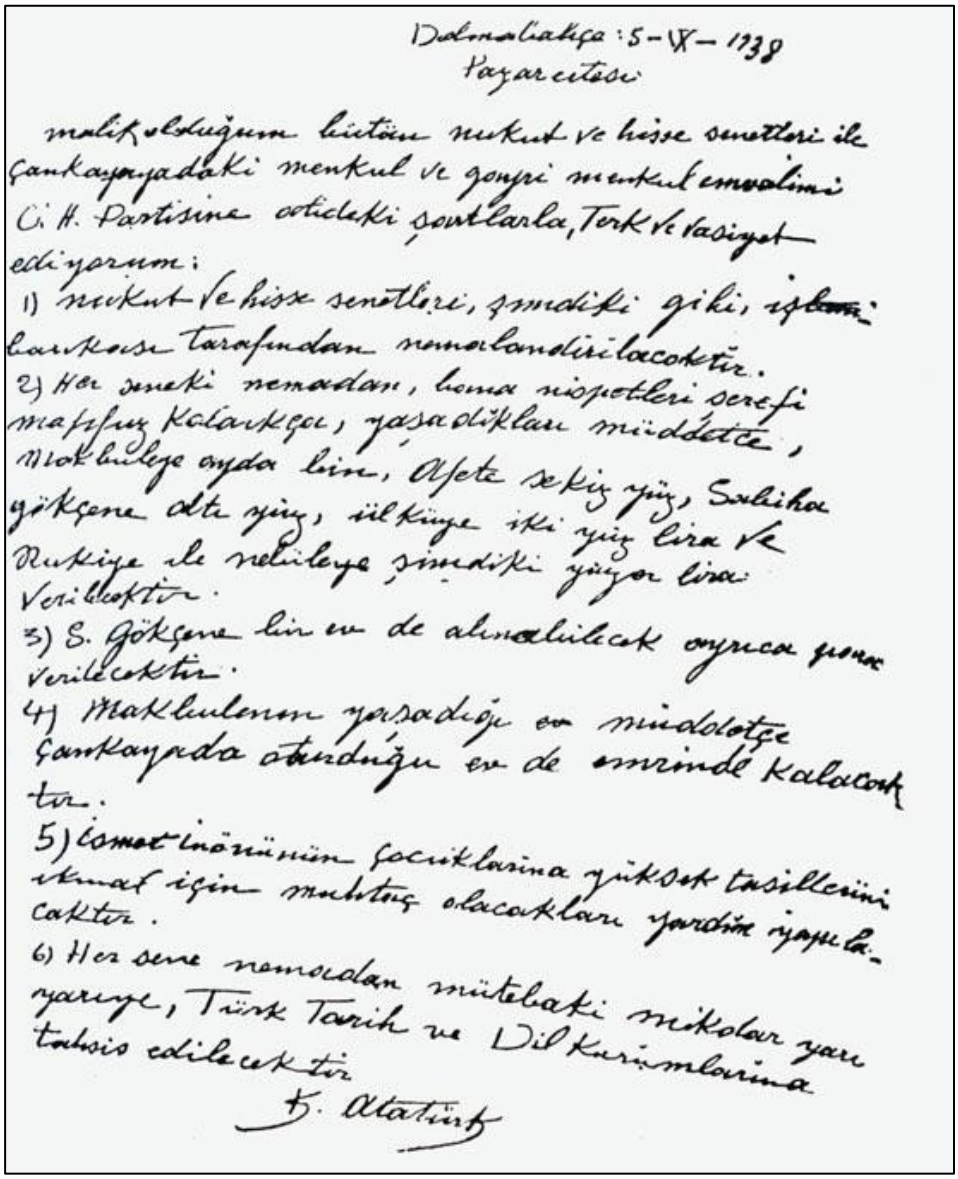
Testamentary dispositions (death-related usage) refers to the legal action requested by the person in case of death. The characteristic of the testamentary disposition is that it produces results and judgment only after the death of the declarator. These are transactions such as assigning an heir to a person, bequeathing some of his property to a person. Death-related savings are divided into two. These:

a) Will (Vasiyet)
b) Inheritance contract

6.6.1 Will

The will (vasiyet) can be made formally or in the ***handwriting*** of the legator or ***orally***. The official will be drawn up by the official with the participation of two witnesses. It can be an official, judge, notary public or any other official who has been given this authority by law. The legator informs the official of his wishes. Thereupon, the officer writes or prints the will and gives it to the legator to read it. The will is read and signed by the legator. The officer signs the will with a date.

The second type of will is the *handwritten* will. It is obligatory that the handwritten will must be handwritten and signed from the beginning to the end, showing the year, month and day in which it was made. A handwritten will can be left open or closed to a notary, judge or authorized officer to be kept.



Dolmabahçe : 5-IX-1938
Pazar ertesi

malik olduğum bütün menkul ve hisse senetleri ile Çankayadaki menkul ve gayri menkul emvalimi C. H. Partisine aşağıdaki şartlarla, Terk ve vasiyet ediyorum:

1) menkul ve hisse senetleri, şimdiki gibi, işbankası tarafından nemalandırılacaktır.

2) Her sene nemadan, hemşirelerim sağlığında mahfuz kalarak, yaşadıkları müddetçe, Makbule'ye ayda bin, Afete sekiz yüz, Sabiha Gökçen'e dört yüz, ülkümüze iki yüz lira ve Rukiye ile nebilere şimdiki yüzer lira verilecektir.

3) S. Gökçen'e bir ev de alınabilecek ayrıca para verilecektir.

4) Makbulenin yaşadığı ev müddetçe Çankayada oturduğu ev de emrinde kalacaktır.

5) İsmet İnönü'nün çocuklarına yüksek tahsillerini ikmal için muhtaç olacakları yardım yapılacaktır.

6) Her sene nemadan mütebaki miktar yarısı, Türk Tarih ve Dil kurumlarına tahsis edilecektir.

K. Atatürk

Figure x. Example of a will: Ataturk's handwritten will

The third type of will is the *oral* will. If he cannot make an official or handwritten will due to extraordinary circumstances such as near death danger, interruption of transportation, illness, war, he can apply for an oral will. For this reason, the legator tells his last wishes to two witnesses and gives them the task of writing or dictating a will in accordance with this statement. One of the witnesses assigned by the legator immediately writes down the last wishes declared to them, including the place, year, month and day, signs this document and has the other witness sign it. They both give the written document to a judge or a court of first instance without wasting any time together and declare to the judge that they consider the legator qualified to make a will and that he has told them about his last wishes in an extraordinary situation.

It is possible to revoke a will by making a new will, removing the old one, or making a disposition after the will. For example, if he left a certain property to an inheritor with a will but later sold that property, it is understood that he returned from the will.

6.6.2 Inheritance Contract

The inheritor can make a contract with someone considering his own death. This contract is called the inheritance contract. In order for the inheritance contract to be valid, it must be drawn up in the form of an official will. The parties to the contract notify their wishes to the official at the same time and sign the contract in front of the officer and two witnesses.

The reserved shares are taken into account when making a testamentary disposition and an inheritance contract. As the heir, the inheritor who has descendants, parents or spouses can make a death-related disposition on the part of his inheritance excluding the reserved shares. If none of these heirs are present, the inheritor can save all of his inheritance.

The hidden share is half of the legal inheritance share for the subordinate, one fourth of the legal inheritance share for each of the parents, for the surviving spouse, the entire legal inheritance shares in case of heirs with the descendants or the family of the parents, and in other cases 3/4 of the legal inheritance share.

6.6.3 Comparison of Testament and Inheritance Contract

A will is a one-sided legal transaction. Inheritance agreement (contract) is a multilateral legal transaction. Therefore, the will can be cancelled. The inheritance contract can only be cancelled by agreement.

Although it is sufficient to be at the age of 15 to make a will, and to have the power of appeal, the conditions for the inheritance contract are that the person must have the power of appeal, be of legal age and not be under a lien (restriction).

While the will can be made in handwriting and in official form or orally, an inheritance agreement can only be made in the form of an official will.

6.6.4 Reasons for cancellation of testamentary dispositions

Testamentary dispositions are cancelled in the following cases.

- If it is made while the decedent does not have the capacity to dispose, for example, if the decedent is not in good mental health or if a guardian is assigned to him, the testamentary disposition is annulled.
- If it is made as a result of mistake, deception, intimidation or coercion, the testamentary disposition is cancelled.
- If the testamentary disposition is contrary to the law, morality and good manners (e.g., giving some money for the manufacture of narcotic drugs, allocating it to print immoral books), the testamentary disposition will be cancelled.
- If the testamentary disposition is made without complying with the forms stipulated in the law (if the contract is not made in the form of a testament and inheritance agreement), the testamentary disposition is cancelled.

6.6.5 Set up a foundation with testamentary disposition

The inheritor can establish a foundation (*vakıf*) with the allocation of all or a portion of his estate that can be saved. The will to establish a foundation is made through a will. The inclusion of such a will in the inheritance agreement does not eliminate the one-sided nature of the will to establish a foundation.

The foundation acquires legal personality only with the provisions of the law are. In this context, the foundation will gain legal personality by being registered in the court registry. However, in case of setup a foundation with testamentary disposition, even if the foundation acquires its legal personality by registration, it is accepted that the allocated property is acquired by the death of the inheritor only.

6.7 Freedom and restrictions on inheritance

6.7.1 Reserved share

A testator is not entirely free to dispose of all his property as he wishes. If the down-parents of the descendant, spouse, mother and father and any of his siblings, he can save only the part of them other than their "hidden shares (*saklı payları*)". If none of these exist, he can save all of his assets.

Among the legal heirs, those who are very close to the inheritor have been given an inheritance share that the testator cannot dispose of with his/her will, which is called "reserved share (*mahfuz hisse*)". In this way, heirs who are protected by law are called heirs with reserved shares.

Therefore, the law limits his freedom to a "hidden share" in favour of his close relatives. This share belongs only to the down-parents of the deceased, father and mother, brothers and sisters, and the surviving spouse. The amount of the reserved portion depends on the proximity of the surviving heirs to the deceased.

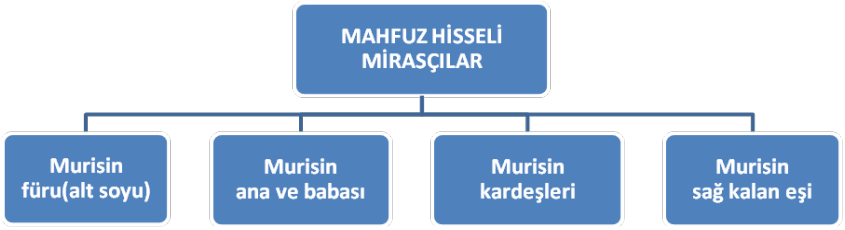


Figure x. Heirs with *mahfuz* shares

1. Grandchildren: Their allocated shares are half of their legal shares. For example, if the amount of estate to be distributed is $80,000 and four children are heirs, each would have 1/4, or $20,000, their statutory share. Therefore, in the will, the share allocated for each child is half of this amount, or $10,000. This leaves the decedent free to dispose of the remaining $40,000 (80,000-40,000) of his estate.

2. Parents: Their allocated share is 1/4 of their legal share.

3. Brothers and sisters: Their allocated share is 1/8 of their legal share.

4. Spouse: If the spouse inherits with the first or second parent, the share allocated to him is equal to his legal share. In other words, if the spouse is the heir with the first parent, his reserved share will be 1⁄4, and if the second parent is the heir, it will be 1⁄2. If the spouse is with the third parent, the share is 3/4 of the legal share.

As an example: If a man dies with a distributable property of $80,000, leaving a wife and three children, the successors' statutory share would be $20,000 each. Therefore, the children's share is $10,000 (20,000 x 1⁄2) and the spouse's $20,000 (equal to the statutory share). This leaves $30,000 (80,000 – 50,000) on which the deceased is free in his will.

Table x. Heirs with reserved shares and reserved shares

Heirs with Reserved Share	*Amounts of Reserved Shares*
Children of the testator and their children	1/2 of the legal inheritance share
The parents of the testator	1/4 of the legal inheritance share
Brothers of the testator	1/8 of the legal inheritance share
If the spouse is together with the 1st zümre	all 1/4 of the legal inheritance right
If the spouse is together with the 2nd zümre	the entire 1/2 of the legal inheritance right
If the spouse is with the 3rd zümre	3/4 of the legal inheritance share
If the spouse is the sole heir	3/4 of the legal inheritance share

6.7.2 Savings quorum

The savings quorum (*tasarruf nisabı*) is the part that is outside of the reserved shares that the inheritor (muris) can freely dispose of. It is the share of death-related dispositions can be made on goods belonging to an heir with a reserved share.

Calculation of the savings quorum

For the net asset of the estate, the sales price and receivables of all goods of the deceased on the date of death are calculated. In its liabilities, the debts of the deceased, funeral expenses, expenses incurred in sealing the estate and keeping the book, and the 3-month living expenses of the legator and those who live and are cared for by him are calculated. Thus, the passive of the estate is found. When the total of liabilities is subtracted from the total of assets, the net estate, which is the basis for calculating the savings quorum, is found. However, the savings quorum is calculated based on the values found after adding some values to the net estate.

6.7.3 Case of Reduction

The heirs who cannot receive the return of their reserved shares may request the reduction (*tenkis*) of their savings exceeding the portion that the legator can save. In other words, if the legator infringes on the reserved shares of his heirs with any death-related savings, these heirs can file a *tenkis* lawsuit to claim their rights.

Tenkis case arranged between the articles 560-571 of the Civil Code. As a rule, the heirs (creditors in exceptional cases, see also Article 562 of the TMK) request the reduction/repudiation of the savings (excessive part) of the legator that exceeds the disposable portion. Thus, the reserved shares are protected.

Tenkis lawsuit is filed by the heirs whose reserved shares are violated. The lawsuit is brought against the persons who benefit from the savings exceeding the saveable portion. The Tenkis case is an innovative case.

The right to file a lawsuit for annulment is bound to a period of deprivation. Accordingly, one year from the date when the heirs learn that their reserved shares have been damaged, and probably ten years after the opening date for wills and ten years for other dispositions, it is no longer possible to file a lawsuit for criticism.

6.8 Absence of the Inheritor

The heirs or persons who are entitled to the inheritance of a person about whom a decision of absenteeism (*gaiplik*) has been given, must show assurance that they will return these goods to the superior right holders that may arise in the future or to the absentee himself before the estate is delivered to them.

This assurance is shown for 5 years in case of loss in danger of death, 15 years in case of not being heard for a long time, and for a period that will probably pass until the missing person reaches 100 years of age. Calculation of 5 years from the delivery of the estate goods; Calculation of 15 years starts from the last news date.

If absence appears, or if those who claim to have superior rights prove their qualifications, those who have received the goods of the estate are obliged to return the goods they have received in accordance with the rules of possession. The obligations of those who have good intentions to give back to the superior right holders are subject to the statute of limitations for the case of reward due to inheritance.

6.9 Opening and Transferring of Inheritance

The inheritance opens with the death of the inheritor. The heirs acquire the inheritance as a whole, in accordance with the law, upon the death of the inheritor. There is joint ownership. The heirs may request that the inheritance be shared.

The heirs are personally liable for the debts of the legator. If the debts are more than the rights, they can refuse the inheritance in order not to be responsible for personal property. Legal and appointed heirs can reject the inheritance. This should happen within three months. If one of the legal heirs rejects the inheritance, his share passes to the rightful owners as if he was not alive when the inheritance was opened. The share of the appointed heir who rejects the inheritance remains with the closest legal heirs of the inheritor, unless it is understood that the deceased's will is otherwise.

6.9.1 Division and Distribution of Inheritance

The division of the inheritance is the split of the effects from which the assets occur among all heirs. He can be a judge when done voluntarily or by court authority when done with the mutual consent of all heirs.

Distribution according to heirs: After the debts of the deceased are paid, the estate is divided among the heirs. The heirs can agree among themselves on how to do this. The property may be distributed or sold in kind and the proceeds may be distributed. If the property contains immovable property such as land or a house, written consent of all heirs will be required.

Distribution by the court: If the heirs cannot come to an agreement, a lawsuit can be filed with the court for the distribution of the estate.

6.9.2 Transferring of immovable assets

In Turkish law, it is accepted that transactions related to real estate are subject to the laws of the country where the immovable assets are located. In other words, Turkish law does not set rules for these immovables and refers to the law of the country where the immovables are located. For example, if the deceased has a home in France, the transfer of property will be made in accordance with the provisions of French Private Law.

According to Turkish law, the property of the deceased person passes to his heirs in the will, and in the case of his death, to his heirs. However, it is not always easy to identify who these people are because they may not live in the same town or even in the same country. If the deceased has made a will during his lifetime, it needs to be discovered and its validity determined.

Legal status of the heirs before the division of the inheritance: If there is more than one heir, the estate becomes the common property of all of them until the estate is divided. As in the case of joint ownership, they must all act together and none has the right to dispose of a single property in the estate without the approval of the others. The lawsuits should be filed jointly, and the names of all heirs should be stated as the defendant in the lawsuits filed against the estate.

Identification of heirs: Upon the application of an heir, the *Sulh* Court determines who the eligible heirs are and their share of the estate and issues a certificate of inheritance.

Inheritance debts and rejection of inheritance: Legal and appointed heirs can reject the inheritance. All rights and obligations of the deceased person pass to his heirs at the time of death. The heirs are not only the heirs of the deceased's assets, but also of his debts. In some cases, the inherited wealth may not be enough to meet the debts of the deceased. The heir, who does not want to be responsible for debts, can renounce his share in the estate within three months from the date of learning of the death of the deceased. In case of rejection, the inheritance passes to the closest relatives of the deceased, and they can also refuse the inheritance.

An heir who does not reject the inheritance within the legal period will have won the inheritance unconditionally. The right of refusal of the heir who dies without being able to refuse the inheritance passes to his heirs. If one of the legal heirs rejects the inheritance, his share passes to the rightful owners as if he was not alive when the inheritance was opened.

Law applicable to movable property located abroad: If the deceased has movable property in a foreign country, the decisions made by the Turkish Courts (such as an inheritance certificate) must be recognized in this foreign country so that the heirs can dispose of this property.

6.9.3 Disinheritance

If the inheritor engages in inappropriate behaviour specified in the civil law, his heirs with reserved shares can be removed from the inheritance (*mirastan çıkarılma*). Heirs with hidden shares can be removed from the heirship if they commit a serious crime against the person who left the inheritance or their relatives or if they do not fulfil their family law-based duties towards family members.

If the heir with a reserved share is removed from the inheritance, he cannot both receive a share from the inheritance and open a *tenkis* case. The share of the heir with a hidden share removed from the inheritance passes to them if they have a descendant. Otherwise, it will be shared equally among other heirs.

6.9.4 Succession and taxes

Inheritance transition (*veraset intikali*) is a legal process carried out to share the inheritance of the inheritor to the heirs.

Inheritance tax (*veraset vergisi*) is a tax on the privilege of acquiring property from a deceased person. In the event of the death of the deceased's heirs or heirs, the transfer of the property cannot be completed unless the inheritance tax is paid, even though they are the owners of the deceased's property. For this, the heirs must submit an "inheritance tax" declaration to the tax office "within four months". For this purpose, before this period expires, they must apply to the "court of peace" or a notary public and take a "certificate of inheritance", that showing who is the heir.

6.9.5 Land registration of inheritance

If the inheritance division is made by a notary, it is obligatory to submit the contract to the land registry directorate. This contract must also include the registration request and it must be explained in the contract who can make the registration process. Otherwise, it will be obligatory for all heirs to come to the land registry directorate with this contract and request registration.

If the signatures of some of the inheritors are notarized and the others are not approved (and those whose signatures have not been approved do not authorize those whose signatures have not been approved) to request registration, all those whose signatures have not been notarized must come to the land registry directorate in person or through their proxies and request registration.

If the authority to request registration has been transferred, all immovables subject to division can be registered in accordance with the contract upon the request of the representative. If the authority to request registration is given, it is possible for each stakeholder to register the parcel in his name because of the division. In this case, the calculation of the partition fee is made only on the value of the parcel.

6.10 Inheritance in Agricultural Lands

Preventing the fragmentation of agricultural lands is of great importance in terms of both the quality in the agricultural sector and the contribution of agricultural incomes to the country's economy. In this context, within the scope of the amendments made in the Soil and Land Use Law No. 5403 in 2014, the concepts of minimum agricultural land size and agricultural land size with sufficient income were defined, and some conditions were introduced regarding the inheritance sharing and transfer of ownership on agricultural lands of the specified size.

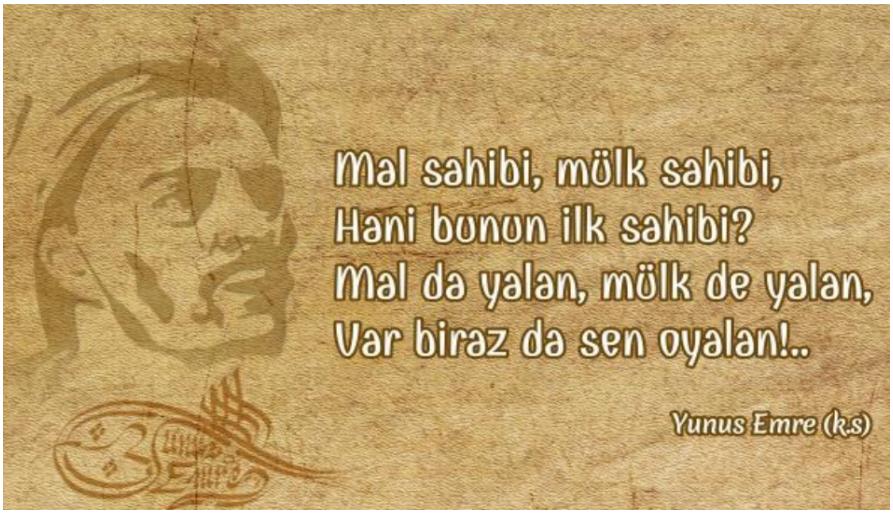
With the Law on Soil Conservation and Land Use, the heirs of the deceased, who died after May 15, 2014 and left the characteristics of agricultural land, fail to reach an agreement within 1 year from the death of the deceased. In case of litigation, they are expected to carry out their transfer proceedings. During this period, the heirs are free to transfer the agricultural lands to one of their own heirs or to more than one heir, as well as to decide on the transfer of the related lands to the family partnership or the limited company they will establish, or even to third parties. While making the decision during the transfer, the criteria of minimum agricultural land size with sufficient income should be considered, and the aim here is to prevent the division of agricultural lands below a certain size.

In Article 8/A of the Law, it is stipulated that agricultural lands cannot be divided under the size of agricultural land with sufficient income and that the number of shares and stakeholders cannot be increased in the related lands, and it is foreseen that this quality of agricultural lands will be notified to the relevant land registry directorate by the Ministry. If the heirs cannot come to an agreement on the transfer and transfer of ownership of agricultural lands within 1 year from the death of the inheritor, or if one of the heirs files a lawsuit before the competent civil court of peace and does not request the transfer of agricultural lands through the court, an additional period of 3 months will be given to the heirs by the ministry. If the transfer of the agricultural land is not completed at the end of the additional period given, a lawsuit can be filed against the heirs. The Ministry opens these cases ex officio and the cases in question are exempt from all kinds of fees and charges. In the lawsuit filed, the competent the court judge, the transfer of the agricultural land subject to the inheritance to a competent heir based on the agricultural income value, taking into account his personal abilities and conditions, if there is more than one competent heir, first of all, to the heir who earns his living from agricultural land with sufficient income, If more than one competent heir has non-inherited agricultural lands, it can decide to transfer their existing lands to these heirs in order to reach a sufficient income, if there is no competent heir, it can be transferred to the heir who offers the highest price, and if there is no heir demanding the land subject to the inheritance, it can decide to sell it.

Here, the criteria for being considered a competent heir are determined by the regulation issued by the Ministry of Agriculture. According to this regulation, the heir or heirs who have fifty points or more with the scoring system are considered as competent heirs. While the evaluation is being made, the inheritor's livelihood must be from the agricultural land subject to the inheritance, he has no non-agricultural income, he has professional knowledge and skills to process agricultural lands, the duration of residence in the agricultural land, being a woman, having agricultural machinery and tools suitable for operating the agricultural land criteria are considered.

In case of an increase in the value of all or some of these lands due to non-agricultural use within twenty years from the transfer of the ownership of the "adequate-income agricultural land (*yeterli gelirli tarımsal arazi*)" to one of the heirs; The monetary value of the land on the transfer date is recalculated according to the date on which the non-agricultural use permit is granted. The difference between the found value and the new value of the land due to non-agricultural use is paid by the heir who takes over the ownership of the land to the other heirs in proportion to their shares.

In deaths before May 15, 2014, the transfer of the lands that have not yet been shared among the heirs must be carried out in accordance with the provisions of the law before this Law. In deaths dated before 15.05.2014, which is the effective date of Law No. 6537, which amended the Law No. 5403, it is possible to register the transfer requests as property, shared property or agreed division between them in cooperation.



6.11 Digital inheritance

Digital inheritance is the passing down of digital assets to designated beneficiaries after a person's death as part of the estate of the deceased. What was traditionally passed down as physical assets – analogue materials such as letters, financial paperwork, photographs, or books – now exist for many people almost entirely in digital form as email, online banking, digital photos, or e-books. In contrast with physical assets, digital assets are ephemeral and subject to constant threats of data corruption, format obsolescence, or licensing restrictions and proprietary control.

Digital media can be physically owned, such as those stored on personal computers, hard drives, or optical discs, in which case the digital content exists on a format which can easily be bequeathed and passed down to heirs. A growing majority of digital content and interactions, however, are stored in an online environment and not owned by the individual but by the company providing the online service or product. Examples of this include the online services provided by large corporations such as Google, Apple, Microsoft and Facebook. With the average person having 150 online accounts that require a password, digital inheritance has become a complex legal and ethical issue. Legal conflicts surrounding digital inheritance centre around questions of intellectual property rights, user privacy, and estate law.

The term digital estate refers to the inheritable digital assets included in a person's estate. This must include the digital media itself as well as the rights to have control over that media. A person's digital assets may be digital media that a person owns outright or has the rights to use according to a terms of service agreement. Assets may be stored either online or offline and include online accounts, any form of writing, images and other created static or dynamic content, or any digital content that has economic value. They may include sensitive information, such as banking and medical records, or shared information, such as social media contacts or forums. In contrast with physical assets, digital assets, particularly those stored online, are always vulnerable to change or deletion.

Two principal issues arise over a person's digital estate. First, the inheritability of the digital content must be determined. Only digital content for which the deceased holds the copyright may be passed down to an inheritor. There is a distinction in law between full ownership and right-to-use licenses such as in software, digital music, film and books and there is legal precedent for denying resale or bequest of these. Second, the heir or administrator of an estate must be able to access the content. This sometimes means navigating any online contracts or service providers' terms of service agreements regarding their policies on user privacy and user death. (Ref: https://en.wikipedia.org/wiki/Digital_inheritance)

'Dijital Miras' uyarası! Düzenleme şart...

Apple, yaptığı son iOS güncellemesiyle çok konuşulacak 'Dijital Miras' özelliğini getirdi. Böylece kullanıcılar, vefat etmeleri durumunda iCloud hesaplarına ve kişisel bilgilerine erişebilmeleri için 'varis' atayabilecek. Konuya ilişkin değerlendirmede bulunan Bilişim hukuku avukatı Görkem Gökçe, dijital varlıkların mirasçılara geçmesinin hukuka aykırı olacağını konusunda uyarıda bulundu. 'Dijital miras'a ilişkin bir düzenleme getirilmesi gerektiğini savunan Gökçe, Antalya Bölge Adliye Mahkemesi'nden çıkan karara da işaret etti.

23.12.2021 - 12:58 | Son Güncellenme: 25.12.2021 - 15:40| İSTANBUL(DHA)

With the iOS version 15.2 update announced by the Apple, a new arrangement has also been made in the field of "digital heritage". With this update, Apple users can appoint a digital heir in case of death. With this method, the personal data on the phone is left to five people to be determined by the user, and after the user's death, the personal data can be seen by these five people. According to the regulation, people who want to access this information as a digital heir will have to bypass a firewall. For this, people will present, for example, a copy of a death certificate and the access key to the company. If the transactions yield positive results, the company will be granted access to personal data.

How do digital assets pass to heirs?

Stating that the property to be inherited is considered limited according to Turkish laws, IT and technology law expert Atty. G Gökçe, "even if it is not regulated by digital inheritance law, it is an important issue how digital assets such as social media and e-mail accounts will be passed on to other individuals after the death of the person who owns them. So, it is necessary to make a classification," he said.

Defending that a regulation should be introduced regarding digital inheritance, Gökçe said, "Our Constitution and the Turkish Penal Code protect the privacy of private life and the privacy of communication. For this reason, it would be against our law to accept that the passwords of the social media accounts used by the deceased will automatically pass to the heirs. The situation is different for social media accounts that provide financial gain. Social media accounts that receive advertisements, have very high followers and have an economic value can be passed on to heirs. Even though some accounts do not have this qualification, the rights of the heirs specified in our law will be in question if there are situations such as the data they hold, correspondence with some economic value kept in the account, and e-mails. In this case, the heirs can request that the related social media accounts be given to them," he said.

Need a regulation on digital assets and digital heritage

Although the digital heritage application is a very new application that has not yet been regulated in Turkish law yet, it has also started to take place in judicial decisions. Atty. G Gökçe made the following assessment by citing a decision (Decision No: 2020/1149 - 2020/905) given by the 6th Civil Chamber of the Antalya Regional Court of Justice, as an example: In the decision he made regarding the issue, he accepted the digital assets by saying that it is understood that social media accounts and e-mail accounts to which digital currency wallets are linked now exceed personal use and begin to fall under the scope of digital assets with commercial value. For this reason, evaluating that there is a legal gap in digital inheritance, he concluded that the e-mail account, social media accounts, and digital wallets of the deceased are included in his estate as an indispensable property to be passed on to the heirs, and reversed the decision of the court of first instance. This decision, which is a first, is very important. However, the main thing that needs to be done is to make a regulation by the legislator by considering the concepts of digital heritage and assets.

The 21st century is coming with many innovations. It is very important to take the necessary steps against new concepts and situations, otherwise time and opportunities may be lost.

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"nullum crimen nulla poena sine lege"

(there is no crime and punishment without law)

Themis, is the goddess of justice and order, the daughter of Uranus and Gaia in Greek mythology. She is the representative of divine justice. She is Zeus' second wife after Melis. She herself is not angry or punitive. When she is not given enough respect or injustice is done, she remains silent. Themis is also a seer, has the power of prophecy, she built the temple of Delphi, the place of prophecy.

Themis is a Goddess, a Goddess, who establishes the balance between life and death between living beings with a Goddess triad who maintains the order of seasons, years and arts in nature. Themis is the law, the rule. But it is not a temporary law, it is an unchangeable, universal and immortal natural law in the world of gods and human beings. Themis lives in Olympos, presides over the meetings of the Gods, she maintains the order in Olympos, she also knows Homer, she shows Hera talking to Zeus.

"Sword" symbolizes the deterrence and power of punishments given by justice, "Libra" symbolizes justice and its balanced distribution. Being "Woman" and "Virgin" signifies independence. Also, the woman is blindfolded. This symbolizes impartiality. Since it symbolically carries the universal principles of law, the statue of Themis expresses justice.