



# ЮРИСТ АХБОРОТНОМАСИ

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ҲУҚУҚИЙ, ИЖТИМОИЙ, ИЛМИЙ-АМАЛИЙ ЖУРНАЛ



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# МУНДАРИЖА/СОДЕРЖАНИЕ/CONTENT

## ДАВЛАТ ВА ҲУҚУҚ НАЗАРИЯСИ ВА ТАРИХИ. ҲУҚУҚИЙ ТАЪЛИМОТЛАР ТАРИХИ

**1.АЗАМОВ Жасурбек Муродович**  
ҲУҚУҚНИ ҚЎЛЛАШ АМАЛИЁТИ: МУАММО ВА ЕЧИМЛАР.....8

### КОНСТИТУЦИЯВИЙ ҲУҚУҚ. МАЪМУРИЙ ҲУҚУҚ. МОЛИЯ ВА БОЖХОНА ҲУҚУҚИ

**2.МАМАТОВ Худоёр**  
ҚОНУН ҲУЖЖАТЛАРИНИ ИЖРОЧИЛАР ВА АҲОЛИГА ЕТКАЗИШ  
МЕХАНИЗМЛАРИНИ ТАКОМИЛЛАШТИРИШ.....15

### ФУҚАРОЛИК ҲУҚУҚИ. ТАДБИРКОРЛИК ҲУҚУҚИ. ОИЛА ҲУҚУҚИ. ХАЛҚАРО ХУСУСИЙ ҲУҚУҚ

**3.ИСМАИЛОВА Раъно Шухрат қизи**  
ДОГОВОР В СИСТЕМЕ МЕЖДУНАРОДНЫХ АВТОМОБИЛЬНЫХ  
ПЕРЕВОЗОК ГРУЗОВ.....21

**4.ГАНИЕВ Нихолбек Валиевич**  
ТЕЛЕКОММУНИКАЦИЯ ХИЗМАТЛАРИ СОҲАСИДАГИ  
ШАРТНОМАЛАРНИНГ ТИЗИМИ.....30

**5.ХАЙРУЛЛАЕВА Дилбар Абдусаматовна**  
ЧЕТ ДАВЛАТЛАР СУДЛАРИНИНГ ВА АРБИТРАЖЛАРИНИНГ ҲАЛ КИЛУВ  
ҚАРОРЛАРИНИ ТАН ОЛИШ ВА ИЖРОГА ҚАРАТИШ ТУШУНЧАСИ ВА  
МОҲИЯТИ.....38

**6.ZAYNOBIDDINOVA Farangiz Baxtiyor qizi**  
REFORMS IN THE INVESTMENT LEGISLATION OF UZBEKISTAN.....45

**7.ЮЛДАШОВ Абдумумин**  
ИНТЕЛЛЕКТУАЛ МУЛК БЎЙИЧА МИЛЛИЙ СТРАТЕГИЯЛАРНИНГ  
АҲАМИЯТИ ВА БУТУНЖАҲОН ИНТЕЛЛЕКТУАЛ МУЛК  
ТАШКИЛОТИНИНГ БУ БОРАДА ТУТГАН ЎРНИ.....53

### ФУҚАРОЛИК ПРОЦЕССУАЛ ҲУҚУҚИ. ИҚТИСОДИЙ ПРОЦЕССУАЛ ҲУҚУҚИ. ҲАКАМЛИК ЖАРАЁНИ ВА МЕДИАЦИЯ

**8.ЭШИМБЕТОВА Дармон Уразбаевна, МАШКУРОВ Ғайрат Абдужалилович**  
КОРПОРАТИВ НИЗОЛАР ТААЛЛУҚЛИЛИГИ МЕЗОНЛАРИНИНГ ЎЗИГА  
ХОС ЖИҲАТЛАРИ.....60

### ЖИНОЯТ ҲУҚУҚИ, ҲУҚУҚБУЗАРЛИКЛАРНИНГ ОЛДИНИ ОЛИШ. КРИМИНОЛОГИЯ. ЖИНОЯТ-ИЖРОИЯ ҲУҚУҚИ

**9.ОТАЖОНОВ Абдоржон Анварович, КУШБАКОВ Дилшод Мусурмонкулович**  
АҚЛИ РАСО ВА НАРОСОЛИК ТУШУНЧАСИ ҲАМДА МЕЗОНЛАРИ,  
ШУНИНГДЕК УЛАРНИ ТАРТИБГА СОЛИШГА ДОИР ЖИНОЯТ  
ҚОНУНИ НОРМАЛАРИНИ ТАКОМИЛЛАШТИРИШ МАСАЛАЛАРИ.....73

**10.АЛИЕВ Шухрат Хасанович, ҚАРШИЕВ Фуломжон Сайфуллаевич**  
ОИЛАДА ЁШЛАР ЖИНОЯТЧИЛИГИНИНГ ОЛДИНИ ОЛИШ  
ЙЎНАЛИШЛАРИ.....87

**ЖИНОЯТ ПРОЦЕССИ. КРИМИНАЛИСТИКА, ТЕЗКОР-ҚИДИРУВ ҲУҚУҚ  
ВА СУД ЭКСПЕРТИЗАСИ**

- 11.РАЖАБОВ Бахтиёр Алмахматович, АБДУҚОДИРОВ Фарходжон Фахритдин  
ўғли**  
ЖИНОЯТ ПРОЦЕССИДА ИСБОТ ҚИЛИШНИНГ ИШТИРОКЧИЛАРИ.....94
- 12.ХАСАНОВ Шавкатбек Хайбатуллаевич**  
СУД ЭКСПЕРТЛАРИНИНГ ПРОФИЛАКТИК ФАОЛИЯТИ.....102

**ХАЛҚАРО ҲУҚУҚ ВА ИНСОН ҲУҚУҚЛАРИ**

- 13.САИДОВА Лола Абдувахидовна**  
ЖАҲОН ГЕНДЕР ТАРИХИГА БИР НАЗАР ВА ЎЗБЕКИСТОНДА ГЕНДЕР  
СИЁСАТИНИНГ ҲУҚУҚИЙ АСОСЛАРИ.....110
- 14.ОЧИЛОВ Бехзод Эргашович**  
ГЕНЕЗИС И ПЕРСПЕКТИВЫ РАЗВИТИЯ СУВЕРЕНИТЕТА И  
МЕЖДУНАРОДНОЙ ПРАВОСУБЪЕКТНОСТИ РЕСПУБЛИКИ  
УЗБЕКИСТАН (ТЕОРЕТИКО-ПРИКЛАДНОЙ АНАЛИЗ).....119

**ЮРИДИК ХИЗМАТ, АДВОКАТУРА, НОТАРИАТ**

- 15.ИСРОИЛОВ Боҳодир Ибрагимович**  
НОТАРИАЛ ФАОЛИЯТНИ СОЛИҚҚА ТОРТИШНИНГ ЎЗИГА ХОС  
ХУСУСИЯТЛАРИ.....133

**ҲУҚУҚИЙ АМАЛИЁТ ВА ХОРИЖИЙ ТАЖРИБА**

- 16.ТОШҚУЛОВ Журабой Ўринбоевич, УМИДУЛЛАЕВ Қахрамон Усманович**  
ҲУДУДЛАРНИНГ ИЖТИМОИЙ-ИҚТИСОДИЙ РИВОЖЛАНИШИНИ  
РЕЙТИНГ БАҲОЛАШНИНГ МУҲИМ ЖИҲАТЛАРИ.....141
- 17.ERKABAЕVA Shakhnoza Ikromjonovna**  
THE LEGAL STATUS OF PARTNERSHIPS IN SEVERAL DEVELOPED  
COUNTRIES AND THE LIABILITY ISSUES IN PARTNERSHIPS.....149

# ЮРИСТ АХБОРОТНОМАСИ ВЕСТНИК ЮРИСТА LAWYER HERALD

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## THE LEGAL STATUS OF PARTNERSHIPS IN SEVERAL DEVELOPED COUNTRIES AND THE LIABILITY ISSUES IN PARTNERSHIPS

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### ANNOTATION

This article provides a thorough investigation of liability issues in partnerships, existing in national and foreign legislations based on the scientific views of scientists and a comparative-legal analysis of legal systems of the United Kingdom and the USA, Russia and the Republic of Uzbekistan. Moreover, it investigates special features of the liability of the partners together with identifying the advantages and disadvantages of subsidiary liability of general partners and limited liability of limited partners. Additionally, taking into account the importance of liability issues in decision making of investors, this article provides suggestions for the improvement of the liability issues by introducing several changes into the legislation regulating the liability issues in partnerships.

**Keywords:** a limited partnership, an investment partnership, a business partnership, a general (full) partner, a limited partner, special partnerships, a partnership agreement, limited liability, subsidiary liability.

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## АЙРИМ РИВОЖЛАНГАН МАМЛАКАТЛАРДА ШИРКАТЛАРНИНГ МАҚОМИ ВА ШИРКАТЛАРДА ЖАВОБГАРЛИК МАСАЛАЛАРИ

### АННОТАЦИЯ

Ушбу мақолада олимларнинг илмий нуқтайи-назарлари ҳамда Буюк Британия ва АҚШ, Россия ҳамда Ўзбекистон Республикаси ҳуқуқий тартиботларининг қиёсий-ҳуқуқий таҳлили асосида миллий ва хорижий қонунчиликда акс этган

ширкатлардаги жавобгарлик масалалари чуқур таҳлил қилинади. Шунингдек, ушбу мақолада шериклар жавобгарлигининг ўзига хос хусусиятлари ўрганилган ҳамда тўлиқ шерикларнинг субсидиар жавобгарлиги ва чекланган шерикларнинг чекланган жавобгарлигининг афзалликлари ҳамда камчиликлари еритилган. Шунингдек назардан, жавобгарлик масалалари инвесторларнинг қарор қабул қилишида муҳим аҳамият касб этишини инобатга олган ҳолда, ушбу мақолада ширкатлардаги жавобгарлик масалаларини ислоҳ қилиш ҳамда тегишли қонунчилик ҳужжатларига ўзгартиришлар киритиш бўйича таклифлар берилди.

**Калит сўзлар:** чекланган ширкат, инвестицион ширкат, хўжалик ширкати, бошқарувчи (тўлиқ) шерик, чекланган шерик, коммандит ширкатлар, шерикчилик шартномаси, чекланган жавобгарлик, субсидиар жавобгарлик.

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## ПРАВОВОЙ СТАТУС ПАРТНЕРСТВ В НЕКОТОРЫХ РАЗВИТЫХ СТРАНАХ И ВОПРОСЫ ОТВЕТСТВЕННОСТИ ПАРТНЕРСТВА

### АННОТАЦИЯ

В данной статье анализируются вопросы ответственности в партнерствах, существующих в национальном и зарубежном законодательствах на основании научных работ ученых и сравнительно-правового анализа правовых систем Великобритании, США, России и Узбекистана. Кроме этого, в статье изучены особенности ответственности товариществ, а также определены преимущества и недостатки субсидиарной ответственности полных и ограниченной ответственности товариществ. Принимая во внимание важность вопроса ответственности в принятии решения инвесторами, в статье изложены предложения по совершенствованию вопросов ответственности, путем внесения изменений в законодательные акты, регулирующие деятельность товариществ.

**Ключевые слова:** ограниченное партнерство, инвестиционное товарищество, хозяйственное товарищество, управляющий (полный) товарищ, ограниченный партнер, коммандитные товарищества, соглашение о партнерстве, ограниченная ответственность, субсидиарная ответственность.

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Nowadays, as it is mentioned in the Decree of the President of the Republic of Uzbekistan No.5583 "On additional measures on improvement of mechanisms of financing projects in the field of entrepreneurship and innovation" dated on November 24, 2018(<http://lex.uz/docs/4076954>), the foremost activities that should be carried out in order to improve investment climate in the Republic of Uzbekistan, comprise the expansion of existing mechanisms and sources of innovative financing, development of market institutions for the commercialization of innovative products and services, encouragement of private sector participation in the financing of the scientific and technological development, particularly the attraction of a wide range of private national and foreign investors to finance innovative projects, etc. [1]

However, it should be admitted that the first and the most important issue influencing the decision making of investors before allocating their assets in order to finance any investment or innovative project, is the liability issues, i.e. to what extent they will be liable in case of occurrence the indebtedness of the business entity running the project. Therefore, it is of a paramount importance to investigate thoroughly the liability issues

in limited partnerships, which are widely developed in both Common law countries and Continental law countries, and investment partnerships, which are becoming more and more popular among business entities in Russian Federation as well as make a comparative analysis with business partnerships in the Republic of Uzbekistan, which include general (full) partnerships and special partnerships.

Regarding the liability issues in limited partnerships, it should be noticed that the liability in a limited partnership is considered as a special feature of the partnership. Because the name itself gives us a notion that not all of the partners have the same rights or obligations, consequently the extent of their liability for the obligations of the partnership is also not equal. Having learned previously from Limited Partnership Act of 1907, it can be stated the general partners have unlimited liability, while limited partners have limited liability. It means that, as it is stated in Article 4 of this Act, general partners are liable for all debts and obligations of the partnerships, while limited partners are liable for the debts or obligations of the partnership to the extent of the amount contributed to the partnership while entering as a partner [2, Section 4].

However, there are some cases, indicated by this Act, determining the subsidiary liability of the limited partners. Particularly, part 3 of Article 4 states that in case the limited partner during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, he shall be liable for the debts and obligations of the partnership up to the amount so drawn out or received back. Moreover, Article 6 determines that if a limited partner takes part in the management of the partnership business, he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner [3, Section 6].

In contrast to this, Section 303 of Uniform Limited Partnership Act states that, an obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership [4, Section 303].

Nevertheless, Lauris G.L. Rall states that the section does not prevent a limited partner from being liable for its own conduct when a third party asserts that limited partners own wrongful conduct has injured the third party [5, P.920].

Even though the Uniform Limited Partnership Act of 2001 provides the guarantees of limited liability of limited partners, the author Brett Trembly notices that there are instances where a limited partner is still liable. This is a very technical and easily avoidable situation. This situation emerges when the limited partnership certificate has not been properly filed with the state. Again, this is an extremely technical exception. Therefore, a limited partnership cannot overestimate the significance of the limited partnership certificate. The logic behind this exception is that without a limited partnership certificate, the limited partnership is nothing more than a general partnership, which retains traditional liability. If there is no certificate, all partners are jointly and severally liable. If the certificate is valid, only the general partners are jointly and severally liable [6, Paragraph 2].

Moreover, Uniform Limited Partnership Act 2001 provides liability of a limited partnership for general partners' conduct. According to Section 403 of this Act, a limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, because of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership. If, in the course of the limited partnership's activities or

while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss [7, Section 403].

Presumably, the liability of a partnership for general partner's conduct provided in the previous paragraph is accomplished at the expense of common property of partners. It can be supposed that Uniform Limited Partnership Act determines such liability of a partnership in order to provide a guarantee for business partners of a limited partnership.

As Charles Wild notices in his work, general partners are personally liable for the actions of the business and the other general partners, even if those actions appear unreasonable, excessive or if they result in legal judgments against the business. General partners can lose far more than their initial investments. These management and risk burdens are two reasons general partners usually receive management fees as well as a larger percentage of the partnership's profits above a certain level [8, P.251-258].

Turning to the liability issues in investment partnerships in Russian Federation, it should be stated that Article 14 of Federal law of Russian Federation "On investment partnerships" of 2011 maintains that all partners are jointly and severally liable for the general obligations not arising from the contract except for tax obligations. However, the limited partners will be liable only in case the court establishes their guilt in the violation of these general obligations. Regarding tax obligations, all the partners shall be liable for all their property in the manner prescribed by the legislation on taxes and fees. Regarding the general treaty obligations related to the implementation of joint investment of the partners, each partner shall be liable to the extent of the amount of share in common property of the investment partnership. But in case the common property of the partnership is not sufficient to meet the obligations, only the general partners will be jointly and subsidiary liable for the obligations with their own property. Article 18 of this Federal law determines that in case the investment partnership agreement is terminated between the general partner and other partners by reasons not provided in Federal law, such general partner or his successor shall be liable for the obligations of the partnership to third parties within three years from the date of termination of the investment partnership agreement [9, Articles 14, 18].

Regarding the liability issues in business partnerships, indicated in national legislation, it has to be noticed that Article 21 of Law of the Republic of Uzbekistan "On business partnerships" (<https://lex.uz/docs/2457>) states that the participants of the partnership bear subsidiary liability jointly and severally for the obligations of the partnership with their all property (except special partnerships, where special (limited) partners bear the risk of losses associated with the activities of the partnership, within the amounts of their contributions). A member of the partnership, who entered into the partnership after its establishment in the form of transfer of a share or succession, shall be liable on an equal basis with other participants for the obligations arising before its entry into the partnership, while a member of the partnership who enters into a partnership after its establishment in the form of accepting a new member, shall be liable only for obligations arising after its entry into the partnership. A participant that withdrew from the partnership remains liable for the obligations of the partnership for two years from the date of the retirement [10, Article 21].

Having analyzed the above mentioned authors' points of view and legislative acts, it can be stated that both in limited partnerships and investment partnerships, general partners bear subsidiary responsibility for the obligations of the partnership, while limited partners are liable for the obligations of the partnership only to the extent of made contribution. However, in contrast to an investment partnership, a limited partnership

does not provide a determined term within which general partners are obliged to bear a subsidiary liability, which makes the latter more attractive for potential investors. Regarding the business partnerships, it can be deduced that all partners in a general (full) partnership and full partners in a special partnership bear full subsidiary responsibility for the obligations of the partnership, while special (limited) partners in a special partnership are liable for the obligations of the partnership only to the extent of made contribution. In a similar way with investment partnerships, general (full) partners in business partnerships remain liable for the obligations of the partnership for a determined term even after their withdrawal.

Taking into account aforementioned deductions, we would like to introduce several suggestions related to the liability issues of general (full) partners in business partnerships. Determining an additional two-year period within which general (full) partners in both full partnerships and special partnerships remain subsidiary liable after their withdrawal from the partnership adversely affects the decision making of investors, and consequently, these forms of doing business become unattractive for potential investors to launch some investment or innovative projects. As for the types of business partnerships existing in national legislation, we should admit that special partnerships are considered more attractive rather than full partnerships because of their limited liability features. In furtherance of the experience of the United Kingdom and the USA, we could suggest that limited partners, while bearing a limited liability for the obligations of the partnership, should be subsidiary liable for the obligations of the partnership exclusively in cases resulted in their deliberate wrong conduct. We believe that the above mentioned suggestion will provide a dutiful attitude of not only general (full) partners but also special (limited) partners in their relations with partnership, and if it is determined by law or a partnership agreement, in their relations with third parties on behalf of the partnership.

In conclusion, it can be deduced that the liability features of special partnerships in the Republic of Uzbekistan are quite similar to the liability features of limited partnerships in the United Kingdom and the USA and investment partnerships in Russian Federation. However, it could not be stated that special partnerships are quite popular among business entities and investors in our country because of their other legal aspects such as formation issues, legal nature, taxation system and others, which are considered as time consuming and difficult by investors.

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