

Law for Business

Quiz 1

Write the answer to the question

What is law for you?

- The police.
- The government's behavior.
- The reflection of the people, organizations and values; it serves and controls.
- It comes from the past, reflects the present and paves the way to the future.

Effective manager

Quiz 2

Write the answers to the questions

- What is an effective manager?
- The one who develops the knowledge of both law and business.
- Why is that so important?

Think of it

- Remember and render situations in your lives where you really felt lack of knowledge of laws.

Legal rules

1. To create the rules – legislatures and government agencies
1. To enforce the rules – police forces
1. To resolve the disputes – courts

The law requires people to conform their behavior to a particular standard.

Law is

- **A set of principles that:**
 1. Have **general application** to society
 2. Developed by a **legitimate authority** within society
 3. “**A process of legal interpretation**” (court)
 4. May have **sanctions** against the law breakers

**How did the law
appear?**

1.The theory of the social contract

G. Grotskiy, G. Ghobbs, D. Lonk, Spinoza, F-F Rousseau, AN Radischev

To ensure a normal life, people conclude among themselves an agreement on the establishment of the state, voluntarily handing it some of their rights.

Noting the progressive nature of many of the social contract theory, which opposed the feudal state, the king in this society, tyranny, inequality, it should be noted that there is no scientific evidence supporting this theory. Also, this theory ignores the

2. The Theological Theory

Religious leaders of the ancient East, medieval Europe (Thomas Aquinas in the 13th century.), The ideologues of Islam and the modern Catholic Church (Jacques Maritain)

The idea of inviolability of the state, the need for submission to the will of the state, as the government of God, but at the same time, and depending on the state itself from the divine will, manifested through the church or other religious organizations. Judgment on the legality of the origin and use of the power of the ruler belongs to the church. People do not only have to fulfill the orders of the governor, which are at odds with the divine laws, but generally do not have to obey the usurpers and tyrants.

3. The Violence Theory

K.Kautsky, E.Dyuring, A. Gumpovich

Laws are for subordination of the weak to strong. Many states have appeared as a result of the conquest of one people by another. (Early German or Hungarian state)

To state emerged required. If the level of economic development that includes the state apparatus is not reached, no conquest can lead to the appearance of the state.

4. The Psychological Theory

G.Gard, L. Petrazhitsky

The emergence of the state and law is explained by the manifestation of the properties of the human psyche, the need to obey, depend on the elite of the society, the realization of justice, certain embodiments of actions and attitudes, and so forth. It is based on specific emotions that are experienced as internal obstacle to freedom and that encourage the person to any action. Norms as authoritarian prohibitions and commandments is only a reflection of these experiences. Psychological theory distinguishes ethical duty as a legal obligation and ethical duty as a moral duty.

Influence of the human psyche is not critical, and the mind itself is influenced by relevant economic, social and other conditions. These conditions

5. The Natural Law Theory

Lock, Rousseau, Montesquieu, Gholbach, Radishchev.

Apart from positive law created by the state, there is common to all men natural right, which stands above the positive law. The latter is based on the requirements of the natural law (the right to life, free development, labor, participate in the affairs of society and the state).

In a civilized society there is no reason to oppose natural and positive law, since the latter reinforces and protects the natural rights of man, making a

6. Normativizm

K. Bergbom, G. Shershenevich, J. Austin,
R. Shtammler

The rules are created by the state - the state's standards to meet the interests of the individual. The main thesis of legal positivism - the recognition of the law created by the state for the common good, or to satisfy the interests of the individual. However, only the justice which gets protection of the State is the law.

Many of her supporters were against the

7. The Sociological Theory

Ehrlikh, S. Muromtsev, G. Shershenevich.

Social norm - a norm of behavior applied to the external expressions of public life. It is the source of human well-being and is above the state.

Sociological theory fills its social content, argues that the right is a balancing force in the life of society. The ideas of this theory clearly express the essence of the rule of law in which the state itself and its citizens must obey the legal requirements in the interest of

Functions of law

1. Keeping the peace (prohibition of not authorized meetings in Russia)
2. Enforcing standards of conduct and maintaining order (outlaw desecration of the flag in Texas)
3. Facilitating planning (eg: contract laws)
4. Promoting social justice (tax laws - redistribute wealth)

It regulates behavior of an individual to make it acceptable to the majority of other individuals.

It shapes politics, economics and society in countless ways and serves as a social mediator in relations between people.

It regulates almost all spheres of social and political life either between public or private members of a society, either on national or international level.

Basic Notions

Rule:

An authoritative statement of **what to do or not to do** in a specific situation, issued by **an appropriate person or body**. It clarifies, demarcates, or interprets a law or policy

A statement that establishes a **principle or standard**, and **serves as a norm** for guiding or mandating action or conduct

Give examples of rules.

Where do you usually meet rules?

Norm:

A **standard** of achievement or behavior that is required, **desired**, or designated as **normal**

Informal guideline about **what is considered normal** (what is correct or incorrect) social behavior in a particular **group or social unit**.

Norms form the basis of collective expectations that members of a community have from each other, and play a key part in **social control** and

Give examples of norms.

Where do you usually meet norms?

Who makes norms?

Law (Statute): A set of rules adopted by a legislative body of a certain state for the purpose of regulating specific sphere of social relations.

Code: a systematic collection of laws and statutes regulating the specific sphere of social relations, adopted by a legislative body of a certain state

Tell the main differences
between
a law,
a norm and
a rule.

What laws or codes have you
come across?

Classification of law

1. Substantive law

Versus

2. Procedural law

1. Criminal law

versus

2. Civil law

Substantive law establishes

- 1. Rights and duties** for people as they act in society.

Duties take form of a command: “Do this!”,
“Don’t do that!”

Eg.: the Civil Rights Act of 1964 tells the employers that they **must not** discriminate among people on the basis of race, color, religion, sex etc.

- 2. Rights and privileges.**

Eg.: freedom of speech granted by the Constitution; the right for self-defense.

Procedural law establishes

- The rules as to what cases a court can decide
- How a trial is conducted
- How a judgment by a court is to be enforced

Criminal law defines

- Duties citizens owe to the society and prescribes penalties for violation
- Always statutory
- Requires legislative branch to define the elements of a crime

Civil law establishes

- **Private duties** owed by one person (including corporations or the government) to another
- Generally **doesn't aim to punish** but to make the wronged party whole through a money award – **damages**
- **Punitive damages** – for an outrageous behavior of a person committed a tort. (goes to the injured party)

Law:

- **National Law**

- **International Law:**

International public law

International private law

National Law

Main goal:

setting up a certain mode of behavior for everyone (state bodies, private entities, individuals etc.) within a jurisdiction of a certain state

Main functions:

- regulating economic activities;
- governing political activities;
- forming public legal consciousness;
- regulating the use of natural resources and environmental management;
- governing relations in such spheres as culture, science and education etc.

Main sources:

- Constitution
- Code(s)
- Law(s)/Statute(s)

Sources of International Law

Article 38 of the Statute of the International Court of Justice:

international conventions (general or particular) establishing rules expressly recognized by the contesting states;

international custom, as evidence of a general practice accepted as law;

the general principles of law recognized by civilized nations;

judicial decisions and the teachings of the

International conventions:

- generally referred to as treaties
- written agreements between States that are governed by international law
- referred to by different names, including agreements, conventions, covenants etc.
- may be bilateral, multilateral, regional and global
- have certain degree of primacy among other sources of international law

International custom (or customary law)

- evidence of a general practice accepted as law through a constant and virtually uniform usage among States over a period of time
- rules of customary international law bind all States

General Principles of Law

- often cited as a third source of law
- apply in all major legal systems
- usually used when no treaty provision or clear rule of customary law exists

Example: No one can be punished for the same crime twice

International law

International Public Law (the law of states/nations)

- a body of customary or conventional rules which are considered as legal binding by civilized states in their intercourse with each other
- concerned mostly with the rights and obligations of sovereign states

International Private Law (the conflict of laws)

- part of national laws of a certain state that is aimed to decide whether a given case involving «foreign» element shall be adjudicated upon by domestic laws of a given state or by laws of some other state and shall be subject to the competence of courts of a given state or of some other state
- deals with cases in which some relevant fact has a connection with a foreign element and may on that ground raise a question as to

International Law v. National Law?

“Monist” tradition

both national law and international law form one unitary legal order

In case when national law conflicts with international law: to declare the supremacy of national over international law or to declare the supremacy of international over national law

“Dualist” tradition

national law and international law are two separate systems and non-overlapping legal orders: conflicts are thus impossible

international law must be transferred into national law, and existing national law that contradicts international law must be “transferred away”; It must be modified or eliminated in order to

Constitution of Ukraine provides

for:

✓ «Valid international treaties, the obligatory character of which is approved by the Verkhovna Rada of Ukraine. The conclusion of international treaties which contradicts the Constitution of Ukraine shall be possible only after the respective amendments to the Constitution of Ukraine are made» (Article 9)

✓ «International treaties are entered into by the President of Ukraine and, where it is required by law, should obtain the approval of the Verkhovna Rada of Ukraine». (Article 106 and Article 85)

✓ “The Constitutional Court of Ukraine upon the request of the President of Ukraine or the Cabinet of Ministers shall decide on conformity with the Constitution of Ukraine of valid international treaties of Ukraine and these international treaties

Elements of cases

	Criminal case	Civil case
Elements	Intentional violation of the statute	Harm to another person or property (tort) or breach of a contract
Actors	Prosecutor v. Defendant (government) (accused)	Plaintiff v. Defendant (wronged party) (party causing harm)
Punishment	Fines, imprisonment, execution	Defendant may have to pay the plaintiff compensatory punitive damages

Peculiarities of American law system

Full faith and credit

- Federal Constitution requires every state to give

“Full Faith and Credit”

to the

“Acts, records and judicial proceedings of every other state.”

“Checks and balances” (13 states)

system between the powers of the states and the federal government:

- **Balance: 3 branches** of government: legislative, executive, judicial

Check: to avoid ill advised statutes to pass

1. a proposal will not become law unless the president and both houses of Congress approve it.
 2. 2/3 majority in each house is required to override a veto by president.
 3. Congress itself couldn't enforce a statute (executive branch could: the attorney general)
- ***Supremacy clause*** in the Constitution: where state laws conflict with legitimate federal laws,

Constitutional powers

- States have own **governments and judicial** systems.
- Constitution **may not give** the Congress the power to pass a law.
- Constitution's **Commerce Clause** permits Congress to regulate interstate and foreign commerce as well as most federal regulations.
- Business activity is regulated by the **federal taxing power**

Constitutional Limitations

- **Bill of Rights** (the first 10 amendments to the Constitution) - prohibitions against government regulation: guarantee rights of free speech, freedom of religion, of expression.

Federalism

- the US is composed of 51 different legal systems (a part of the checks and balances system)
- There is a federal legal system and each state has its own system.
- Still: if there is a conflict between the 2 systems, the federal rules prevail.

Sources of law

1. Constitutions
2. Treaties
3. Statutes
4. Administrative rules and decisions
5. Executive orders
6. Court decisions
7. Private law

Constitutions

- The highest source of law
- All forms of law must be consistent with the Constitution
- Each state has Constitution, some are more specific and detailed but subordinate to the US Constitution, though superior to law derived from other sources within the state.
- Some were rewritten several times.
- The US Constitution has 17 amendments (more than 200 years)

Treaties

Constitution:

“Treaties made by the president with foreign governments and ratified by 2/3 of the senate are the supreme law of the land”

Statutes

- is the product of lawmaking of a legislature

Statutes

- add details to the government framework
- Establish rules that govern certain kinds of activity (auto on highway)
- Criminal law
- Law applicable to sales of goods
- Law that limits or regulates business

- Congress and state **enact statutes** at sessions
- People turn to Congress to urge the passage of such a law: economic, moral or health problem.
- **Statutory law** varies from state to state.

though

- The Uniform Commercial Code is adopted by 50 states as a **uniform law**.
- **Laws in business** tend to be uniform.
- **Ordinances** are enactments of governmental units within the states (eg. noise levels)

A government agency

- Congress and state legislatures can delegate lawmaking power to a **government independent** (not part of executive branch) **regulatory agency**
- **Strictly civil**
- **Business** is highly regulated in this way
- **Interstate Commerce Commission** – 1887 (the 1st federal agency)
- Some rules issued by an agency have the same force as statutes passed by Congress (if they are within the authority granted by the statute)

A government agency

creation	Congress passes enabling legislation specifying the powers of the agency
features	Headed by a board or commission Members nominated by president Appointments confirmed by Senate Appointees drawn from the two major political parties
powers	Investigative Rule-making Adjudicatory

Executive orders

- Congress and state legislatures can delegate lawmaking power to the **president or a governor**.
- Franklin D. Roosevelt's **1943 order** required all contracts for war supplies to include a clause prohibiting race discrimination.
- Have the force of a law if they are **within the authority** granted by the statute.

Judicial decisions

- Courts also make laws.

They do it in three ways

Interpretation

(they give meaning
source

and effect to the other
legal dispute)

sources of law)

through the **common law**

(they find law when no

offers a solution to a

judicial review determining the
legitimacy of the actions of other branches of
government

Common law

- It is a **court – created law** (decisional law).
- Arises when there is no source of law to resolve a dispute.

Judicial review

- A judge may render a **legal rule unenforceable** declaring it in conflict with constitution.

Procedural safeguards

- A law must be **knowable, predictable, adjustable** (in changing time).
 1. For people to know the **bills** they are **published**.
 2. The Constitution prohibits **ex post facto laws**. A new statute applies only to actions taken after it became effective.

Stare decisis – a court in making a decision should follow the rulings of prior cases that have similar facts (precedents).

3. **Interpretation** – narrow or broad. Court may **choose facts** to stress or to ignore.

The highest appeal court can **distinguish** or **overrule** (in fact rarely) a precedent case.

Constitution of Ukraine

Constitution of Ukraine

- **“The Verkhovna Rada of Ukraine on behalf of the Ukrainian people - Ukrainian citizens of all nationalities, expressing sovereign will of the people standing on the century-old history of Ukrainian state building, on the ground of the right to self-determination realized by the Ukrainian nation, all the Ukrainian people, providing for the guarantee of human rights and freedoms, and of the deserved conditions of human life, providing strengthening of the civil consent on the Ukrainian land, desiring to develop and strengthen a democratic, social, legal state, recognizing the responsibility before God own**

Constitution declares

- **Ukraine is a sovereign and independent, democratic, social, legal State.**
- **The sovereignty of Ukraine covers the entirety of its territory.**
- **Ukraine is a Unitarian state.**
- **The territory of Ukraine within the limits of existing borders is indivisible, and inviolable.**
- **An individual, his/her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value.**
- **Human rights and freedoms and their guarantees determine the essence and the direction of the activity of the State.**
- **The state is responsible to the person for its activity. The establishment and maintaining of human rights and freedoms is the main duty of the State.**

Ukraine is a Unitary
state

- A unitary state is a state governed as one single unit in which the central government is supreme and any administrative divisions exercise only powers that their central government chooses to delegate.

The great majority of states in the world have a unitary system of government.

- Unitary states are contrasted with federal states (federations) and confederal states

The main features of the unitary state

- One main law (normative legal act or set of such acts) for the entire state, which has the rule over the entire territory of the country;
- One highest authority for the whole country;
- One law system;
- Single citizenship;
- Single currency;
- Single national language;
- Components of the unitary state do not have signs of sovereignty.

Unitary states may be centralized and decentralized, depending on:

- **nature** of the relationship between the higher and local authorities;
- **volume of the powers** granted to administrative-territorial units or autonomous entities within the unitary state;

Centralized state: head of the local government bodies are designated from the center.

In decentralized unitary states, local governments are elected by the people and enjoy considerable autonomy in matters of local life

Unitary states are contrasted
with
**federal states (federations) and
confederal states.**

Federation

- **a form of government in which the units of a federal state are public entities, having legally certain political independence.**
- **Constituent parts of the federation - entities called subjects of the federation, and the territory of the Federation consists of the territories of its subjects**

- In a federal state there are **two systems of higher authorities** (federal and subjects of the Federation).
- Along with the **federal constitution** federal subjects have the right to **make their own legal acts** of the constituent character.
- They have the power to make **regional laws**. Subjects of the Federation often have their own **institute of citizenship, capital, coat of arms** or other parts of the constitutional and legal status of the

- The subject of the Federation **can not be the subject of international relations**, if not leaving the federation.
- Subjects of the federation may **have different names**, determined by historical or legal factors: states, provinces, regions, territories and republics, land or federal land.
- Federation should be distinguished from the confederation, which is **an international legal union of sovereign states**.

Features of federal states:

- The territory **consists of the territories** of its individual actors: states, cantons, republics, and so emirates.
- **Supreme legislative, executive and judicial power belongs to the federal government.** Relation between the Federation and its subjects is delimited by the **federal constitution**.
- Some federations subjects make their own **constitution, internal supreme legislative, executive and judicial bodies**.
- In most federations, there is a **single-federal citizenship**.
- The main **foreign policy** is realized by the federal government agencies. They are officially a federal state in international relations (USA, Russia, Germany, Brazil, India and others.).

TASK

- Think and write “+” and “-” of Unitary and Federative State organization.

“+”	“-”

Constitution

- **Ukraine is a republic.**
- **The people are the bearers of the sovereignty and the only source of power in Ukraine. The people exercise power directly and through the bodies of state power and local self-government.**
- **The right to determine and change the constitutional order in Ukraine belongs only to the people and may not be usurped by the state, its bodies or its officials.**
- **No one has the right to usurp state power.**

- **Local self-government** is recognized and **guaranteed** in Ukraine.
- The **principle of rule of law** is recognized and acts in Ukraine.
- Ratification of international **treaties** which **contradict** the Constitution of Ukraine, is possible only after introducing appropriate **changes** to the Constitution of Ukraine.
- The state **language** in Ukraine is the **Ukrainian** language.
- The **free development, use and protection** of **Russian and other languages** of national minorities is **guaranteed** in Ukraine.

- **The state assists in the consolidation and development of the Ukrainian nation, its historical consciousness, traditions and culture, as well as in the development of the ethnic, cultural, linguistic and religious features of all native nations and national minorities of Ukraine.**

The property sets responsibility. The property shall not be used against a person and society.

- **Public life** in Ukraine is based upon principles of political, economic and ideological **diversity**.
- **No ideology** can be considered **mandatory** by the State.
- **Censorship** is **prohibited**.
- The State guarantees **freedom of political activity** not prohibited by the Constitution and laws of Ukraine.

ARTICLE 20

Symbols are the State Flag, the State Emblem and the State Anthem.

The State Anthem of Ukraine is the national anthem with the music of M.Verbytskyi and words, confirmed by law, which shall be adopted by no less than two-thirds of the constitutional membership of the Verkhovna Rada of Ukraine.

The description of the state symbols of Ukraine and the order of their use is determined by law, adopted by no less than two-thirds of the constitutional membership of the Verkhovna Rada of Ukraine.

The capital of Ukraine is the City of Kyiv.

Chapter II

- **All people are free and equal in their dignity and rights which are guaranteed and may not be abolished.**
- **Every person has the right to the free development of personality, as long as there are no violations of the rights and freedoms of other people, and has obligations before society.**
- **Citizens have equal Constitutional rights and freedoms and are equal before the law.**
- **There are no privileges or restrictions based upon race, color of skin, political, religious and other beliefs, gender, ethnic and social origin, property, ownership, position, place of residence, based upon language or other circumstances**

- **Foreigners and persons without any citizenship, who live in Ukraine on a legal basis shall enjoy the same rights and freedoms and have the same duties as citizens of Ukraine except in cases determined by the Constitution, by laws or by international treaties concluded by Ukraine.**

- The form of Ukraine is a **parliamentary republic with elements of a presidential republic**, in the form of a territorial and political unit - a complex unitary state. In Ukraine, there is a **democratic political regime**.

Changing the constitution.

- A bill may be submitted to the **Verkhovna Rada of Ukraine only by president or 1/3 of Verkhovna Rada.**
- It is **considered by the Verkhovna Rada after the Constitutional Court. Change must be approved by parliament twice on different sessions:** by the majority of the Parliament and then by 2/3 of votes.
- Rada may not, during its term of office to change the same provisions of the constitution twice.
- **The Constitution can not be changed in a state of emergency or martial law.**

Constitutional control.

- Sole body of constitutional jurisdiction in Ukraine is the Constitutional Court.

Consists of **18 judges.**

- 6 appoints Verkhovna Rada
- 6 - President and
- 6 - Congress of Judges of Ukraine.
- Judges are appointed for 9 years without reappointment for another term.
- Judge of the Constitutional Court must be a **citizen of Ukraine over 40** years old, has **professional experience at least 10** years, residing in **Ukraine for the past 20** years and **speaks the Ukrainian** language.

President of the Court

- Elected by its members **secretly** and only for **three-year term**.
- Judges are guaranteed **independence and integrity**.
- They **may not belong** to political parties and trade unions, to participate in political activities, have a representative mandate, hold any paid positions, paid work, except for scientific, teaching and creative.

The authority of the Constitutional Court

Constitution - Chapter XII

The Court on the appeal of the President, no less than 45 members of the parliament, the Supreme Court of Ukraine, the Ombudsman assesses the constitutionality of:

- laws and other legal acts of the parliament
- acts of the President
- acts of the Cabinet
- officially interprets the Constitution and laws of Ukraine
- on the appeal of the President or the Cabinet, provides opinions on the conformity with the Constitution of international treaties
- on the appeal of the parliament, provides an opinion on the procedure of impeachment of the President
- provides an opinion on introducing amendments to the Constitution with the restrictions imposed by the Constitution.

Task 1

- President of Ukraine appealed to the Ukrainian people of congratulations on Independence Day.
- Take a legal analysis of the facts. Do these actions belong to the circle of the President of Ukraine of its powers? What are the regulations governing the issue?
- Art. 106 of the Constitution: he has the right

TASK 2

- President took the decision to **impose martial law** in the country.
- Parliament has recognized **this illegal decision** and began the procedure of impeachment. Is it lawful actions is the President and Parliament? Under what conditions Parliament can initiate the impeachment of the President?

- «President may be removed by the Verkhovna Rada of Ukraine if he commits treason or other crime."
- Under the terms the of the task the President did not commit a crime, but took the decision to impose martial law - this is not treason;

The procedure of impeachment of the President:

- «Impeachment is initiated by the majority of the Verkhovna Rada of Ukraine"
- «Verkhovna Rada establishes a special temporary investigative commission, made of special prosecutor and investigators."
- «Conclusions and recommendations of the temporary investigative commission shall be considered by the Verkhovna Rada of Ukraine";

The impeachment adopted by the Verkhovna

Task 3

- People living in the town N gathered in the central square, having informed local authorities about it. Local executive authorities stopped the meeting, citing the fact that the organizers of the meeting didn't get written permission for the meeting. Give the legal analysis to the fact. Justify the legality of actions of the citizens and authorities? What are the regulations governing the issue?
- The right of citizens to assemble peacefully without arms and to hold meetings and demonstrations(Article 39 of the Constitution of Ukraine) is their inalienable and inviolable . The notification must be made by citizens through the organizers of mass gatherings.
- According to the law The authorities have one month for giving the allowance for a meeting, and the meetings that do not require further

Task 4

- Cabinet of Ministers of Ukraine adopted an unconstitutional resolution. Parliament abolished the it. Which body has the right to decide this question?
- Illegal action on the part of public authorities. Violation of Art. 19 of the Constitution of Ukraine "state bodies and local authorities are obliged to act only on the basis and within the limits and in the manner envisaged by the Constitution and laws of Ukraine."
- The Constitutional Court of Ukraine adopts decisions and provides opinions in cases concerning the constitutionality of laws and

Task 5

- Chairman of the Verkhovna Rada of Ukraine read out the oath of the President thus done the inauguration of President within 30 days after the official announcement of the election results at a meeting of the Verkhovna Rada of Ukraine.
- Say if that was right?

- A person N without citizenship, having lived in Ukraine for 5 years, filed an application for citizenship of Ukraine. Together with her 14 years old baby.
- **Conditions for granting the citizenship of Ukraine are:**
- 1) recognition and respect for the Constitution of Ukraine and laws of Ukraine;
- 2) the declaration of **absence of citizenship**.
- 3) continuous **legal residence** in the territory of Ukraine for the past 5 years.
- 4) **obtaining** an immigration permit.
- 5) Knowledge of the **state language** or understanding at a level sufficient to communicate.
- 6) the existence of **legitimate earnings**.

Law for Business

Crimes

The Nature of Crimes

- Crimes are public wrongs – acts prohibited by the state or federal government.
- Prosecutions are brought by the prosecutors in the name of the government.
- Forms of punishments: fines, imprisonment and prosecution.

Classed as:

- ***Felonies*** – serious offences: murder, rape, arson

May result in **disenfranchisement** (loss of the right to vote) and **bar** a person **from practicing** some professions: law or medicine

- ***Misdemeanors*** – lesser crime: traffic offences or disorderly conduct.

Results in **finer** or **confinement** in a city or country jail.

The convicted must bear the **stigma** as well – social condemnation

The Essentials of Crime

- To convince a person of committing a crime, the state must:
 1. ***Demonstrate*** a prior statutory prohibition of the act
 1. ***Prove*** beyond a reasonable doubt that the defendant committed ***every element*** of the criminal offence prohibited by the statute
 1. ***Prove*** that the defendant had the capacity to form a ***criminal intent***

A Criminal Case

Did the defendant have the requisite criminal intent?
prosecutor prove

YES

Did the

of these
YES
elements beyond

each

reasonable doubt?

a

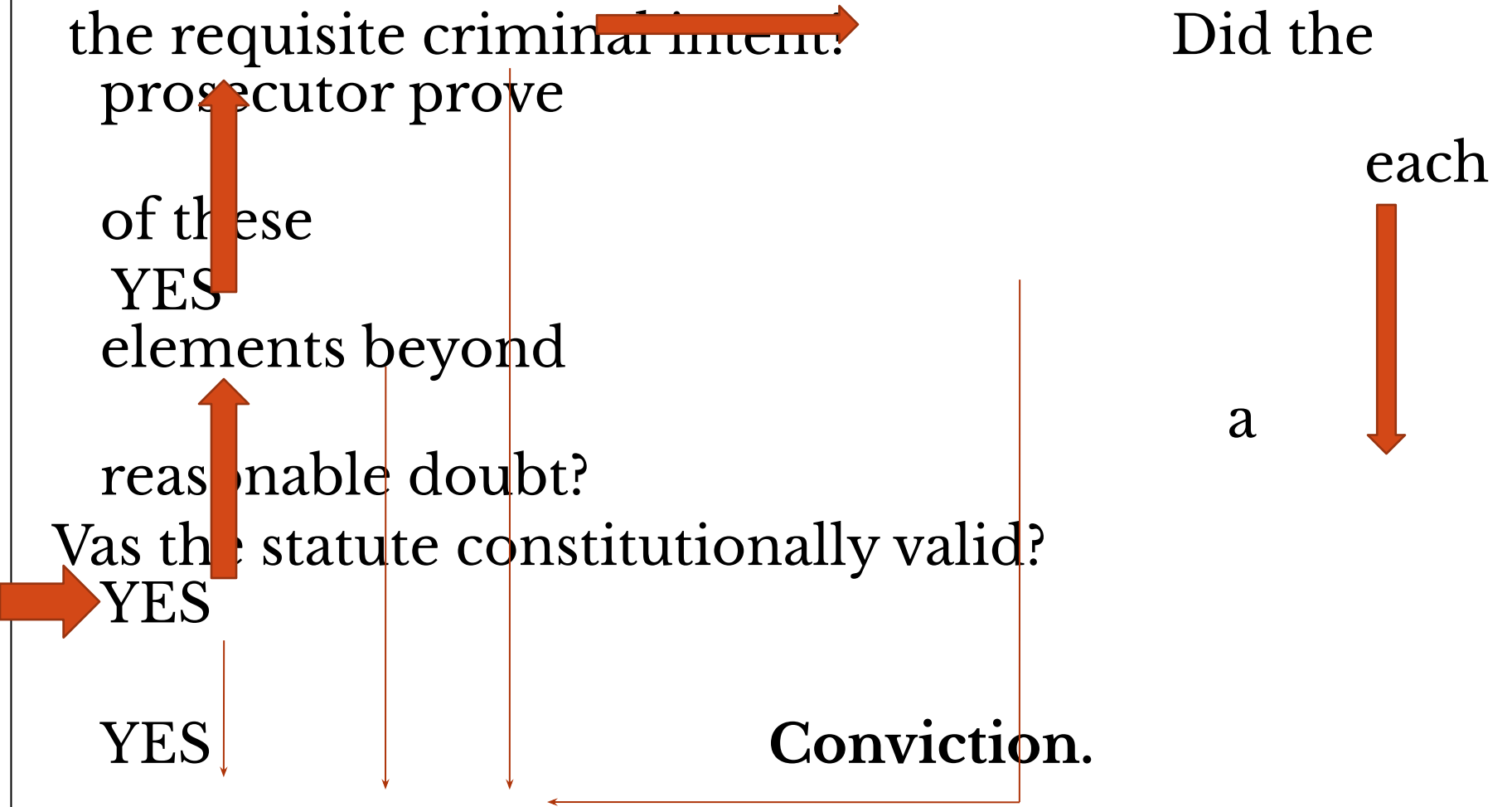
Was the statute constitutionally valid?

YES

YES

Conviction.

Did the defendant violate the statute?



Prior Statutory Prohibition

- For behavior to be treated as criminal, the legislature must have passed a statute making it criminal.
- *Ex post facto* laws - Constitution protects against being accused of smth back in time after it became a crime.
- Behavior **can't be accepted as criminal** if it is protected by the Constitution (1st Amendment – right to freedom of speech and expression).
- The Prohibited behavior **must be clearly defined** for an ordinary person to understand it (5th & 14th Amendments).

Proof beyond a Reasonable Doubt

The legal system *places strong limits* on the power of the state to convict a person on a crime:

- Criminal defendants are *presumed innocent*.
- To *overcome the presumption*, the state must prove every element of the charged offence *beyond reasonable doubt*.
- The state must prove a case within a framework of procedural safeguards to protect the accused.

The Defendant's Capacity

- ***Mens rea*** (criminal intent) – element of most serious crimes. Conscious intent: ***not intoxication, infancy, insanity***.
- ***Voluntary intoxication*** – not a complete defense to criminal liability. (***no premeditation*** – a conscious desire to commit a crime (as to kill))
- ***Infancy*** - the children under 7 are incapable of forming an intent; of 7-14 are presumed incapable; 14-21 are presumed capable.
- ***Insanity*** – at the moment of trial (the trial is delayed); after trial but before sentencing – is not sentenced until regains sanity; at the time of criminal act – absolves of criminal liability.
- Some states have instituted “guilty but mentally ill” verdict.

Crime and People in Business

- ***White collar crime*** – nonviolent criminal offences committed by businesspersons and organizations, primarily harm people outside the corporation. (bribery, fraud, price fixing)
- ***Responsible corporate officer doctrine*** – (a category of liability) – official tried for crimes if their actions (or lack of actions) lead to accidents.
- ***Personal liability*** for corporate executives is necessary to deter them from violating laws and viewing any fines on corporations as merely a cost of doing business.

Under the Sarbanes-Oxley Act

- It is a **crime** to knowingly **alter or destroy documents** with the intent to obstruct or influence a government investigation (no eating!)
- It is a **felony to defraud** shareholders of a publicly traded company
- **Procedures for whistleblowing**, including anonymous reporting, must be established. Employees who “blow the whistle” on their employers for fraud are offered legal protection.
- Do you approve of the last point?

RICO

- Racketeer Influenced and Corrupt Organizations Act.
- Designed to stop the entry of organized crime into legitimate business enterprises.
- Passed by the Congress in 1970 as a part of Organized Crime Control Act.
- Effective and much-needed weapon against unethical business practices.

RICO prohibits

1. Using income derived from “a pattern of racketeering activity” to acquire an interest in an enterprise
2. Acquiring or maintaining an interest in an enterprise through a pattern of racketeering activity
3. Conducting or participating in the affairs of an enterprise through a pattern of racketeering activity
4. Conspiring to do the preceding.

Racketeering activity – includes the commission of any of over 30 federal or state crimes include bribery, mail, wire, and securities fraud; and extortion.

To show a pattern of activity, the prosecution must prove, at a minimum, the commission of 2 offences within a 10-year period.

Penalty

- ***Criminal:***

1. fine up to \$25 000
2. imprisonment up to 20 years
3. forfeiture (confiscation)

- ***Civil:***

- ***In government suit:***

1. Divestiture (deprive)
2. Dissolution
3. Other forfeiture

- ***In private suit:***

1. Treble damages (big ones)
2. Attorneys' fees

Other Acts

against corruption , bribery, etc

The USA Patriot Act

- (against money-laundering rules) includes traditionally involved organizations:
securities and commodities brokers; travel agencies; dealers in precious metals or jewels; car, boat, airplane dealers; etc
- **must report suspicious** activity, including large cash transactions.

The Foreign Corrupt Practices Act

- 1977, (against bribery beyond national borders)
Crime for any American firm is to offer, promise or make payments or gifts to foreign officials and certain others.

For violation of FCPA:

- Individual - \$100 000 fine and/or up to 5 years prison.
- Corporation – up to \$2 000 000 fine.

Global Anticorruption Initiatives

- Rapid trade since 1990s.
- 1. 2000 – Inter-American Convention Against Corruption. Initiated by the Organization for American States (23 members). It criminalizes transitional bribery in the Western Hemisphere.
- 2. Convention on Combating Bribery of Officials in International Business Transactions. Requires from 35 members to make it a crime to bribe foreign officials, designate appropriate punishments and extradite charged.
- 3. WTO, the World Bank, the IMF implemented anti-corruption policies & procedures.

Financial Action Task Force Group

- French name: Groupe d'action financi`ere. (GAFI)
- Created by G7 in 1989 to combat money laundering and terrorism financing, 36 members.
- Groups of 40 recommendations:
 1. Policy and coordination
 2. Money laundering and confiscation
 3. Terrorism financing
 4. Prevention measures
 5. International cooperation

Cybercrime

Specifics of computer crime

According to federal and state law a computer crime is:

1. To access or use a computer without authorization
2. To access the services of commercial service providers without paying their fees
3. To alter or destroy data stored in another person's computer.
4. A range of online activities:
 - Theft
 - Distribution of obscene materials
 - Destruction of property
 - Trespass

Federal law

Electronic Communication Privacy Act

Wiretap Act

- Protects against unauthorized interception of electronic communications. (providers)

Stored Communication Act

- Protects against unauthorized access and disclosure of electronic communication. (third parties)

Covers 1/3 senders.

Federal law

The Computer Fraud and Abuse Act

Prohibits certain access to computers:

- Bars an unauthorized person from knowingly transmitting a program, information, code, command with the intent of causing damage to a computer
- Prohibits interference with computers used by, or for the benefit of, the government or financial institutions
- Prohibits acts of sabotage or vandalism to protected computers or networks

International efforts to combat cybercrime

The Council of Europe's "Convention on Cybercrimes" aims to:

- Harmonize computer crime laws around the world to outlaw computer intrusion, child pornography, commercial copyright infringement, online fraud.
- Permit the government to search and seize e-mail and computer records, perform internet surveillance, etc.
- G-8 developed the task forces to address high-tech crime.
- NGOs and private corporations fight cybercrime.

Torts

Tort – private (civil) wrongs against persons or property.

Injury in tort can include:

Intentional Torts

Intentional tort – type of behavior that indicate either the wrongdoer's ***conscious desire to cause harm*** or the wrongdoer's knowledge such harm was ***substantially certain to result***.

- Physical injury. Plus result – loss of pay and medical benefits.
- Loss of privacy
- Emotional distress
- Injury to reputation
- ***Punitive damages*** – in excess of plaintiff's actual injures

- Injured may file a civil suit for actual (compensatory) damages to compensate

A rapist is liable for

Civil (tort)

Criminal

- Assault, battery,
- false imprisonment,
- Intentional infliction of emotional distress.

Sometimes are not filed because defendants unable to pay.

Differences between torts and crimes

	Crime	Intentional torts
Nature	Criminal	Civil
Elements	1. Violation of a statute	1. Harm to another person or property
	2. Intent	2. Intent
Actors	Government prosecutor v. defendant	Plaintiff v. defendant (victim) (tortfeasor)
Burden of proof	Prosecutor must establish Defendant's guilt beyond a reasonable doubt	Plaintiff must establish defendant's liability by a preponderance of the evidence
Punishment	Fines, imprisonment, execution	Defendant may have to pay the plaintiff compensatory and punitive damages

Types of Intentional Torts

Battery

- Is an *intentional*, unconsented-to touching that is harmful or offensive.
- It produces injury or would be considered offensive *to a person of ordinary sensibilities*.
- It is sufficient to touch anything connected to the plaintiff's body: to snatch a bag, to kick a dog on a leash, etc.
- This makes many problems.

Assault

- Putting another in in apprehension of immediate threat to his or her physical safety. No contact is necessary. A gesture is enough.

False Imprisonment

- Is an *intentional confinement* of a person for an appreciable time (2 minutes is enough) without the person's consent.
- Protects physical and mental interests.
- *Confinement* – a person substantially restricts another person's freedom of movement.
- A person must know that he is confined, and any consent to confinement must be freely given.
- *Partial obstruction* – is not false imprisonment: you stand on the path or lock smb inside leaving the back door open.
- Some states passed statutes giving the shop owners a *conditional privilege* to stop persons reasonably believed to be shoplifters. (but not to exceed the privilege)

Intentional Infliction of Mental Distress

- Thanks to modern medicine such injuries became *more provable*.
- Some courts require *physical manifestation* of the emotional distress (tic or ulcer), before they allow a suit to be brought.
- The defendant's conduct must be *outrageous* – certain to produce severe emotional distress in a person of ordinary sensibilities.

Defamation

- Injury to a person's reputation
 1. The torts of **libel** (written defamation)
 2. The torts of **slander** (oral defamation)

The *basis for the torts* – publication (to at least 1 person) of an *untrue statement* that injures a person's reputation or character. Jury decides if a statement is defamatory.

Concerns only a person (not a group or one of the group).

Corporations or other business entities have a limited right to protect their reputation.

Truth is the complete defense to a defamation suit.

Defamation

- Does it mean that you can not speak without fear of liability in certain situations?
 - Statements communicated in some situations are granted *absolute privilege* – they can *never serve* as a basis for a defamation suit:
 1. Statements by members of Congress on the floor of congress
 2. Statements by participants in judicial proceedings
 3. Private statements between spouses
- Other statements are only *conditionally privileged* . Can serve as a basis for a suit.

Law for Business

Legal profession

- When do people need lawyers and legal advice?

An attorney:

- must not violate legal and ethical rules designed to ensure the fair operation of the judicial process.
- required to act in the best interests of the client, being a servant of the court.

Features of legal profession

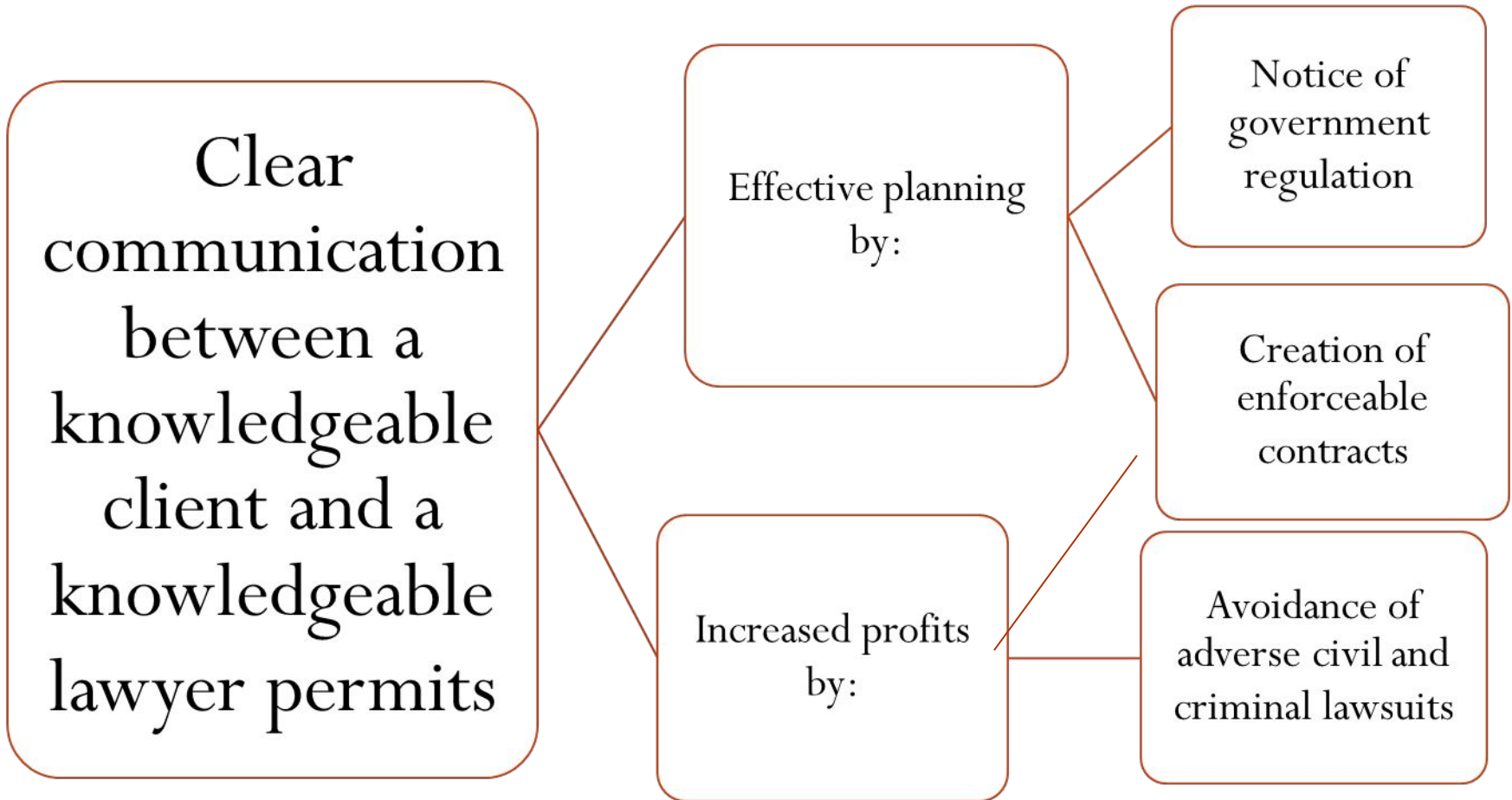
1. **Confidentiality** (the attorney – client privilege)

An exception – if a client intends to commit a crime.

2. **The work product privilege.** (a lawyer works with certain degree of privacy without interference).

3. **Competence and care.** (the lawyer does not guarantee that the client will win a lawsuit, however the client can bring a **malpractice** claim: improperly drafted documents for the court, being inaccurate with time, etc.)

4. **Preventive law.** To help **businessmen** not only solve existing problems, but to avoid these problems. The goals: 1. Avoid losses through



Disputes

Why can disputes in business arise?

- Defective goods
- Customers don't carry out their promises
- Unreasonable government regulators

Dispute settlement before trial (USA)

- **Negotiation** (it's less expensive and takes less time than trial)
- **Alternative dispute resolution (ADR)** (as collaborative counselors). Quick, cheap, less complicated procedurally, less publicity, facilitate a continuation of business between the parties.
- **Mediation:** a third party is chosen **to assist** in setting the dispute (mediator). The result – mediation agreement (a compromise).
- **Arbitration** (after mediation) – the third party **decides the outcome**, (commercial, employment contracts, consumer related disputes).

- **Minitrial** refocuses the dispute to a business problem. (voluntary, with a neutral third party) Lawyers present a shortened case to the executives of the disputing companies.
- A **summary jury trial** (similar to minitrial, but under court guidance)
- **Private judging** a person is hired (usually a retired judge) to settle the dispute.
- **Ombudsperson** appointed within an organization to settle disputes/
- **Med/arb** – a combination of mediation and arbitration.

And many other ways to reach an agreement!

Arbitration

International Alternative Dispute Resolution

(globalization, rapidly growing volume of trade)

1. UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958; (regulates the enforcement of arbitral agreements)
2. WTO and the North American Free Trade Agreement (disputes solved through consultations)
3. North American Free Trade Agreement (disputes solved through the use of binational panels)

Dispute settlement before trial (UA)

Pre-trial settlement of commercial disputes is a system of measures taken by organizations, whose property rights were violated, to directly address the conflict (dispute) before appealing to the Court.

“The Parties shall apply measures of pre-trial settlement of commercial disputes by agreement among themselves (Art. 5 CPC)”.

The purpose of pre-trial settlement

- is to eliminate or prevent the negative impact on economic activity of the contractors and avoid additional costs for legal charges.
- The right to judicial protection does not deprive the parties of pre-trial disputes settlement.
- Pre-trial dispute resolution can take place by the will of each party even in the absence of a clause concerning dispute settlement in the contract.

- **Special procedure** for the settlement of commercial disputes is provided in Ukraine for road transport, the railways, the Maritime Code, the Air Code of Ukraine.

Pre-trial disputes settlement procedure does not apply to :

- Disputes for recognition of contracts void;
- disputes to invalidate acts of government and other agencies, companies and organizations that do not meet the law and violate the rights and legitimate interests of enterprises and organizations;
- disputes concerning debt collection for bills (векселя) protested;
- disputes over fines of National Bank of Ukraine and other financial institutions;
- disputes concerning foreclosure (лишение права выкупа закладной) on the mortgaged property (имущество в залоге).

- Organizations whose rights and interests are violated, to settle the dispute directly with the violator of these rights and interests, turn to him with a written claim.
- Claim represents a means of settling the conflict by the parties without the intervention of the state (as a commercial court).

CLAIM

claims contain:

- full name and postal details of claimant
- date and the number of claim;
- the circumstances under which revealed the claim;
- evidence confirming these circumstances;
- reference to the relevant regulations;
- the claimant's demands;
- the amount of the claim and its calculation if the claim is subject to assessment;
- payment details;
- list of documents and other evidence accompanying the claim.

- Documents proving the claimant's request, added to the original or certified copies.
- The documents of the other party may not be attached to the claim, if this stated this in the claim.
- Claim must be signed by authorized person and sent to the addressee by registered letter or handed.
- When signing the claim necessary to indicate the name and position of the person signing the claim.

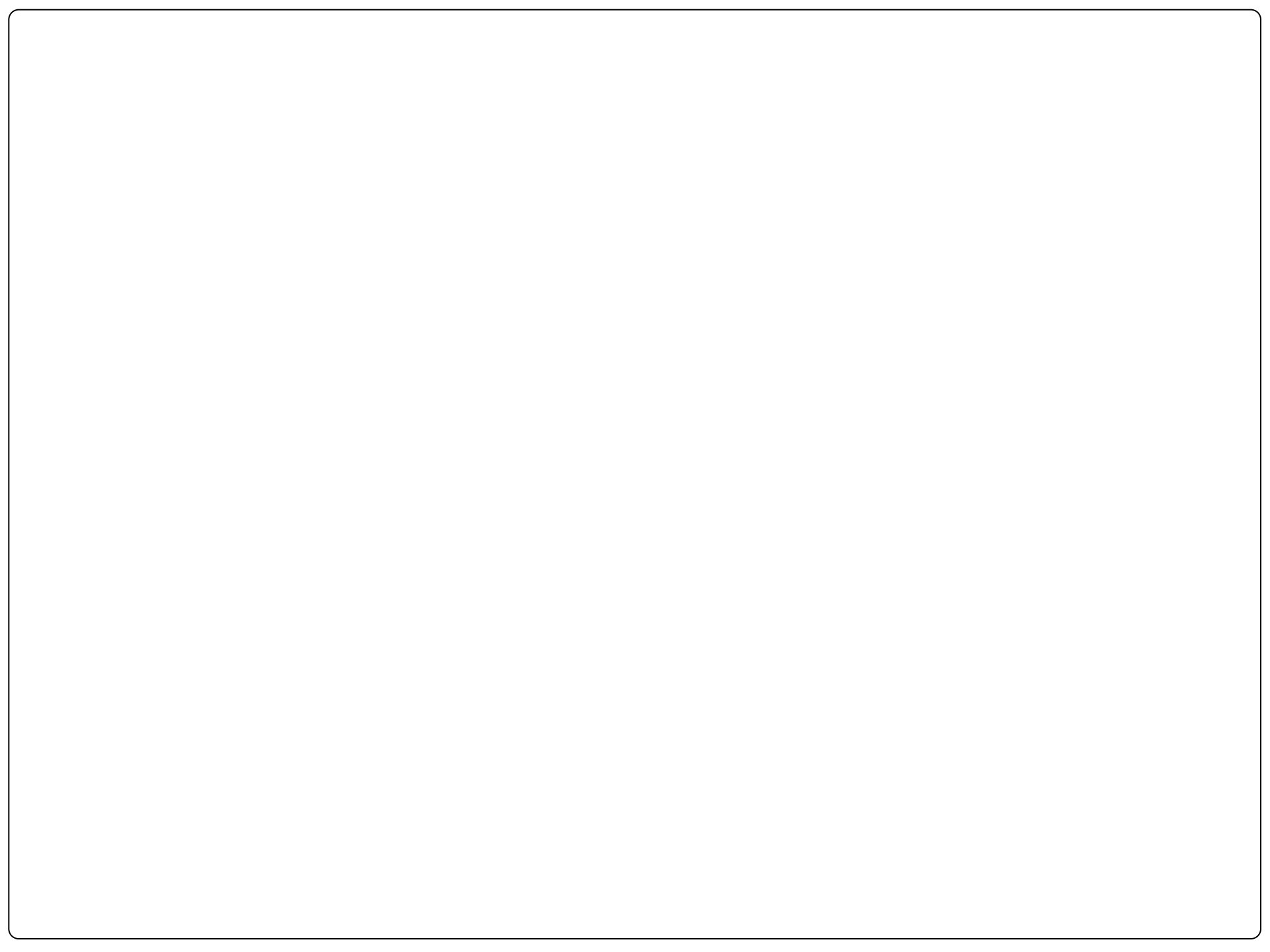
- The claimant is entitled to meet its legal and reasonable requirements (ch. 5, Art. 7 CPC Ukraine), the right to timely treatment of claims and a response to it (p. 1 - 3. 7 CPC Ukraine) and the right to return he received the original documents submitted with the claim.

Terms

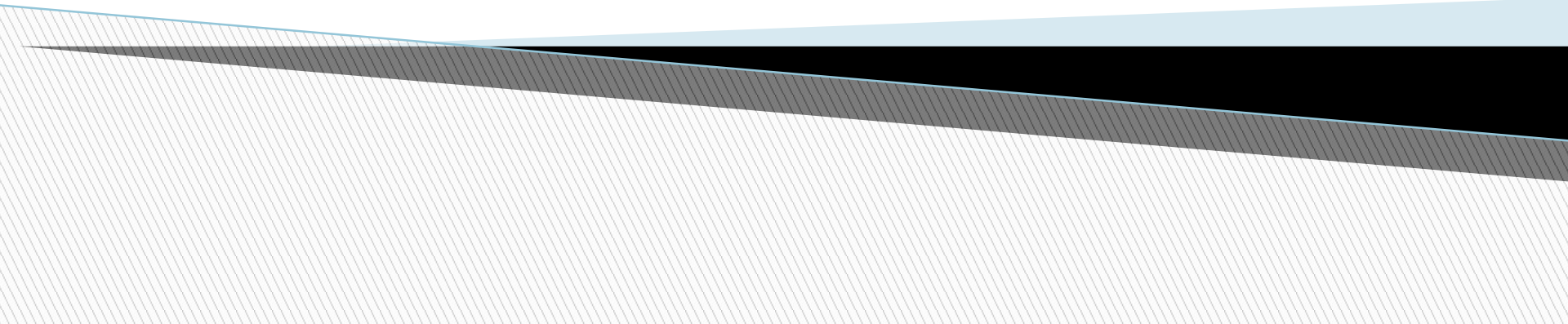
- In cases when defective products (goods) must be checked, claims related to the quality and completeness of products (goods) are treated for **two months**.
- **Transport organization** is obliged to consider the claim presented and inform the applicant about accepting or denying it within **three to six months**; claims for **payment of fines - 45 days**.
- The results must be presented in writing.







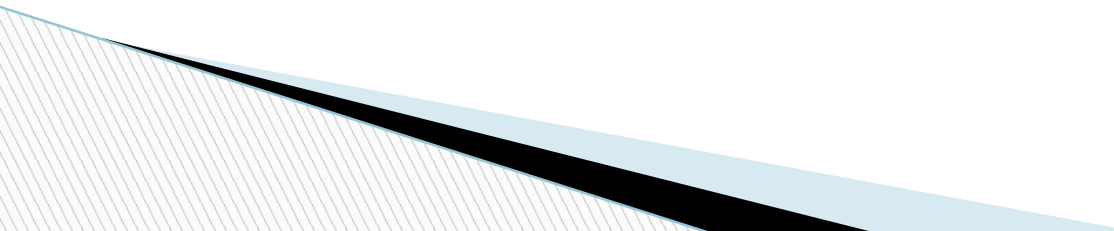
Contracts



Definition

- ▶ Contract is the agreement **of two or more** parties on the **establishment, modification or termination of civil rights** and **obligations** (Article. 626 of the Civil Code).

“Contract” used in three senses:

- ▶ as a **legal relationship**;
 - ▶ as a **legal fact**, that creates an obligation;
 - ▶ as a **document** recording the fact of the liability by the **will of its** members.
- 

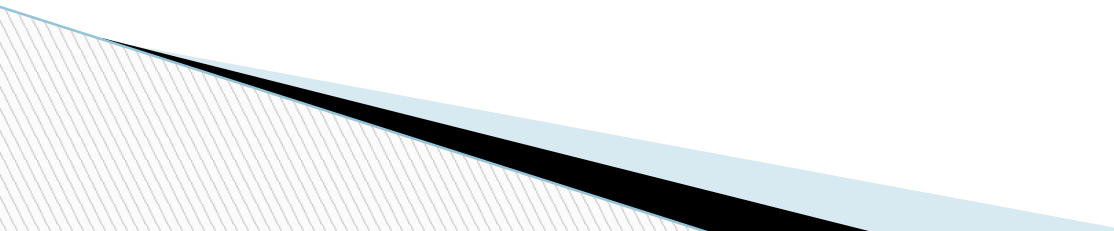
All commercial enterprises ***work is done on the basis of contracts.***

- ▶ Logistics,
- ▶ sale of finished products,
- ▶ capital construction,
- ▶ domestic services to citizens,
- ▶ retail and others

are done with the help of a contract.



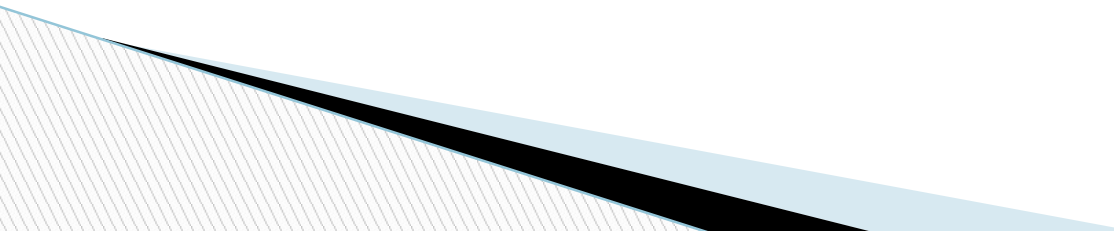
Freedom of contract

- ▶ The Law **sets freedom of contract.**
 - ▶ This means that **citizens and legal entities** are **free to make a contract.**
 - ▶ Parties may enter into an agreement as **provided and not provided for by law** or other **legal acts.**
 - ▶ **Compulsion** to make the contract **is not permitted,** except in cases where **the obligation to enter into a contract provided for by law** (for example, the supply contract for public use on the basis of the state contract).
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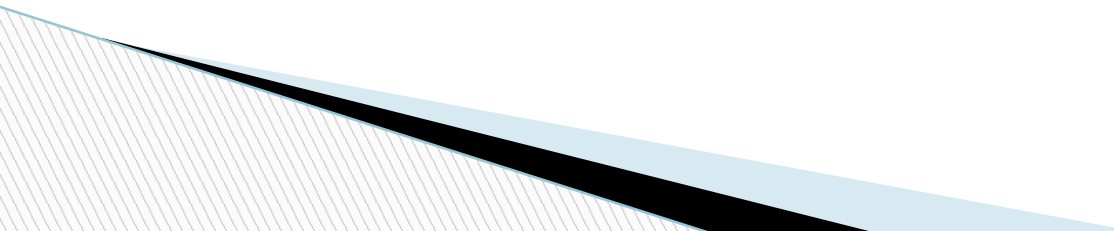
Parties to the contract

- ▶ can be both **physical and legal** persons, including a variety of **public-law entities** (international organizations, the state, municipalities, etc..).

Main – Preliminary

- ▶ The **main contract** directly creates rights and obligations of the parties,
 - ▶ The **preliminary** contract – an agreement of the parties to conclude the main contract in the future.
- 

Capacity

- ▶ A party must have **capacity to contract**. That means **parties** in a contract **must justify their maturity in age to understand terms** of the contract and **be mentally able (for a person)**.
 - ▶ The **purpose** of the contract must be **lawful**.
 - ▶ The **form** of the contract must **be legal**.
 - ▶ The **parties** must **intend** to create a **legal relationship**.
 - ▶ The **parties** must **consent**.
 - ▶ As a result, there are a variety of **affirmative defenses** that a party may assert to avoid their obligation.
- 

Factors constituting defenses to contract formation:

1. **Mistake** (erroneous belief that certain facts are true.)

2. Incapacity, including mental **incompetence** and **infancy/minority** .

- ▶ The **capacity** of both **natural** and **legal** persons lets them realize their **rights, duties** and **obligations** (getting married, entering into contracts, making gifts, or writing a valid will).
- ▶ Capacity is an **aspect of status**.
- ▶ for **natural persons**, (defined in civil law of the corresponding state);
- ▶ for **legal persons**, the law of the place of incorporation, for companies while other forms of business entity derive their capacity either from **the law of the place in which they were formed** or **the laws of the states in which they establish a presence for trading purposes** depending on the nature of the entity and the transactions entered into.

3. Duress a "threat of harm made to compel a person to do something against his will or judgment"

- ▶ Physical duress\Economic duress

4. Undue influence (one person taking advantage of a position of power over another person)

- ▶ Government/citizen

- ▶ Parent/child

- ▶ Guardian/ward

- ▶ Religious adviser/member of the flock

- ▶ Solicitor (attorney)/client

- ▶ Doctor/patient



5. Unconscionability describes **terms** that are so extremely **unjust**, or **one-sided** in favor of the party who has the superior bargaining power, that they are contrary to good conscience.

- ▶ An *unconscionable* contract is held to be **unenforceable** because **no reasonable** or **informed** person would otherwise agree to it, the consideration offered is so obviously inadequate, that to enforce the contract would be unfair to the party seeking to escape the contract.

6. Misrepresentation or fraud (England and some other Commonwealth countries), refers to a **false statement of fact made by one party to another** party, which has the effect of **urging that party into the contract**.

- ▶ For example, under certain circumstances, false statements or promises made by a seller of goods regarding the quality or nature of the product that the seller has may constitute misrepresentation. A finding of misrepresentation allows for a remedy of **rescission** and sometimes **damages** depending on the type of misrepresentation

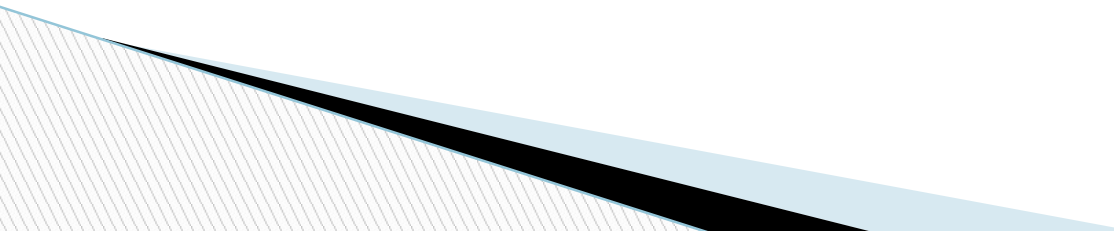
7. Frustration of purpose

is a **defense** to **enforcement** of the contract.

Occurs when an **unforeseen event** undermines a party's principal purpose for entering into a contract, and both parties knew of this principal purpose at the time the contract was made.

Despite frequently arising as a result of government action, any third party (or even nature) can frustrate a contracting party's primary purpose for entering into the contract.

This concept is also called **commercial frustration**. (форс-мажор)

- ▶ Such defenses **determine** whether a **contract** is either (1) **void** or (2) **voidable**.
 1. **Void contracts *cannot* be ratified by either party.**
 1. **Voidable contracts *can* be ratified.**
- 

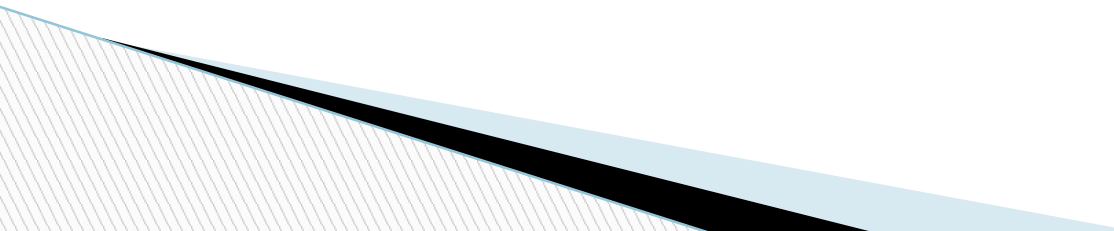
Contract

1. is a **legal** act
2. an act of people's actions (**goodwill**)
3. it **lawful** action
4. specifically directed to the **creation, termination or modification** of civil relations
5. creates civil interaction only **for its members**, but sometimes - "in favor of a third party"

Article 203.

1. Content of the contract can not contradict this *Code*, *other acts of civil law*, as well as the *interests of the state and society, its moral principles*

Form of the contract

- ▶ 1 The contract can be **made orally or in writing**. **Parties** have the right to **choose** the form of the contract, unless **otherwise** provided **by law**.
 - ▶ 2 Contract for which the law does not set a written form is considered complete when the **conduct** of the parties **certifies their will** to come to the relevant legal consequences.
 - ▶ 3 In cases specified in the contract or by law, the parties' will to make the contract can be expressed **by their silence**.
- 

Article 206 of the civil code

- 1 The oral form is accepted for the contracts which are fully **executed by the parties at the time they were committed**, **except** for contracts that are *subject to notarization* and (or) *state registration*, as well as contracts for which the failure to comply with the written form entails its invalidity.
- 2 Entity, which has paid for goods and services on the basis of oral contract with the second party, makes a document confirming payment and the amount of cash received.
(cheque)
- 3 Contracts made in writing, by agreement of the parties may be concluded orally, unless it is contrary to the law or the contract.

Requirements for written contracts

1 The contract is *considered to be done in writing* if:

- ▶ Its content is *recorded in one or more documents, letters, telegrams exchanged* between the parties.
- ▶ the will of the parties expressed via teletype, electronic or other technical means of communication.
- ▶ it is signed by his party (parties).

2 *The contract made by the legal entity shall be signed by persons authorized* to do so by its constituent documents, power of attorney, law or other acts of civil law, *and sealed*.

3 The usage of *facsimile, electronic signature or other analogue* of a handwritten signature *is allowed in cases specified by law*, or by written *agreement of the parties*, which shall contain samples of the corresponding analog handwritten signatures.

4 If a person *can not put the signature* due to illness or physical disability, the text of the contract on his instructions in his presence *signs another person*.

- ▶ Signature of another person in the text *is certified by a notary*.
- ▶ Signature of another person on the text of the contract when the notarization is not required, may be *certified by the appropriate official* at the place of work, training, accommodation or treatment of the person who commits it.

Contracts that must be made in writing

Notarization

In writing must be performed:

- ▶ contracts between *legal entities*;
- ▶ contracts between *physical and legal persons*, if other is not stated by the 1 part of Article 206 of the Civil Code of Ukraine;
- ▶ contracts between *physical persons* on the amount that exceeds twenty or more times the size of non-taxable minimum incomes of citizens, if other is not stated by the 1 part of Article 206 of the Civil Code of Ukraine;
- ▶ other contracts if the law establishes the written form for them .

Notarization

A written contract, shall be notarized only if *prescribed by law* or *by agreement of the parties*.
Procurement contract, which is in accordance with the Law of Ukraine "On public procurement", at the request of the customer shall be subject to mandatory notarization.

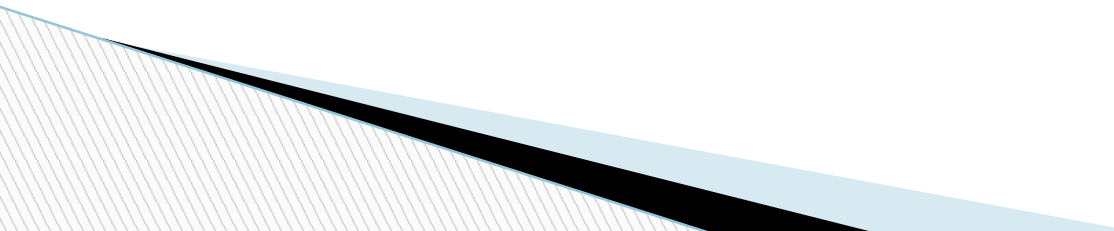
Notarization of the contract is *done by a notary or other official who is entitled according* to the law to commit such an act by the commission on the document, which contained the text of the transaction, certifying text.

At the request of the person or entity any *dealings with her participation may be notarized*.

State registration

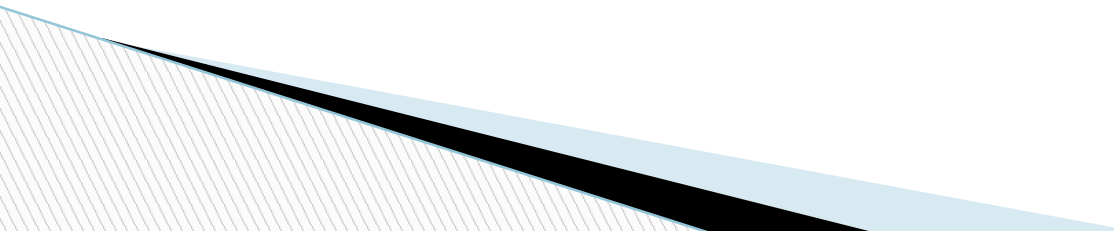
- ▶ The contract is subject to state registration *only in cases prescribed by law*. A contract comes to power from the moment of its state registration.
- ▶ A list of bodies that carry out state registration, registration procedure and the procedure for conducting the relevant registries is established by law.

Article 221. The legal consequences of the contract made by underage person outside his civil capacity

- ▶ Such contract may be approved by his parents or one of them.
 - ▶ The contract is considered approved if, learning about its commission, they did not state any claims to the other party for one month.
 - ▶ In the absence of approval, it is void.
 - ▶ Upon the request of an interested person, the court may admit such a contract legal, if it is determined that it was made in favor of a minor.
 - ▶ If a contract with a young person was made by a person with full civil capacity, the latter must return all that was received on such a contract from a minor party.
- 

Partial civil capacity of a person under the age of fourteen

Underage person has the right:

- 1) to make own small home contracts to satisfy the needs of the household, their physical, mental and social development;
 - 2) to get paid for the result of intellectual and creative activity, which are protected by law.
 - 3) Underage person is not liable for harm caused by him.
- 

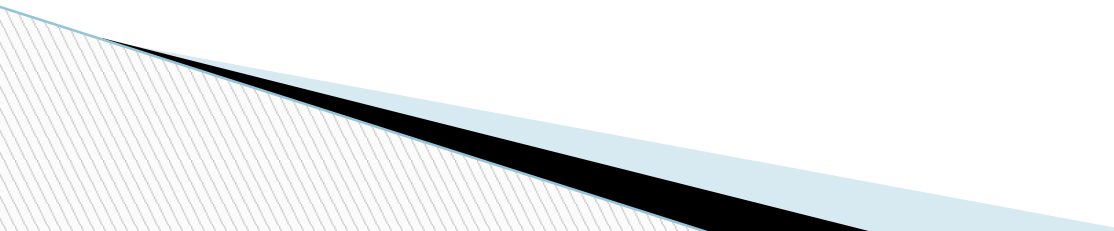
A person between the ages of fourteen and eighteen years (a minor) has the right:

- ▶ to manage his earnings, scholarships or other income;
- ▶ independently exercise rights to intellectual and creative activities that are protected by law;
- ▶ to be a member (founder) of legal entities, unless prohibited by law or by the constituent documents of a legal entity;
- ▶ independently make the contract of bank deposit (account) and dispose of the contribution made by him in his own name (cash account).

Other contracts are made with the consent of the parents.



Civil liability of a minor:

- ▶ A minor personally liable for breach of contract entered into by himself independently according to law.
 - ▶ A minor personally liable for breach of contract entered into with the consent of the parents (adoptive parents), trustee. If the minor is not enough to compensate for loss of property, additional responsibility is on his parents.
 - ▶ A minor shall be liable for damage caused to another person, in accordance with Article 1179 of the Code.
- 

Task 1

Konstantin N. (12 years old) received a bike as a gift from his grandfather. Since Kostya urgently needed skates, he sold the bike to a friend teenager (16 years old), to buy skates.

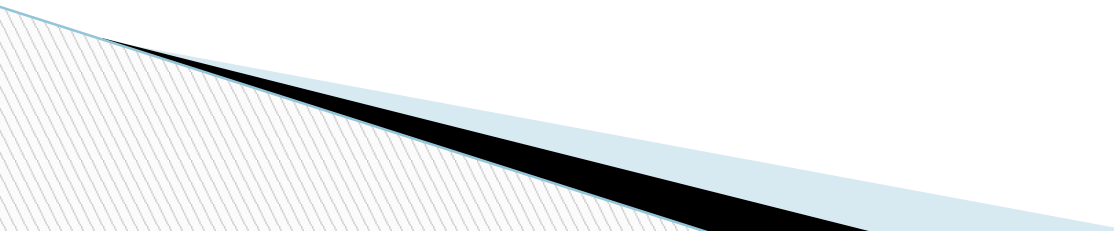
Father found out about it, and regarded it as disrespectful act of the boy to the grandfather.

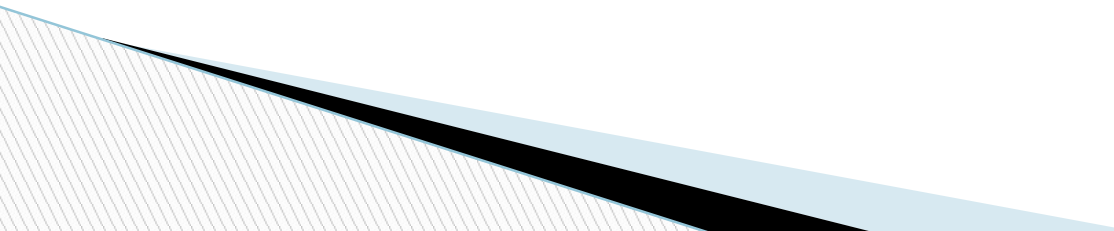
So, father went to the buyer with a plan to return the money and pick up the bike.

But Kostya's friend refused to take the money and return the bike saying that he had given for the purchase good price and Kostya sold the bike, not belonging to his father and there are no circumstances to consider the contract void.

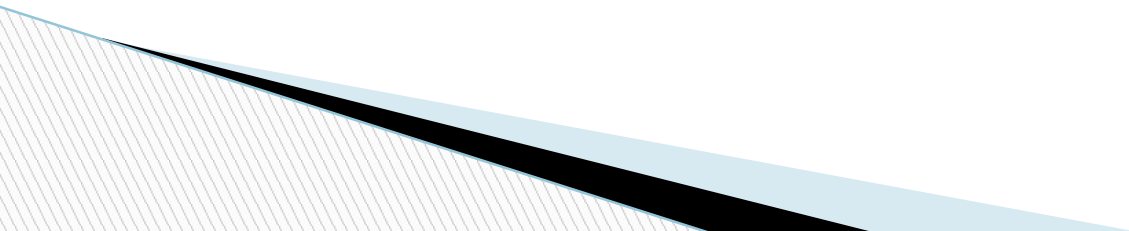
- ▶ Questions:
- ▶ Is the contract of sale the bike between these teenagers valid?
- ▶ What are Kostya's father rights in this situation and how can they be implemented?
- ▶ Would it make difference if Kostya was 15 years old? 19 years old?

Task 2

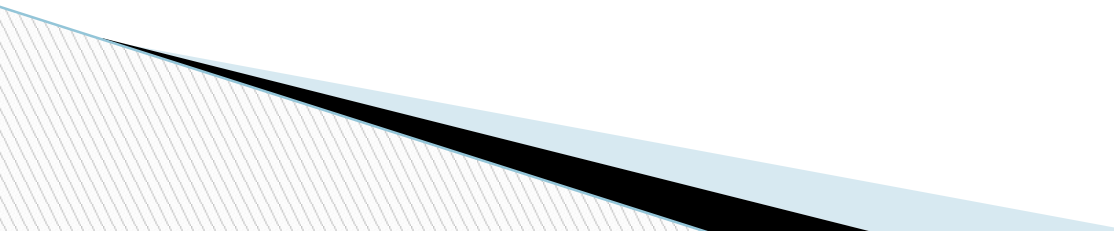
- ▶ Anisimova and her ex-husband appealed to the notary with the request to certify their agreement, according to which the divorced spouses mutually denied any demands to each other on maintaining the children, the husband undertook not to claim the division of joint property, and his wife - not remarry until children reach adulthood.
 - ▶ Notary refused to certify such a contract.
 - ▶ Was the notary right?
- 

1. Art. 202 Civil Code: Contracts are actions of citizens and legal entities, aimed at the establishment, modification or termination of civil rights and obligations.
 1. Part 3 Art.30 of the Civil Code "No one shall be limited legal capacity except in the cases and in the manner prescribed by law." (fail to care of young children and the duty of the wife not to remarry until children reach certain age).
 1. Thus, the contract does not meet the requirements of the law and shall be void.
 1. Condition that "husband undertook not to claim the division of joint property " is legal, but it is not notarized.
- ▶ Thus, the notary acted lawfully.
- 

Types of Contracts



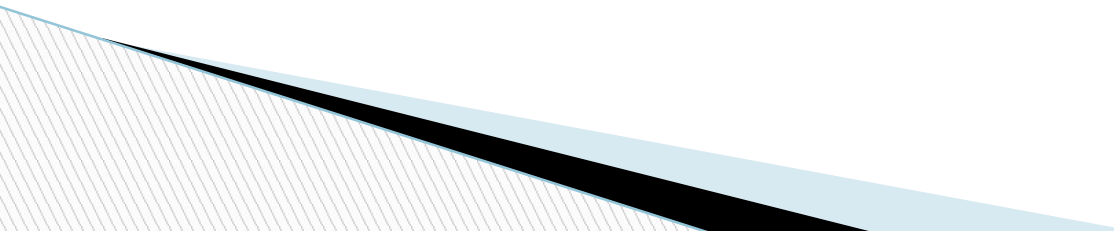
Amount of the parties involved aspect

1. **Unilateral** – expression of the will of one party is enough (*the will, denial of the right to own property, the refusal to accept the inheritance, power of attorney, public competition*) Such actions do not require anyone's permission or approval.
 2. **Bilateral** – necessary to express the will of the two sides
 3. **Multilateral** – three or more parties
- 

Time aspect

1. **Consensual contract** – a civil contract, which is recognized as concluded from the moment of approval of essential conditions by the parties. Consensual contract *does not require any conditions* on the formulation and implementation, except the mutual consent of the parties at its conclusion. **Most civil contracts belong to this group** (sales, lease agreement, supply contract etc.)
2. **Real contract** – demands transfer of property except the parties' agreement.

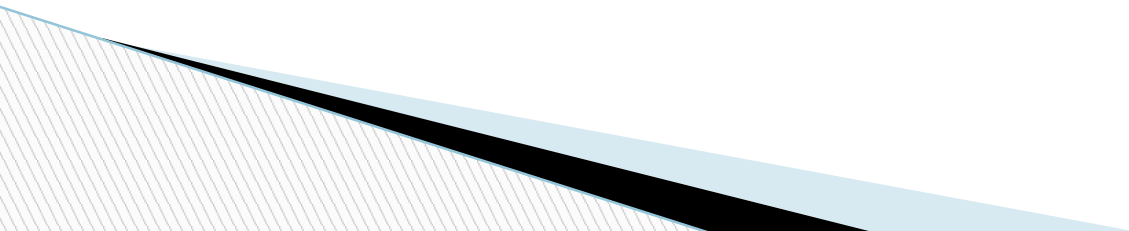
Interests aspect

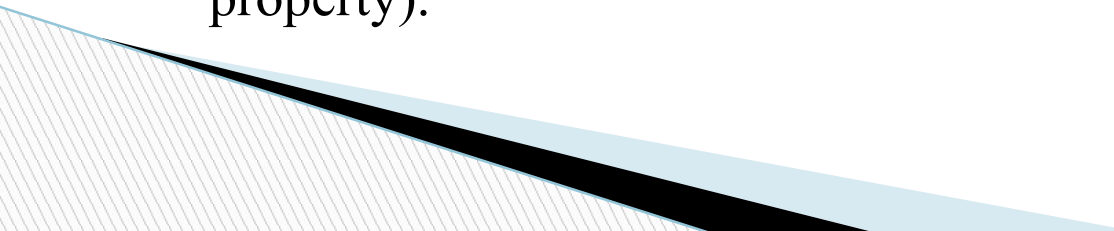
1. **Onerous** – one party **gets paid** or gets some **remuneration** for the performance of duties (rent, exchange)
 2. **Gratuitous** – one party undertakes to **provide** the other party with something without getting any payment or gratification (donation, loan)
- 

Reality aspect:

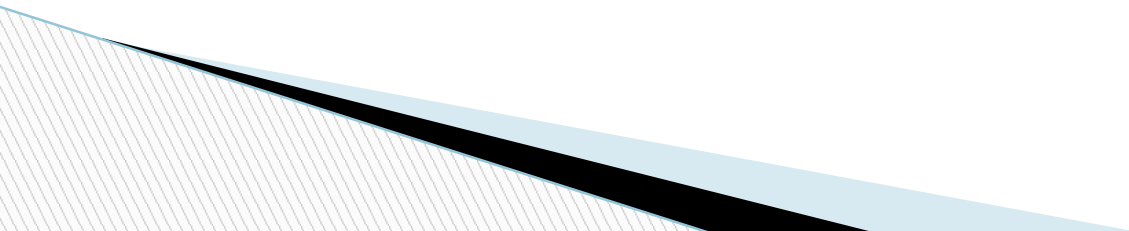
1. ***Causal:*** Any contract has a legal goal. If a contract is causal it is clear what purpose it pursues.
2. ***Abstract***
 - ▶ (Art. 877 of the Civil Code). Abstract recognized as a bank guarantee (of Art. 370 of the Civil Code), because it does not depend on the original obligation in respect of which the guarantee was provided;

In general, contracts can also be divided in accordance with their subject matter.

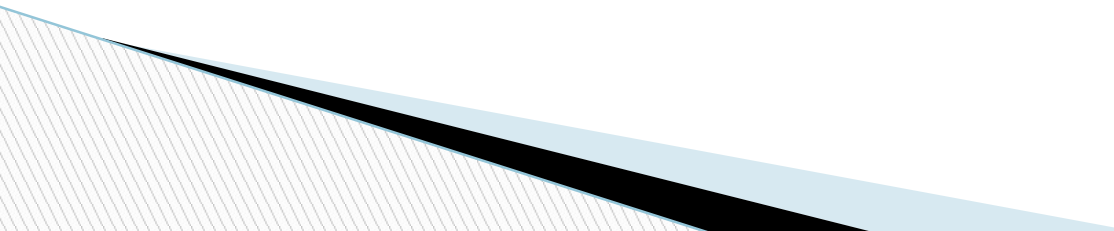


1. Contracts aimed at property (purchase, sale, delivery, exchange, contracting).
 1. Contracts that are aimed at providing another person the right to use the property. These include contracts of rent, lease, etc.
 1. Agreements to provide services (orders, storage, transportation, etc).
 1. Contracts for the performance of work.
 1. The loan agreement, financial service.
 1. Contracts for the redistribution of risk arising from accidental causes (property and personal insurance).
 1. Agreements on joint actions.
 1. Contracts for donation of assets (donation, the gratuitous use of the property).
- 

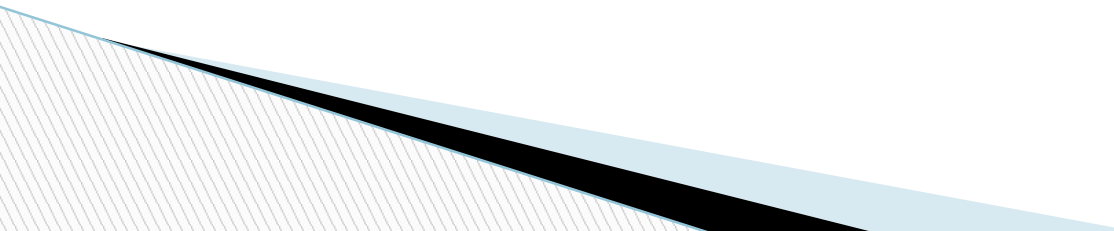
Contracts that may be considered invalid by the court

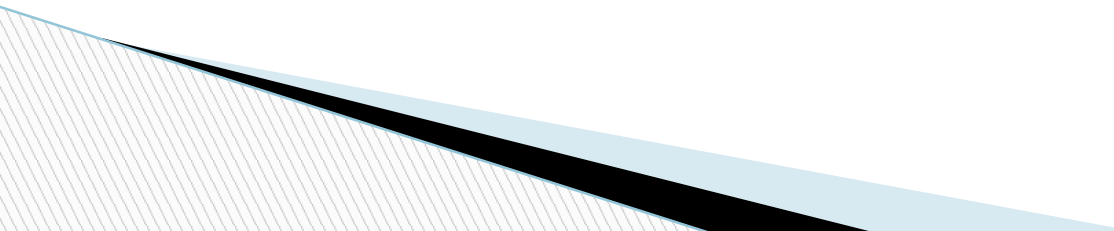


- ▶ If a natural person signed a contract at a time when he did *not realize the significance of his actions* and (or) *could not control them*.
- ▶ If a legal person made a contract *without certain needed permission* (license).
- ▶ If one of the parties deliberately introduced the other side *in the confusion about* the circumstances that are important

- ▶ If a contract *was aimed at the violation of the constitutional rights and freedoms*, destruction, damage to property of a person or entity, the state, territorial communities.
 - ▶ If the person making a contract, *was mistaken* about the *circumstances* that are *important*.
- 

- ▶ Contract made as a result of *purposeful malicious arrangement* of one party to a second party.
- ▶ Contract made by a person *under the influence of heavy circumstances for him* and *the extremely unfavorable conditions*, may be considered invalid by the court *regardless of who was the initiator* of it.

- ▶ *Fictitious contract* which made without any intention of creating legal consequences.
 - ▶ *Feigned contract* is made by the parties *to conceal* another contract which in fact was made.
 - ▶ Void contract or contracts declared by a court to be invalid, is *invalid from the moment of its commitment*.
- 

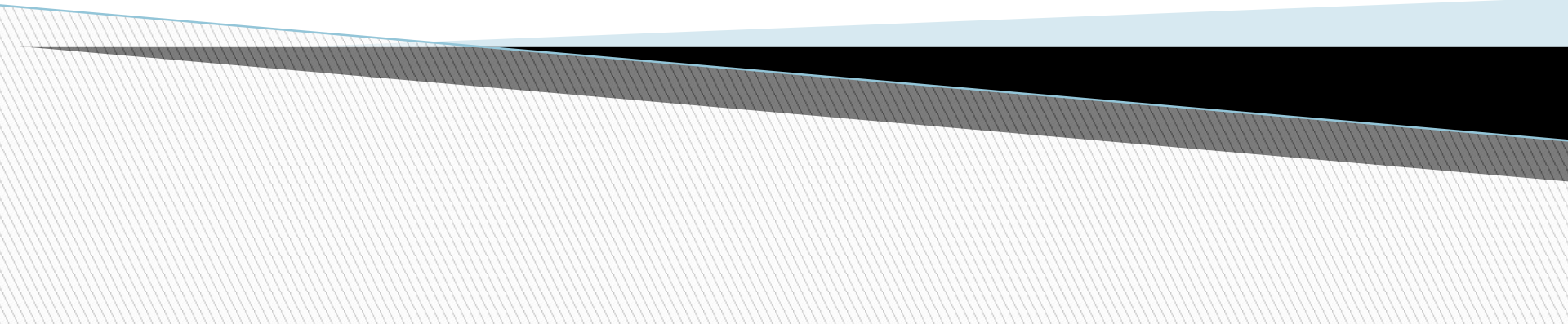
- ▶ Vasiliev, Senior Researcher of an Institute presented the Institute library specialized literature, which he had collected over the lifetime. he announced at a meeting of the Academic Council of the Institute about his gift, and in an interview published in the newspaper.
 - ▶ Since there were a lot of books, Vasiliev transported them in small amounts. Not having transferred all books, Vasilyev died. His son, being the sole heir under the law, in response to a request from the Director of the Institute to transfer the remaining books required to return all previously submitted books, referring to the fact that the agreement between his father and the institute was not duly executed.
 - ▶ In court, which addressed the dispute, the Institute presented the act of taking the balance of books, sent as a gift to the institution Vasiliev signed by the head of the library of the Institute and approved by the director of the institute.
 - ▶ How to resolve the dispute?
- 

- ▶ as the contract void in the event of: non-written form; committed under the influence of errors; fraud; violence; under the influence of severe circumstances, etc. In this case, the invalidity determined by the court.

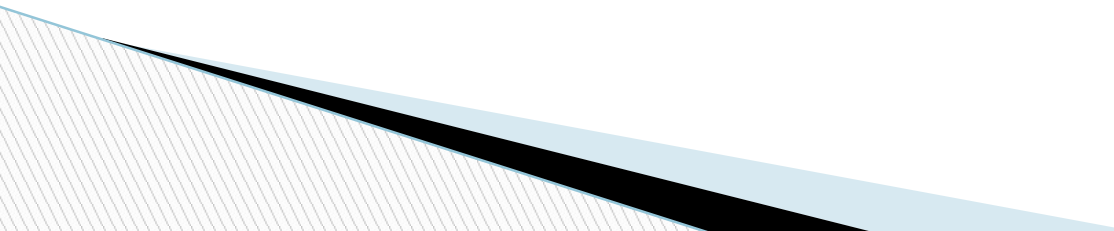
Right of donee:

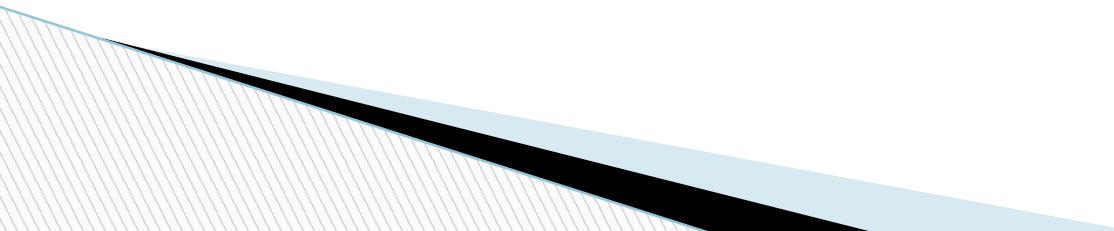
- ↗ Demand the transfer of the gift in time or under deferred (отложенных) circumstances (p.1, Art. 723);
- ↗ Article 719 of Civil Code: things of personal usage and household purpose are gifted by oral agreement. Part 3 of Article 719 provides that the deed of gift of property rights and contract with the obligation of giving a gift in the future are to be made in writing.

Contracts



The essential terms of the contract

- ▶ all that require coordination, because in the absence of agreement between the parties in at least one of them an agreement is recognized nonexistent.
 - ▶ the condition, which the law considers necessary and sufficient for the occurrence of a contractual obligation.
- 

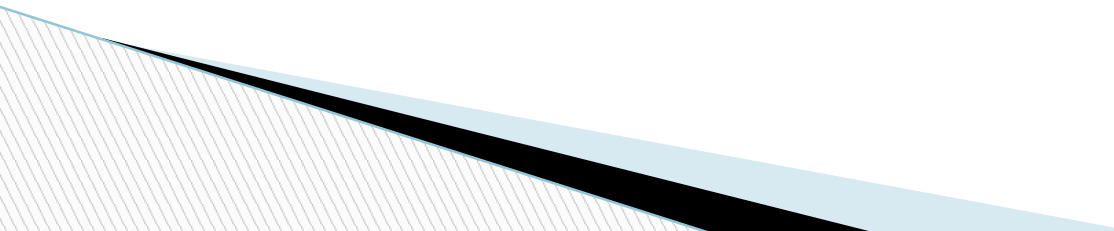
- ▶ law recognizes as essential:
 - subject matter of the contract;
 - conditions mentioned in the law or other legal acts as essential;
 - the conditions necessary for this type of contract;
 - conditions on which at the request of one of the parties must be reached an agreement.
- 

Preamble

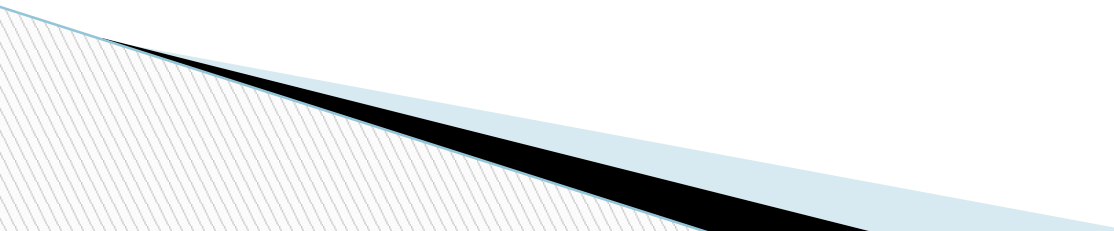
- ▶ **CONTRACT NO: 10/2014**
 - ▶ **October 02th 2014**
 - ▶ **Kurgan, Russia**

LLC “PROMTRADE”, Russia, hereinafter referred to as the “BUYER” in the name of Director Aleksey Savelyev on the one hand and the firm , HangZhou JinMin Import & Export Co. Ltd, China, hereinafter referred to as the “SELLER” in the name of manager Sam, on the other hand have concluded the present Contract of the following:

Subject of the Contract.

- ▶ **Without the subject of the contract it can not exist.**
 - ▶ **Subject is: *Actions defining beginning change or termination of rights and obligations of the parties***
 - ▶ For example, if in the contract of sale the number and title of the goods to be transferred to the buyer is not given, it is impossible to talk about the existence of the contract.
- 

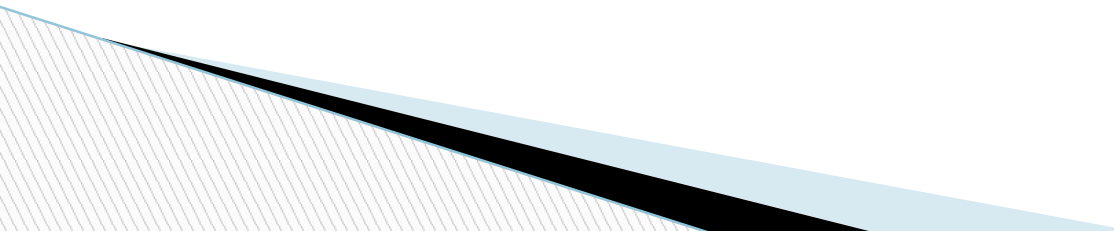
▶ **1. Subject of the Contract.**

- The BUYER is to buy and the SELLER is to sell the NUTS (hereinafter referred to as the “GOODS”) in compliance with the specification specified in Appendix # 1 to the Contract.
 - ▶ 1.2. Technical data of the GOODS listed in Appendix # 1 to the Contract.
 - ▶ 1.3. Technical characteristics of the materials for the manufacture of GOODS listed in Appendix # 1 to the Contract.
 - ▶ 1.4. The SELLER guarantees to the production of GOODS in strict accordance with the requirements of the BUYER specified in the Contract.
 - ▶ 1.5. Shipping is FOB SHANGHAI (Incoterms 2010).
- 

The price and the currency of the contract.

- ▶ In most types of contracts are not classified as essential conditions. Depends on the contract type.

2. Price and the total amount of the Contract.

- 2.1. Itemized prices are given in the specification (Appendix # 1 to the Contract) and they are stipulated in USA Dollars (USD).
 - 2.2. The prices of the Contract are fixed and can be changed only according to the written agreement of the Parties.
 - 2.3. The total amount of the Contract is fixed in dollars and is understood as FOB SHANGHAI (Incoterms 2010) – 37830,03 USD.
- 

3. Terms of payment.

3.1. The BUYER or its agent is to make the payments in dollars according to the conditions of the Contract clause.

3.2. The Contract payments are to be effected as follows:

3.2.1. Advance payment of 30% of the amount specified in p. 2.3. of the Contract within three days from the date of signature of the Contract by both Parties.

3.2.2. Payment of 70% of the amount specified in p. 2.3. of the Contract shall be paid as provided in p. 4.3. of the Contract.

The Duration of Contract

- ▶ time during which the obligations of the parties arising under the contract are completely executed. (valid contract)

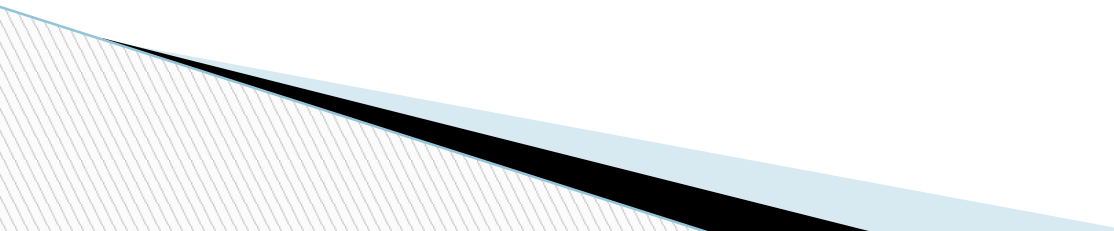
10. Other conditions.

10.1. The SELLER has no right to assign its rights and obligations under the Contract to any third party without the written agreement of the BUYER.

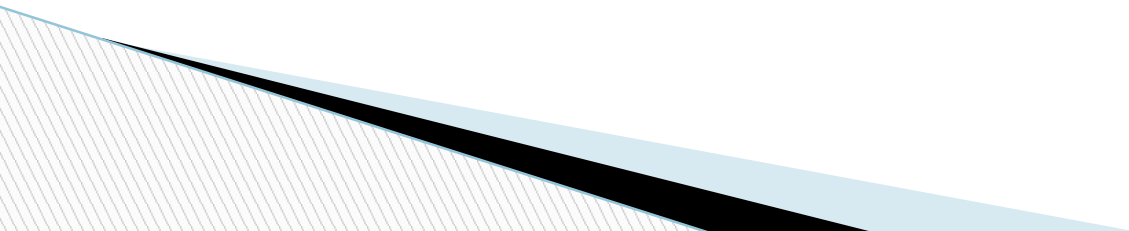
10.2. ***The Contract enters into force from the date of its sealing by both Parties. The Contract expires after the fulfillment of the obligations by the Parties and settlement of the accounts.***

10.3 The Contract is made in English language.

10.4 The copies of the Contract and Appendixes #1, #2, #3 signed by both sides, attested by seal and received by email have the same legal effect as the original with the following exchange of the originals.

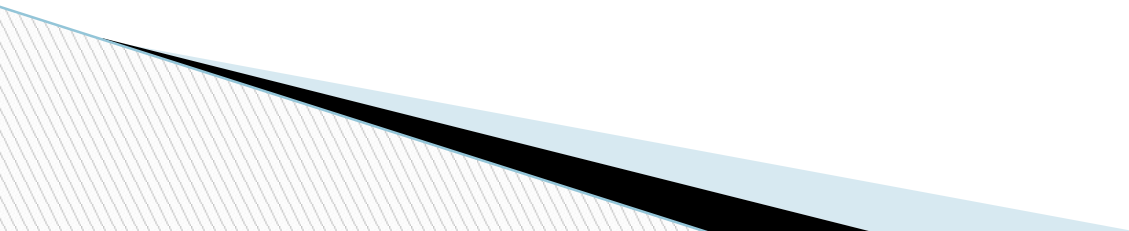
- ▶ Other terms that are named as essential by law.
 - ▶ The **value** of the essential terms of any contract is that **the contract can not be considered concluded** if the parties have not reached agreement on each of them.
- 

Essential Terms for some kinds of contracts



Contract of Sale	The subject (description of goods), quantity, Price
Supply contract	The subject, Delivery time
Contract of real estate sale	<ul style="list-style-type: none"> •The subject (name, quantity, description, place), •Price •List of persons, preserving the right of use the residential premises after its purchase by the buyer
Contract of enterprise sale	
Contract of sale of residential premises	
the Lease contract	The subject, Price
Gift	The subject
Service contract	Exact kind of service
Construction	The subject (what kind of work is to be done), time limits
Transportation	The subject
Loan	The subject
Insurance	The subject, insured event, sum insured, contract time
Agent contract	The subject (actions), authority of the agent

Parts of a contract



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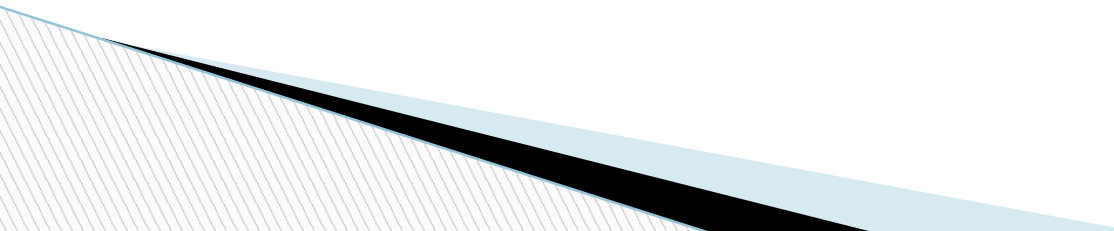
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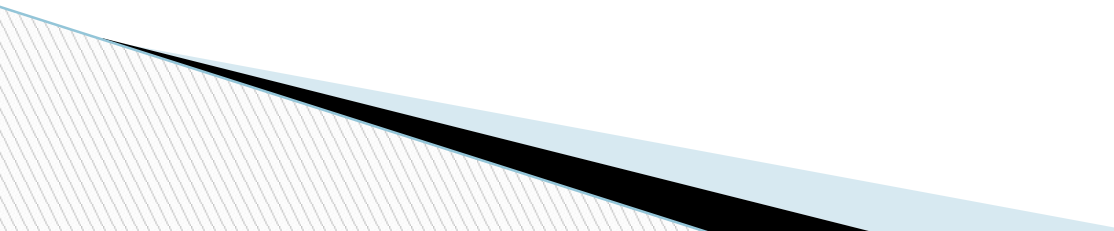
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3.2.2. Payment of 70% of the amount specified in p. 2.3. of the Contract shall be paid as provided in p. 4.3. of the Contract.

4. Delivery terms and notice.

- 4.1. Delivery terms – 60 days from the date of the receipt of the first payment according to the p. 3.2.1 of the Contract for first container. 90 days from the date of the receipt of the first payment according to the p. 3.2.1 of the Contract for second container.
 - 4.2. The SELLER is to present the ready GOODS for the final acceptance at the SELLER's factory according to Appendix #1, from the date of the receipt of the first payment according to the p. 3.2.1 of the Contract not later than 55 days for first container and 85 days for second container.
 - 4.3. The BUYER checks the GOODS for compliance with contract requirements (quantity and quality). The SELLER provides the BUYER the ability to check the chemical composition of the GOODS, the mechanical characteristics of the GOODS. If the goods are fully compliant with the Contract, the BUYER or his agent shall pay the amount specified in p. 3.2.2. of the Contract within two days from the day of the GOODS check ending.
 - 4.4. In case the BUYER or its inspectors find that the GOODS have defect or do not comply with the specifications stipulated in the Contract, the SELLER shall give the full explanation and take necessary measures to remove the defect of the GOODS at his own expense.
 - 4.5. The SELLER supply the transport documents, documents for the GOODS in accordance with the instructions of the BUYER's agent.
- 

5. Guarantee of quality of the GOODS.

5.1. The quality of the delivered GOODS is to be in full conformity with the requirements of the Contract.

5.2. The SELLER confirms the high technical level of the GOODS and their high quality and guarantees that the GOODS are completely new.

5.3. The SELLER guarantees:

High-quality materials to be used in manufacturing of the GOODS and proper processing and technical tests to be performed.

5.4. All the Contracted GOODS supplied by the SELLER shall be inspected and tested by the SELLER. The quality certificates shall be submitted to the BUYER, according to the order

6. Packing and Marking.

6.1. The GOODS should be packed in 25 kg carton packing then on wooden pallets and 900kg per pallet to be protected against water, moisture and mechanical damage during transportation.

6.2. The marking shall be clearly done with non-washable paint in English and include the following data:

Country of origin:

Manufacturer:

Box No

Gross weight

Net weight

7. Penalties.

7.1 In case of the SELLER's non-fulfillment or improper fulfillment of the Contract's liabilities, the BUYER is enabled to demand the SELLER to pay a penalty fee at the rate 0,1 (one tenth)% from the amount of Contract per each day of delay of the shipment.

7.2 If the delay in delivery of the GOODS exceeds 30 days, the BUYER is enabled to annul the Contract completely or partially without reimbursement any costs or losses, caused by the avoidance of the Contract, to the SELLER. Thus, the SELLER is obliged to return the advance payment received earlier on the account of the BUYER together with the interest charged at the rate of the bank of the SELLER.

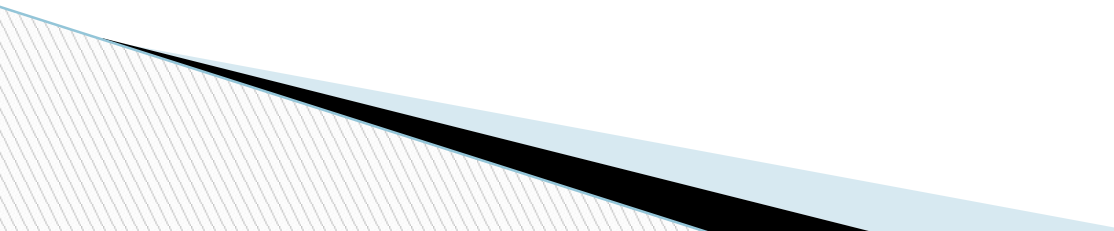
The avoidance of the Contract does not release the SELLER from payment of the penalty for the delay in delivery of the GOODS under the present Contract.

The date of the cancellation of the Contract is the date when the BUYER sends the notification about its refusal from the Contract.

7.3. The amount of penalties can't be altered by the Arbitration Court.

7.4. The SELLER is obliged to consider all the claims of the BUYER within 2 days from the date of their receipt.

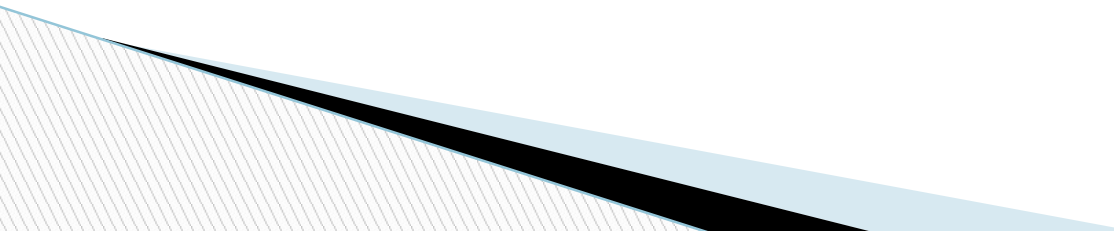
8. Force major.

- 8.1. Should any circumstances arise which prevent the complete or partial fulfillment by any of the parties of the respective obligation under this Contract namely: fire, flood, earthquake, labor disputes a/o., the time fixed for the fulfillment of the obligations shall be extended for a period equal to that during which circumstances will remain in force.
 - 8.2. The Party for whom it becomes impossible to meet its obligation under this Contract, shall immediately inform the other Party about the beginning and the ending of the circumstances preventing the fulfillment of the obligations.
 - 8.3. Certificates, issued by the respective Chamber of Commerce of the SELLER'S or BUYER'S country shall be the sufficient proof of such circumstances and their duration.
 - 8.4. If the above circumstances continue for more than one month, each Party has the right to renounce to any further fulfillment of the obligations under this Contract. In such case neither of the Parties shall have the right to demand from the other Party the compensation for any possible damages.
- 

9. Arbitration.

- 9.1. The SELLER and the BUYER will take all the measures to settle disputes and disagreements, which could arise in connection with the present Contract.
- 9.2. If the parties do not come to agreement, the case is to be submitted to the Arbitration Court of Sverdlovskaya Region, Russia, in accordance with its' regulations. Arbitration language is Russian. The property law of Russia will be applied to the questions, which can't be adjusted by the Contract and by the Convention of United Nations Organization of international rules for purchase and sale contracts.
- 9.2. The judgement of this Arbitration is the final and obligatory for both of the Parties.

10. Other conditions.

- 10.1. The SELLER has no right to assign its rights and obligations under the Contract to any third party without the written agreement of the BUYER.
 - 10.2. The Contract enters into force from the date of its sealing by both parties. The Contract expires after the fulfillment of the obligations by the Parties and settlement of the accounts.
 - 10.3 The Contract is made in English language.
 - 10.4 The copies of the Contract and Appendixes #1, #2, #3 signed by both sides, attested by seal and received by email have the same legal effect as the original with the following exchange of the originals.
 - 10.5. All alterations and addenda to the present Contract are valid only if they are made in writing and signed by the representatives of the SELLER and the BUYER.
 - 10.6 The present Contract includes Appendixes #, which is an integral part of the Contract.
- 

11. Addresses and bank information.

THE SELLER:

HangZhou JinMin Import & Export Co.,Ltd

ADD: Room 2004, Maya Plaza, Nanyuan Street, Yuhang District, Hangzhou

TEL: 86-571-89267438 FAX : 86-571-89268176

Bank data:

BANK NAME: CHINA EVERBRIGHT BANK HANGZHOU BRANCH

BANK ADD: TRADE FINANCE DEPT. ZHESHANG SHIDAI MANSION NO. MIDUQIAO ROAD, HANGZHOU

SWIFT CODE: EVERCNBJHZ1

BANK ACCOUNT: 7743148800004939

Manager

----- **Sam**

THE BUYER:

LLC «PROMETRADE»

ADD: Mashinostroiteley street, 31A, Kurgan, Russia

TEL :+7-3522-66-21-62

Bank data:

BANK NAME: PROBUSBUSINESSBANK, MOSCOW, RUSSIA

SWIFT CODE: PRBMRUMMXXX

BANK ACCOUNT: 30109978100000070662

Director

----- **A. Savelyev**

ADMINISTRATIVE RESPONSIBILITY

Legal capacity

A person acquires a different capacity at different ages.

Age grading amount of capacity:

1) persons under 14 years of age (juvenile) are **partially capable**. They are free to do domestic transactions.

Have non-property rights to the results of intellectual and creative activity. All other civil transactions on their behalf and for their benefit done by parents (adoptive parents) or guardians;

2) persons aged from 14 to 18 years (minors) **have incomplete legal capacity**. A number of actions they can perform on their own: to dispose their earnings, scholarships, other income; to exercise moral rights to results of intellectual and creative activity; be the founders of a legal entity; enter into a contract of bank deposit. All other transactions they make with the permission of the parents (adoptive parents) or guardians;

3) coming of age (18 years old) or a person entering into marriage before the age gets a **full civil capacity**. In addition, the full civil capacity can be given to an individual who has attained 16 years of age working

The amount of capacity:

- 1) by the court decision a person can be recognized **partially capable** in two cases: 1. alcohol, drugs or toxic dependence; 2. a mental disorder that significantly affects the ability to realize the significance of his actions. Such person shall be appointed a trustee who agrees to commit his/her civil legal action. **Partially capable** person can do on their own only small domestic transactions (buy food, movie tickets, etc.);
- 2) a person with chronic, persistent mental illness and does not understand results of his actions, by the court decision may be pleaded **fully incapable**. Such person is appointed a guardian who does civil actions on behalf of the ward. Thus, the restriction of the civil capacity is possible only **by court order**. In the case of changes in mental status (cessation of drinking or drug use, recovery) court removes these

Relations regulated by administrative law

- Administrative law - the branch of law regulating social relations in the sphere of public administration.

The specifics of this kind of legal relations: imperious character - these relationships arise between rulers and ruled, between **subjects, unequal to each other.**

For example, a legal relationship between the **driver of the vehicle and inspector of traffic police who stopped him.**

The structure of administrative relationships:

1) subjects.

One of the participants of administrative legal relations - **official or body of the state executive authorities**, acting within its **jurisdiction**. The second participant can be **natural or legal person**.

Administrative capacity of a natural person arise from the moment of birth and ends with his death.

Administrative capacity of an individual depends on age. **Partial capacity** of citizens of Ukraine – achievement of **school-age children**.

Citizens of Ukraine of **16** are required to have a passport and register their place of residence. General age for possible offensive administrative responsibility is 16.

Full administrative capacity - 18 years.

Ability to be legally responsible for violations of administrative law depends on **the age and sanity**.

Sanity - it is a mental state in which the person at the time of offense is able to be aware of his actions and control them.

For legal persons - at the moment of state registration;

2) **object**. The object of administrative relations is a **social good, about which there was matter**. (normal functioning of the organs of state power; public order);

3) **contents**. The content of the administrative legal relations are the **rights and obligations of the participants**. We analyze the structure of the legal relations arising between the inspector of traffic police

Inspector of traffic police and car driver who exceeded the permissible speed.

- **The subjects** of this relationship are the representative of the government and subservient face.
- **The object** is a real social good - road safety.
- **Content** is entitled traffic police inspector to require termination of the offense and the driver's duty to obey a lawful request.

CONCEPT and CHARACTERISTICS OF ADMINISTRATIVE RESPONSIBILITY

- Administrative responsibility - a type of legal liability, applied for an administrative offense and consisting of the imposition of restrictions on the offender of material and moral character.
- Administrative liability has all the features of legal liability and, at the same time, it has a special and unique features.

Signs of administrative responsibility:

- 1) Measures of this kind of liability are provided and regulated by administrative law;
- 2) is softer compared to criminal responsibility;
- 3) Applied by the executive authorities, and only in some cases - the courts;
- 4) the procedure for bringing to administrative responsibility is simplified in comparison with the criminal responsibility;

The concept and features of administrative offense

- Administrative offense - is wrongful act upon social benefits, protected by administrative law.
- Signs of an administrative offense:
 - 1) **the illegality.** Violation of the specific rules of administrative law;
 - 2) **anti-social character.** Administrative misconduct, or real damage to the individual, society, the state, or threat of such harm;
 - 3) **guilt.** Misconduct is recognized only an offense. Guilt exists in the form of intent and negligence;
 - 4) **offense.** Administrative law establishes the type and measure of punishment for committing an administrative offense.
- The administrative offense may be committed in the form of actions (such as drinking alcohol at work) or omission (failure to comply with the responsibilities).

Composition of Administrative Offences

- **The composition of administrative offense** - a set of statutory objective and subjective elements characterizing the act as an administrative offense.
- 1) **the object of administrative offense** - it is public relations in the sphere of rights and freedoms of man and citizen, which infringes the offender;
 - 2) **the objective side of the administrative offense** - the act (action or inaction) and its harmful effects, the causal link between the act and its consequences, the place, time, environment, the instruments and means of committing the offense. The basic and essential feature of the objective side is a wrongful act. All other attributes are optional;
 - 3) **the subject of an administrative offense** - the citizens of Ukraine, foreign citizens, stateless persons who have reached at the time of the offense the age of 16, the officials who are responsible for non-compliance of part of their duties. The subject of an administrative offense in tax, financial law, legislation on business, can be a legal entity;
 - 4) **the subjective aspect of administrative offense** - related to the fulfillment of his mental state. The signs are: the motive and purpose of the offense. It is a mental attitude of a person to his actions in the form of intent and negligence. The motive and purpose of administrative offense are optional

Types of administrative penalty

- **Administrative penalty** - a measure of state coercion against the person who committed an administrative offense. Penalty applies for the purpose of legal education of such persons, and to prevent the commission of further offenses. Forms and procedure for applying administrative penalties determined by the Code of Administrative Offences:
 - 1) **prevention**. Must be in writing;
 - 2) **fine**. The penalty is called monetary penalty;
 - 3) **compensated seizure of the object which appeared being instrument or subject of an administrative offense**.
 - 4) **confiscation of the object which appeared being instrument or subject of an administrative offense or the money received as a result of an administrative offense**.
 - 5) **deprivation of special rights for up to 3 years**. Applied for gross or systematic violation of the rules - driving license deprivation, the right to hunt;
 - 6) **correctional labor for up to 2 months**. Executed at the place of permanent employment of the offender by holding up to 20% of earnings to the state budget;
 - 7) **administrative arrest for up to 15 days**. For foreigners and stateless persons may be applied such a measure of

ADMINISTRATIVE RESPONSIBILITY

- minors may be administratively liable persons from the age of sixteen. Cases of committing administrative offenses committed by minors (persons between 16 and 18 years), - district (city) court (judge). The juvenile may be assigned any administrative penalty, except for the administrative arrest. In addition, the court (judge) have the right to apply to juvenile offenders following measures:
 - 1) obligation to publicly or other apologize to the victim;
 - 2) prevention;
 - 3) reprimand or severe reprimand;
 - 4) the transfer of a minor under the supervision of parents or persons substituting them, or under the supervision of pedagogical or labor collective with their consent, as well as individual citizens at their request. The use of such interventions is a right not



Labor code

The Labor Code

- ▶ Regulates labor relations
- ▶ States freedom of choice (work and profession)
- ▶ Proclaims that worker realizes the right for labor by signing a contract with the employer.
- ▶ States the equality of labor rights for all the citizen.



Labor Code of Ukraine regulates the most important aspects of labor relations:

- 1) the procedure for the making and executing a collective agreement;
 - 2) the procedure for making the individual employment contract;
 - 4) the duration of working time and rest periods for workers;
 - 5) the principles of valuation of labor;
 - 6) general rules for determining remuneration;
 - 7) guarantee labor rights;
 - 8) provision of labor discipline;
 - 9) provision of safety and health;
 - 10) the procedure for settling labor disputes;
 - 11) the rights and powers of trade unions and labor collectives.
-



Other legal acts regulating labor relations

- ▶ the Law of Ukraine "On Labor Protection"
- ▶ "On Collective Contracts and Agreements"
- ▶ "On wage"
- ▶ "On holidays".
- ▶ For foreign workers in Ukraine and Ukrainians working abroad there is the "International Private Law of Ukraine"



Collective agreement

- ▶ Made between the parties (trade union and employer) for regulating working relations.



Task

- ▶ The head of a consulting company included in the collective agreement the paragraph on skirt length and forbidding the women-workers to wear trousers. A new woman worker refused to obey the rule and was immediately fired. Was it legal?
- ▶ What about gender restriction?
- ▶ Reprimand (выговор).



Content of Collective agreement

- ▶ Labor process organization
- ▶ Norms
- ▶ Payments
- ▶ Conditions of labor
- ▶ Safety
- ▶ Working hours
- ▶ Leisure time



Collective agreement

- ▶ Created by negotiation
- ▶ Regulated by Labor code and Law "On Collective Contracts and Agreements"
- ▶ Registered by state
- ▶ Cannot create the condition of work worse than they are defined in law.



1. GENERAL PROVISIONS

- 1.1. The present collective agreement concluded in accordance with the current legislation of Ukraine and is the legal act regulating the production, employment and socio-economic relations between the owner (authorized body) and the collective on the basis of mutual agreement the interests of the parties.
 12. The present collective agreement concluded in order to regulate the production, labor, social and economic relations and coordination of the interests of workers and the owner (authorized body), as well as identify additional measures of social protection of workers taking into account the financial situation of the company, which depends on the activity of each employee.
 13. The terms of this collective agreement shall be binding on the signatories. In case of any disputes and disagreements, these conditions can not be interpreted as a worsening compared to the current legislation of Ukraine the situation of workers. Otherwise, the relevant conditions shall be deemed invalid.
 14. The provisions of this collective agreement apply to all employees and are required for both the owners and for each member of the staff of the enterprise.
 15. Neither party can unilaterally terminate the Agreement or the performance of their obligations under the collective agreement.
 16. Collective agreement shall enter into force on the day of its signing by the authorized representatives of the parties.
 - 1.7. This collective agreement is subject to notification registration
-



2. Labor organization,

2.1. An employment contract can not contradict the present collective agreement if the employee is given less rights under the labor agreement (contract), rather than in the present collective agreement. In the event of such a conflict, the relevant provisions of the employment contract shall be deemed invalid.

2.2. Owner may not require the employee to perform work not specified by an employment contract concluded between him and the employee.

Functional responsibilities of each employee are provided.

Another employee's work may be done only if absolutely necessary. (due to illness, vacation or for other valid reasons of another worker). Appropriate instructions should be given to the employee. Under the given conditions, the employee is entitled to extra payments.



- 2.3. Each employee shall conscientiously, efficiently and properly perform their duties honestly and conscientiously to work to comply with labor discipline, labor and technological discipline, to comply with regulations on labor protection, care of the property of the enterprise.
- 2.4. Workers may be dismissed from the company in the event of changes in the organization of production, while reducing the number of staff. In these cases they warned personally not later than two months.
- 2.5. Firing workers is permitted only after the use of all available and created additional employment opportunities at the company.
-



3. SALARY AND OTHER PAYMENTS

3.1. Wages shall be paid at the place of work in the Ukrainian currency, and _____ day of each month, and if pay day coincides with a holiday - on the eve of this day. Wages for the next holiday is payable no later than _____ days before the holiday.

3.2. Payment shall be in accordance with applicable law, but not less than the minimum wage guaranteed by the state.

3.3. The pay system, tariff scale, wage rates and salary schemes operating in the enterprise, are given in Appendix N^o * _____ hereto.

3.4. Work on holidays, weekends and holidays, if it is not offset by other rest periods, as well as overtime work is paid at double the rate

4. WARRANTIES, compensations and benefits

4.1. Employees are granted guarantees, compensation and benefits for business trips, when moving to work in another country and in other cases stipulated by law.

4.2. The owner set the following additional (non-law) guarantees, compensation and benefits:

—



5. hours of work and rest

5.1. The company set the time which must comply with all employees:

- Start 09.00,
- End 18.00,
- Friday 17:00,
- Breaks for rest and meals from 13.00 to 13.45,
- Weekends: Saturday and Sunday.

5.2. On the eve of public holidays and non-working days, the duration of employees reduced by one hour.

5.3. Changes in working hours (a week) administration of the enterprise is committed to negotiate with the trade union bodies of companies (employee representatives).

5.4. Overtime workers of the enterprise must be notified at least one day before the start of such work.

5.5. The staff is in agreement with the administration have the right to use a flexible work schedule.

5.6. The duration of annual leave for employees Owner of at least _____ days.

5.8. Schedule regular annual leave is approved up to _____ for which this schedule no later than _____ given him

_____. In determining the order of the holidays are taken into account family and other personal circumstances of each employee.

5.9. The list of positions and professions in which are entitled to additional leave for irregular working hours and the duration of such leave is given in Annex N^o _____ to the present collective agreement.



6. Admission and firing workers

6.1. Terms of the contract of employment, including dismissal, if not provided by the current legislation of Ukraine, to be agreed with the trade union of the enterprise.

6.3. Each new employee must read the terms of the collective agreement in time of _____.

7. The conditions and safety

7.1. Providing a safe working environment is the responsibility of the owner (authorized body), which organizes the working conditions at the workplace, process safety, machinery and other means of production, the availability of remedies, compliance with sanitary and living conditions of the normative acts on labor protection.

7.2. Workers have the right to refuse the assigned work, if such work creates a situation dangerous for their life and health, if such conditions are not expressly provided for by employment contracts.

7.3. The owner shall:

7.3.1. Adopt a comprehensive organizational and technical measures to achieve the standards of safety, health, improving the existing level of occupational safety and health (Annex № __) with the release of funds for their implementation in the amount of:

from the fund of the enterprise labor protection _____ thousand. UAH.;

from its own funds (net profit) of the enterprise _____ thousand. UAH.

7.4. Employees are required to know and comply with the requirements of regulations on labor protection in accordance with their functional responsibilities, rules for handling of machines, equipment and other means of production, to use means of individual and collective protection, undergo mandatory medical examinations.



8. social benefits and guarantees

8.1. The owner guarantees to provide employees free time for medical treatment, as well as a medical examination, to appear before the state authorities to address the necessary housing and living problems of workers without making any reduction of wages or other unjustified sanctions.

9 REPRESENTATIVE ORGANIZATIONS OF WORKERS

9.1. The owner guarantees the freedom of organization and activities of the trade union organization, workers council, after hours of general meeting of the staff.

9.2. The owner must:

- provide the necessary trade-union information on socio-economic development_____
- promote trade-union in its activities by _____

9.3. Trade union organizations must:

- hold union meetings of the labor collective;

10. RESPONSIBILITY OF THE PARTIES AND DISPUTE RESOLUTION

10.1. In the case of non-performance or improper performance of duties under this collective agreement shall be liable in accordance with applicable law.

10.2. Disputes between the parties shall be settled in accordance with the applicable legislation of Ukraine.

10.3. Disciplinary, administrative or criminal liability does not exclude individual perpetrators to civil, financial or other responsibility.

11. FINAL PROVISIONS

11.1. The term of this collective agreement - the date of its signature by the representatives of the Parties to "____"
_____ 200_

11.2. The provisions of this collective agreement in force until the conclusion of new or revision of the Parties the terms of this collective agreement.

11.3. Changes and additions to the present collective agreement during its period of validity may be amended only by mutual agreement of the Parties.

11.4. Monitoring the implementation of the collective agreement made by the Parties directly or by authorized representatives of the Parties in the manner determined by the Parties in

11.5. The signatories of the present collective agreement, each year, not later than _____,
report on its implementation by



Labor Contract

- ▶ Made between worker and organization

Forbidden paragraphs:

- ▶ Discriminating age, gender, health, etc. (these are regulated by law)
- ▶ Not based refusal of taking a person to work.



Time restriction

1. No time restriction
2. With time limits
3. For the time a certain work is done



As a rule Labor contracts are made in written form.

► Obligatory written form:

1. A group of workers is hired.
2. The work in difficult geographical, geological conditions or with risk for health.
3. When it is a contract.
4. If the worker demands.
5. If the worker is underage.
6. If the worker is a private person (he must register the contract within a week).



It is forbidden

- ▶ To demand from the worker for making the labor contract the documents proving the following:
- ▶ Political party belongings
- ▶ Nationality
- ▶ Place of birth
- ▶ Registration or living place



Restrictions

- ▶ The employer can restrict relatives from work with each other in subordination.



Probation period

- ▶ Optional
- ▶ For this period labor contract is made too
- ▶ Not more than 3 (rarely 6) months long

Not allowed when a worker:

- ▶ Under 18
- ▶ Has just graduated
- ▶ After military or alternative service
- ▶ Disabled (with expertise)
- ▶ Will have to move to another place to live
- ▶ Transferred to another department or subdivision of the organization



Before you start working

The employer must:

1. Inform the employee about rights and duties
2. Show working place/ instruments
3. Possible dangers
4. Working hours
5. Instruct on sanitary, hygienic, fire safety.



Labor contract can be terminated

1. On agreement of the parties
2. On expiration date (except if work continues)
3. Military service (except mobilization but no longer than 1 year)
4. Court decision (the worker sent to prison/)
5. Refusal to move to another place or position
6. Worker's corruption facts (only court decision)
7. Other defined in the contract



Employer can terminate the contract before its exploration date in cases

1. Changes in the process organization (bankruptcy, reorganization, reduction of staff)
2. The worker doesn't match the position (qualification, health)
3. Systematic neglect of duty by worker
4. Absence at the working place for 3 hours and longer
5. More than 4 months of disablement incapacity (except pregnancy and if another not stated by law)
6. Returning the previous worker
7. Being at work drunk or drug intoxicated
8. Committing theft at work (court decision)
9. Employer called to military service or mobilization



1. General Provisions

1.1. This contract is a fixed-term employment contract.

12. The term "Parties" in the present contract are determines employer and employee.

2. Obligations of the parties

2.1. In accordance with the employment contract worker undertakes to perform the work described in this contract, and the employer shall pay the employee wages and provide working conditions necessary to perform the work stipulated by the legislation, collective agreement and the parties' agreement.

2.2. The employee is obliged to:

2.2.1. do the work, provided in the employment contract and job descriptions;

2.2.2. promote increasing profits of the Employer;

2.2.3. comply with the requirements of work safety, fire regulations and sanitary-epidemiological safety;

2.2.4. bear the full financial responsibility for given him material and technical values on the conditions stipulated by the current legislation of Ukraine;

2.2.5. not to disclose confidential information and information which constitutes a commercial secret of the enterprise and be responsible for its disclosure of the current legislation of Ukraine.

2.3. If an employee during the term of the employment contract carry out any research, develop computer programs, the author's property rights and the exclusive right to the use of such products, in accordance with Article 16 of the Law of Ukraine "On Copyright and Related Rights" belongs to the

3. Working hours

3.1. The employee agrees to comply with work rules.

3.2. Features of working time (part-time, part-time, hourly work, long working hours, etc.)

4. Payment of work and social maintenance

4.1. For the performance of the duties stipulated in this agreement, the employee is set: base salary (wage rate) of \$ _____ this month or in the amount of _____ for 1 hour.

4.2. employee entitled to annual paid leave: the main _____ days
_____ additional days.

4.3. employee may be established allowances and other incentives for the intensity and quality of work and other indicators of activity in accordance with the Regulations on material incentives for employees.



5. Responsibilities of the parties, disputes settlement

- 5.1. In case of default or improper fulfillment of obligations under the contract, the parties are responsible in accordance with the current legislation of Ukraine and this agreement.
- 5.2. employee shall not be liable for the improper performance of the contract, if it occurred as a result of failure by the Employer of its obligations under the agreement.
- 5.3. The employee shall reimburse the losses caused by the company, in the amount and procedure established by the legislation of Ukraine on labor.
- 5.4. The disputes between the parties are resolved in accordance with the laws of Ukraine.



6. Changes, termination and breaking contract

6.1. Changes and additions to this contract are accepted by the parties signing additional agreements.

6.2. The contract shall be terminated:

6.2.1. after its expiry;

6.2.2. by agreement of the parties;

6.2.3. on other grounds stipulated by the Labour Code, except for those that are not used in accordance with this agreement.

6.3. employee may be dismissed from his position, but the employment contract can be terminated by the employer before the expiry of its validity only on the grounds stipulated by the Labour Code.

6.4. Additional conditions of termination of this contract not covered by the current legislation of Ukraine:

6.4.1. in the case of complaints from customers;

6.4.2. in the case of poor performance of assigned tasks;

6.4.3. in the case of actions that discredit the Employer.

6.5. An employee may take the initiative to terminate the employment contract before its expiry on the grounds stipulated by the Labour Code.



7. Terms and other conditions of the contract

7.1. This contract is valid from " _____ " _____ 200 __ till
" _____ " _____ 200 __ g

A month before the expiration of the contract may be extended or entered into a new period.

The contract is extended to " _____ " _____ 200, at
the
" _____ " _____ 200 g

The contract is extended to " _____ " _____ 200, at
the
" _____ " _____ 200 g

7.2. The work book is preserved and maintained by the employee in the enterprise.

7.3. Parties undertake to respect the confidentiality of the terms of this contract.

7.4. The parts not covered by this agreement shall be governed by laws of Ukraine, which apply to the company, the company's Charter and other documents binding on the parties.

8. Addresses....



Removal

- ▶ Employee can be removed from work in the cases:
 1. Coming to work in state of intoxication (any)
 2. Refusal to be medically examined (if supposed to)
 3. Refusal from labor and fire safety instructions or check of knowledge.
 4. Another if provided by law.
-



Working hours

- ▶ Not more than 40 per week.

Shortened time is set:

1. 16-18 years – 36 hours
 2. 15-16 (14-15 if work on school vacations) – 24 hours
 3. Harmful production – 36 hours max.
 4. For mothers of disabled children or under 14 (for the costs of organization)
 5. Some categories stated by law: teachers, doctors, etc.
 - ▶ 5 days work a week. If 6 days – still not more than 40 hours ($40/6=7;$)
 - ▶ The day previous to an official holiday and days off – 1 hour shorter
-



Night work

- ▶ Duration – 1 hour less than daytime work.
- ▶ Night work – since 22.00 to 6.00

Work at night forbidden to:

1. Pregnant women
2. Mothers of children of under 3
3. Women if other is not stated by law.
4. Other if stated by law

Disabled work at night only if voluntary.



Part time work

- ▶ Possible on agreement between the parties.
- ▶ Pregnant women.
- ▶ Mothers of disabled children or under 14.
- ▶ Mother caring of ill family member.



Leisure time

- ▶ Not more than 2 hours for dinner.
- ▶ After 4 hours after the beginning of work.
- ▶ Work in days off is forbidden if not coordinated with professional labor compete.

Exception:

1. Emergency (all kinds).
2. Accidents threatening people or property.
3. Unforeseen works that could influence further work.
4. Logistics (if needed to free the storage).

Double wages for work on holidays.



Salary

- ▶ Twice a month – every 16 days
- ▶ Before the holidays if dates coincide
- ▶ Not more than 7 days of delay



Youth

- ▶ Work from 16.
- ▶ From 15 – needed approval of a parent.
- ▶ Obligatory medical examination (up to 21)!
- ▶ Equal salary but shortened working time (as well as for study and work students).



Disputes

- ▶ Labor disputes commissions (pre-court)
- ▶ District or city courts
- ▶ 3 months limitation period



NATURAL PERSONS AND LEGAL ENTITIES AS THE SUBJECT OF CIVIL LAW

- All individuals have the legal capacity.
- The civil legal capacity of a natural person arises at the time of his birth and ends at death.
- **The civil legal capacity** - the ability to have a person of the subjective civil rights and civil responsibilities.
- **Civil capacity** - the ability of a person by his actions acquire and exercise civil rights, and the ability through their actions create civil obligations. Civil capacity depends on the age and mental state of the individual.

Age grading volume capacity:

- 1) persons who have not attained 14 years of age (juvenile) are partially capable. They are free to commit petty domestic transactions, personal exercise non-property rights to the results of intellectual and creative activity. All other civil transactions on their behalf and for their benefit by parents (adoptive parents) or guardians;
- 2) persons aged from 14 to 18 years (minors) have incomplete legal capacity. A number of actions they can perform on their own: to dispose of his earnings, scholarships, other income; to exercise moral rights to results of intellectual and creative activity; be the founders of a legal entity; enter into a contract of bank deposit and dispose of the contribution. All other transactions they make with the permission of the parents (adoptive parents) or guardians;
- 3) coming of age (18 years old) or a person entry into marriage before the age comes a full civil capacity. In addition, the full civil capacity can be given to an individual who has attained 16 years of age working under a labor contract or registered as an entrepreneur, as well as a minor party, recorded the mother or father of the child.

The dependence of the volume capacity of the person of his mental state :

- 1) the court decision a person can be recognized partially capable in two cases: the abuse of alcohol, drugs or toxic substances; a mental disorder that significantly affect the ability to realize the significance of his actions. Such person shall be

LEGAL ENTITIES as subject of civil law

- **Legal entity** - an organization established and registered in accordance with the law.
- A legal entity can be created by combining several individuals and (or) property.
- **Features of a legal entity are:**
 - 1) **organizational unity.** Legal entity has a certain structure (departments, administration), management, certain goal and objectives (set out by the charter or other constituent documents);
 - 2) **the existence of property.** The organization must have its property separate from the property of the founders or other legal entities. The entity should have independent

- 3) **independent property responsibility.** Legal entity itself is responsible for contracts concluded, for the debts and other obligations.
- 4) **participation in public circulation on its own behalf.** A legal entity has its own name, the registration by state. It has the right to acquire civil rights and obligations as defined by its charter or other founding documents.
- 5) **the ability to sue and be sued in court.** On its own behalf the legal person is entitled to be a member of a judicial or economic process. The civil legal capacity of a legal entity shall arise from the moment of its state registration and shall terminate from the date of entry into the Unified State Register of its termination. Legal entity acquire and exercise civil rights and

Types of legal entities:

- 1) **Depending on creation** - legal entities of private law and legal entities of public law.

Legal entities of private law created on the basis of constituent documents (charters, contracts).

The legal entity of public law created by administrative act of the President of Ukraine, state authority or local government;

- 2) **Depending on the form of ownership** - private, public and governmental entities;

- 3) **Depending on the legal form** - societies and institutions (organizations). Society is created by associations of persons (members) who have right to take part in this society.

It can be commercial and non-commercial.

Commercial has the purpose - profit and its division between the parties. They are subdivided into cooperatives and business entities.

Noncommercial - society that has no aim to make

OBJECTS OF CIVIL RIGHTS

- **The objects of civil rights are things**, including money and capital issues, other property, property rights, results of works, services, results of intellectual and creative activities, information, and other tangible and intangible benefits.
- Types of objects of civil rights, first of all, are divided into **material and immaterial objects**.
- Among the **material objects**:
 - 1) **Things**. The thing is subject of the material benefit that may arise civil rights and obligations.

Types of things:

- **Movable** (can be moved in space without being ruined) and real estate (land and attached facilities, river and sea vessels, space objects and other objects, the rights to which are subject to state registration);
- **Divisible and indivisible things.** Divisible recognized thing that can be divided without losing its purpose (land, bread, cloth). Indivisible thing can not be divided without losing its purpose (TV, clothes, desk);
- **Things defined by generic or individual-specific features.** The main characteristic of a generic thing - weight, volume, number. Individual-specific thing has unique features and can not be replaced. For example, money - generic thing, and the

- **Consumable** (destroyed on first use), and **non-consumable** (do not lose the essence when reused). For example, food, money, technical raw materials - consumable items, and porcelain set, furniture, car - non-consumable;
- **The main thing and implementation.** **Implementation** is a thing designed to serve the main thing and the associated with the general purpose (for example, the violin and the case for it);
- **Simple and complex things.** Complex thing is composed of several things that make up a single entity (for example, tea set);

Products, furniture and things are that is all that is

- 2) **Property** - it is a separate item, a set of things, as well as property rights and obligations;
- 3) **Company** - a single real estate property complex, which is used for business purposes. It includes land, buildings and facilities, equipment, inventory, raw materials, products, trademark rights, etc .;
- 4) **money and currency values**. Money (cash) - is legal tender, must be accepted on the entire territory of Ukraine. Monetary unit of Ukraine - hryvnia. In some cases established by law, in Ukraine can be used foreign currency. Among the currency values are precious metals and precious stones;

5) Capital issue - a form of document, certifying the cash or other property right owner.

Groups and types of capital issues:

- **Mutual issues** certifying the participation in the authorized capital (eg, stocks);
- **Debt issues** which certify loan relations (eg, bonds, domestic and foreign government loans, local bonds, corporate bonds);
- **Derivative issues** giving the right to buy or sell at certain periods of the securities, financial and (or) commodity resources;
- **Disposition of the goods issues** entitling the holder to dispose of the property specified in the document.

Intangible objects of civil rights (intangible goods) include:

- 1) **the results of intellectual and creative activity:** literary and artistic works, computer programs, compilations of data (databases data), performance, phonogram, videogram, transmission (program) broadcasting organizations, scientific discoveries, inventions, utility models, industrial designs, layout designs (topographies) of integrated circuits, rationalization proposals, plant varieties, animal breeds, commercial (proprietary) names, trade marks (marks for goods and services), geographical indications, trade secrets;
- 2) **information** - documented or publicly announced information about events and phenomena that have taken or are taking place in society, the state, or environmental
- 3) **the moral goods** - health life: honor dignity and

Moral rights of NATURAL PERSON

- **Moral rights** are unlike property rights, **have no economic** content.
- They belong to every individual from birth or by law.
- A person (individual) **can not give up** his individual rights and **may not be deprived** of personal rights.
- **Limiting** the moral rights is possible **only in** cases stipulated by law (for example, for the offense may be limited to personal liberty).

- Moral rights are divided into two groups:
 - 1) **personal non-property** rights that provide **natural existence** of a natural person;
 - 2) **non-property rights** that provide **social life** of an individual.
- (Task: try to write lists of such rights)

The first group:

- The right to life and the right to eliminate danger to life and health. A natural person **can not be deprived of life, even at his request**. An individual has the right to protect his life by any legal means. Medical, scientific and other experiments can be carried out only in relation to an adult capable person, and only with his consent.
- An individual has the right to **demand the removal of the danger created** due to business or other activities that threaten the life and health;
- The right to **health and medical care**. Health care activities ensure government agencies. An individual who has attained the age of 14 has the right to **choose a doctor and methods of treatment** in accordance with the instructions of the doctor, **medical care done with his consent**. In urgent cases, when there is a real

- An individual has a right to privacy about their health status. It is **forbidden to demand and supply at the place of work information** on the diagnosis and methods of treatment;
- The right of admission other health care workers, family members, guardian, trustee, notary, lawyer, priest;
- The right to **liberty and security**. It **prohibits physical and mental violence**, torture, ill-treatment;
- The right to **be a donor**. An adult capable person has the right to donate blood components, organs and other anatomical materials and reproductive cells;
- The right to a **family**. A natural person, regardless of age and health, has the right to a family;
- The right to **guardianship**. This right has a child and an adult incapable or partially capable;
- The right to a **safe life and health environment**. This right includes the right to reliable information about the state of the environment the quality of food and

The second group of the moral rights:

- The right to a name, change and use of name. Everyone has the right to write their own name in accordance with their national traditions;
- The right to dignity and honor. Dignity - a self-identity. Honor - a public assessment of the moral qualities of man.
- Respect for the deceased person;
- The right to the inviolability of business reputation;
- The right to individuality, ie. to preserve ethnic, cultural, religious, linguistic identity and the free choice of the forms of its manifestation;
- The right to privacy and the preservation of its confidentiality;
- The right to information. An individual has the right to freely collect, store, use and disseminate

- The right to personal papers;
- The right to confidentiality of correspondence, telegrams, telephone conversations;
- The right to defend their interests during the photography, film, television, video. (only with consent). It is expected that such an agreement exists, if you take pictures at public events;
- The right to freedom of literary, artistic, scientific and technical creativity;
- The right of residence and free choice of residence;
- The right to inviolability of the home;
- The right to choose the occupation;
- The right to freedom of movement on the territory of Ukraine;
- The right to freedom of association in political

Entrepreneurship

Entrepreneurship

- is the direct independent, systematic, at your own risk activities for the production of products or provision of services for profit. It is carried out by individuals and legal persons registered as subjects of entrepreneurial activity in the order established by the legislation. Legal regulation of business activities carried out by the Constitution of Ukraine, the Economic Code of Ukraine, the Law of Ukraine "On Entrepreneurship", "On Enterprises in Ukraine" and a number of other legal acts .

Business entities:

- 1) Citizens of Ukraine, foreign citizens, stateless persons, not limited by law in legal capacity;
- 2) legal entities of all forms of ownership;
- 3) association of legal entities.

- The Constitution of Ukraine, the Economic Code and the Law of Ukraine "On Entrepreneurship" embody the principle of freedom of entrepreneurship.
- However, there are some limitations in the implementation of business activity. In particular, certain activities may only be state-owned enterprises (production and sale of drugs, the production of military weapons and ammunition).
- A number of business activities subject to licensing. License - a

Organizational and legal forms of business

- The company - is an independent statutory business entity, having legal personality and carry out production, research and commercial activities for profit.
- The charter of the enterprise determine the owner and the name, location (legal address), the object and purpose of the activity, competence and authority of the staff and its elected bodies, the terms of reorganization and liquidation of the enterprise.

In Ukraine:

- 1) *private enterprise founded on the property of individuals;*
- 2) *a collective enterprise based on the property of the staff of the enterprise;*
- 3) *Business Company (хоз. общество);*
- 4) *the company based on own citizens' association property;*
- 5) *the utility, based on the ownership of the territorial community;*
- 6) *The state-owned company, based on state property.*

Three conditions:

- The company carries out production or any other activity that may carry out only the state-owned enterprise (for example, manufacture of weapons);
- The state is the main (over 50%), consumer of goods of company (eg, sewing uniforms for the army);
- The company is a natural monopoly (eg, power supply system).

Business company - an enterprise, institution, organization, created on the basis of the contract legal entities and citizens by pooling their assets and business activities for profit.

Types of business entities:

- 1) Joint Stock Company. It has a statutory fund, divided into certain number of shares equal to the nominal value. For liabilities company property company is only responsible. Shareholders are responsible within their existing shares;
- 2) Limited Liability Company. In a limited liability company authorized fund is divided into specific shares. Members of the company are responsible for the obligations only within their doley- contributions to the statutory fund;
- 3) additional liability. Members of the company are responsible within their doley- contributions, and if this is not enough - further property belonging to them in the same way for all the multiples of the contribution of each member;
- 4) complete society. All participants are responsible for the company's obligations with all its assets;

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STATE registration of legal entities

- a documentary certification of the fact of creation of a business entity. The legal significance of the state registration of a business entity is that the time of registration, he acquires the status of a legal entity.
- Done by executive committee of the district (city and district in the city) council or district administration at the location of the subject.

For state registration of a business entity - a legal entity - the following documents are needed:

- 1) registration card, which is also a application on the state registration;
- 2) decision of the founder or the memorandum and articles of association;
- 3) a document confirming the payment of the registration fee;
- 4) document certifying the payment of the contribution to the authorized fund of the business entity.

For state registration of a business entity - a natural person - the following documents:

- 1) registration card, which is also a application on the state registration;
- 2) a document for inclusion in the National Register of natural persons - payers of taxes and other obligatory payments;

