



MidTerm №2

Madi Kenzhaliyev, LL.M

Law of Obligations

Section 3 General Provisions on Obligation

- Chapter 16. Bases for the Emergence of Obligations
 - Articles: 268-271;
- Chapter 17. Execution of Obligations
 - Articles: 272-282;
- Chapter 18. Securing Execution of Obligations
 - § 2. Damages
 - Articles: 293-298;
- Chapter 20. The Liability for Violation of Obligations
 - Articles: 349-352.



Law of Obligations

Section 3 General Provisions on Obligation

- Chapter 21. Termination of the Obligations
 - Articles: 367-374.



Law of Obligations

- Due to an obligation one person (debtor) shall be obliged to commit for the benefit of another person (creditor) certain actions:
 1. to transfer property;
 2. perform work;
 3. pay money etc.
- or abstain (воздержаться) from certain actions.



Law of Obligations

- The creditor shall have the right to claim from the debtor the execution of his obligation.
- The creditor shall be obliged to accept the execution from the debtor.



Law of Obligations

▣ Bases for the Emergence of Obligations:

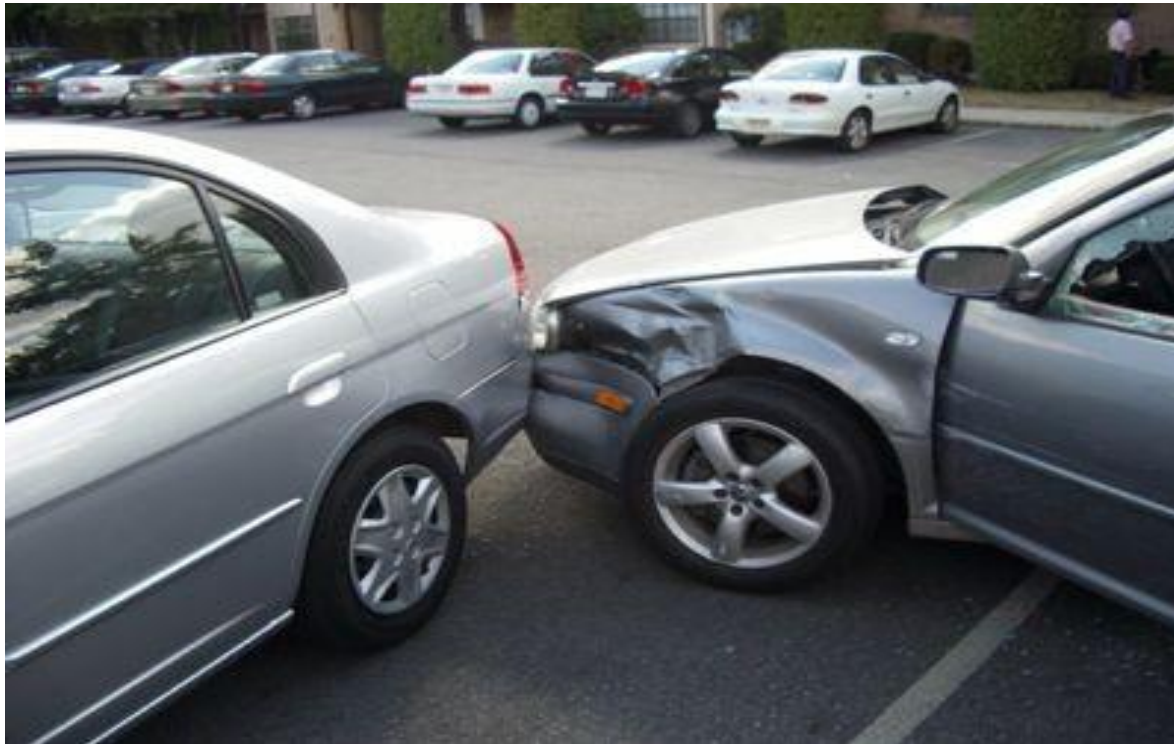
1. Agreement;



Law of Obligations

▣ Bases for the Emergence of Obligations:

2. Infliction of damage (причинение вреда);



Contracts (Договор)

- You hired a construction company to build a house.
- You agreed the contract for USD 5 mln.
- It turns out that there is an underground water, which would increase the cost of construction 10 times up to USD 50 mln.



Contracts (Договор)

- Can construction company refuse from the execution of the contract?



Contracts (Договор)

- **Article 367. The Bases for the Termination of Obligations**
- Obligations shall be terminated entirely or in part by the execution, granting of smart money, offset, novation, or forgiving of debt, coincidence of the debtor and the creditor in one person, **impossibility to execute**, the issue of an act by a state body, demise of the citizen, liquidation of the legal entity.



Contracts (Договор)

- **Article 374. Termination of Obligations by Impossibility to Execute**
- An obligation shall be terminated by impossibility to execute it, provided it is caused by a circumstance for which the debtor is not responsible.



Contracts (Договор)

- **Article 359. The Bases of Responsibility for Violating Obligations**
 - A person who failed to execute or improperly executed an obligation when carrying out entrepreneurial activities, shall bear the financial liability, unless he proves that proper execution turned out to be impossible as a result of force majeure, that is extraordinary and unpreventable under given circumstances (natural calamities, military actions, etc.).
-



Transactions

Chapter 4. Transactions

□ Articles 147-153, 157, 159, 161.



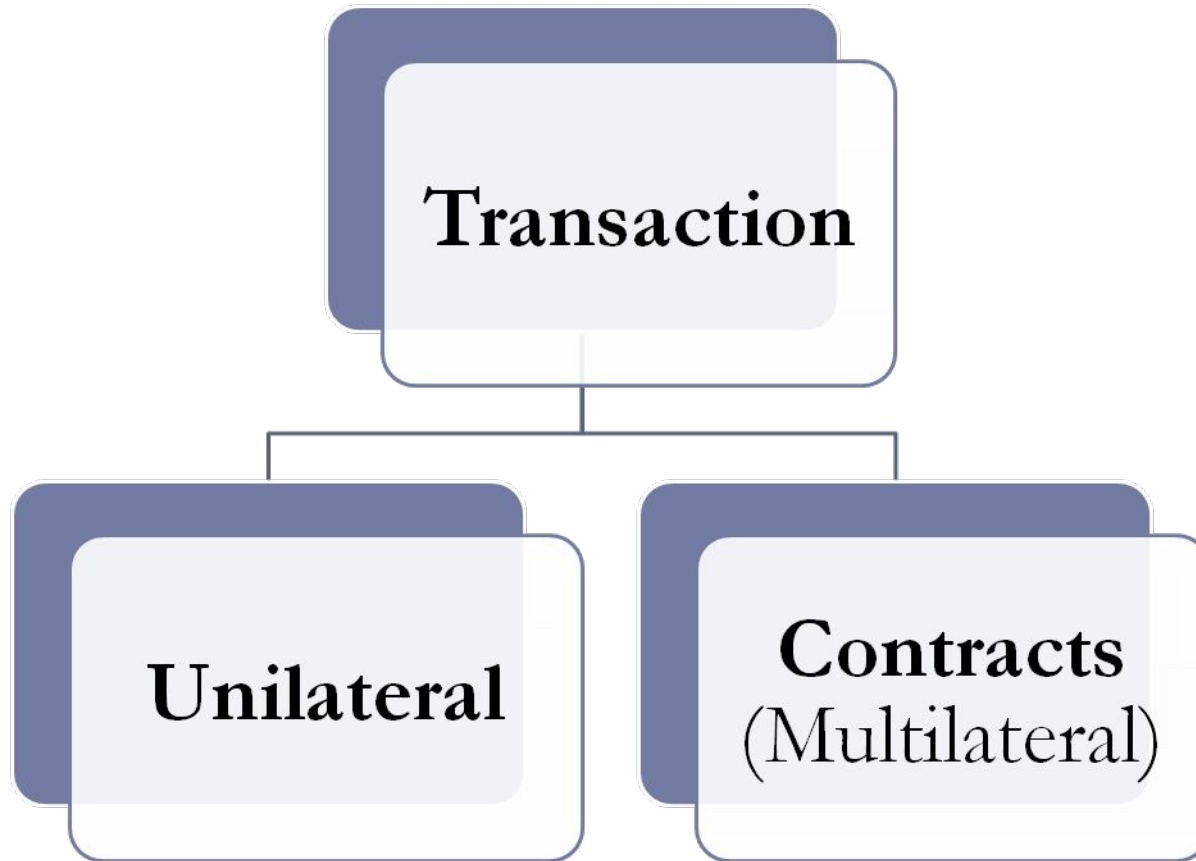
Transactions (Сделки)

□ The actions of citizens and legal entities which are aimed at:

1. Establishing (установление);
2. Changing (изменение);
3. or terminating (прекращение) civil rights and obligations, shall be recognized as transactions.



Transactions



Unilateral Transactions

- A transaction which requires the expression of the will of one party for being sufficient, shall be recognized as a unilateral transaction (односторонняя сделка).



Unilateral Transactions

- Unilateral Transaction

- Examples:

1. Testament (завещание);
2. Termination of Power of Attorney
(доверенность);

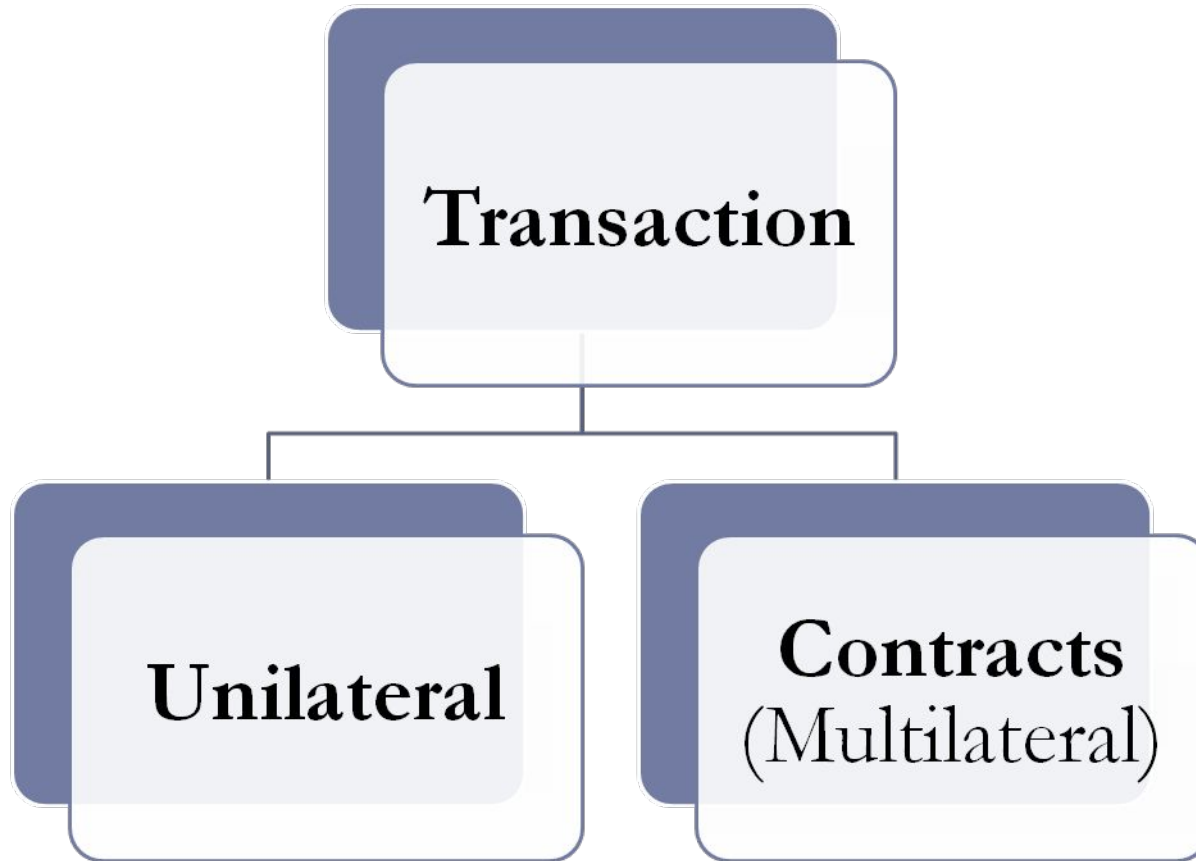


Contracts (Договор)

- An arrangement of at least two or several persons concerning the establishment, amendment (change) or termination of civil rights and obligations shall be recognized as multilateral transaction or just **contract**.

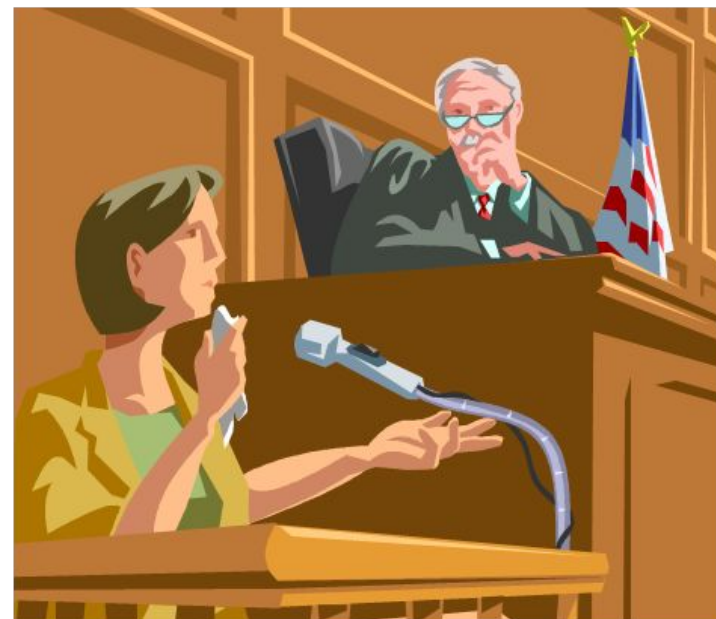


Transactions



Transaction

- A failure to comply with written form shall not entail invalidity;
- But it deprive the parties of right to confirm its conclusion, contents or its execution by witness evidence (свидетельские показания) in the case of a dispute.



Written Form of the Transaction

□ The following transaction must be entered in written form:

1. those which are carried out in course of entrepreneurial activities, except for transactions which are executed immediately at that time;
2. and those for the amount of more than 100 MCI (KZT 198,200) except for the transactions which are executed immediately at that time.



Written Form of the Transaction

- Executed immediately (by their commitment itself) means that parties execute transaction fully at the time of agreement of the transaction; i.e. receiving the good and paying money immediately.



Written Form of the Transaction

- A transaction which is executed in writing, must be signed by the parties or their representatives, unless otherwise ensues from the usual business practice.
- It shall be allowed, when entering into transactions, to use facsimile copying of signatures, unless this contradicts legislation or the requirements of one of the participants.



Written Form of the Transaction

- The exchange of letters, telegrams, telephonograms, teletypograms, facsimiles or any other documents which identify the entities and the contents as expression of their will, shall be equated to the execution of transactions in writing, unless it is otherwise stipulated in legislation or in the agreement of the parties.



Notarization of Transactions

- In the cases which are stipulated in legislative acts or by the agreement of the parties, written transactions shall be deemed to be entered into only upon their notarization.
- 1. Rent contract (ДОГОВОР РЕНТЫ);
- 2. Testament;
- 3. Power of attorney for mngt. of property;
- 4. Foundation documents;
- 5. Marriage contracts.



Formation of the Contract

- **Chapter 22. The Definition and Conditions of Contracts**

- Articles: 378, 380, 382, 385, 387.

- **Chapter 23. Formation of the Contract**

- Articles: 393-397

- **Chapter 24. Amendment and Termination of the Contract**

- Articles: 401-405



Formation of the Contract

- Conclusion of the contract has two stages, proposal to make an agreement – offer, and its acceptance by the other party – accept.



Formation of the Contract

- **Offer** is a proposal to conclude a contract.
- Golovkin says: “I am ready to fight with anybody”.
- **Offer?**



Formation of the Contract

- ❑ **Offer** is a proposal to conclude a contract.
- ❑ Golovkin says: “I am ready to fight with anybody”.
- ❑ **Offer? No**
- ❑ Article 395 CC.
- ❑ Specific persons;



Formation of the Contract

- ▣ **Offer** is a proposal to conclude a contract.
- ▣ Golovkin says: “I want to fight with Miguel Cotto”.

- ▣ **Offer?**



Formation of the Contract

- ❑ **Offer** is a proposal to conclude a contract.
- ❑ Golovkin says: “I want to fight with Miguel Cotto”.
- ❑ **Offer?** No
- ❑ Art. 395 CC.
- ❑ Essential terms



Formation of the Contract

▣ **Offer** is a proposal to conclude a contract:

1. it is made for one or several specific persons;
2. it is sufficiently definite, which means that it contains the essential terms of the contract;
3. and it expresses the intent of the person who made an offer to conclude a contract;



Essential Terms

□ Essential Terms:

1. Subject-matter (предмет);
2. Terms recognized as important by the legislation;
3. Terms recognized as important by one of the party to the contract;
4. Conditions required for specific contracts;



Formation of the Contract

- ▣ **Offer** is a proposal to conclude a contract:
1. It's made for specific person(s);
 2. Essential terms;
 3. Intent;



Formation of the Contract

- **Accept** is a response of a person to whom the offer is addressed, about accepting it.
- Cotto says – “Ok, I will fight you in a catch-weight”.

□ **Accept?**



Formation of the Contract

- **Accept** is a response of a person to whom the offer is addressed, about accepting it.
- Cotto says – “Ok, I will fight you in a catch-weight”.
- **Accept?** No
- Art.396 CC.



Formation of the Contract

- **Accept** is a response of a person to whom the offer is addressed, about accepting it.
- Accept must be entire and unconditional. Silence is not considered as an acceptance.



Formation of the Contract

- ❑ **Accept** is a response of a person to whom the offer is addressed, about accepting it.
- ❑ Cotto says – “Ok, I will fight you in a catch-weight”.
- ❑ **Accept?** No
- ❑ Counter-offer.



Formation of the Contract

- ▣ **Offer** is a proposal to conclude a contract:
1. It's made for specific person(s);
 2. Essential terms;
 3. Intent;



Offer

□ Is this an offer?

КОЛЁСА
Все регионы ▾

Машины Запчасти Услуги Спецтехника Прочее На карте

Выберите ваш город. × Внедорожники / Toyota / Toyota Land Cruiser

Toyota Land Cruiser 2011 года за **45 000 \$** ▾

287 900 тг. в месяц

★ В избранное

Регион	Астана
Кузов	внедорожник
Двигатель	4.0 л (бензин)
КПП	автомат
Состояние	На ходу
Руль	слева
Привод	передний привод
Цвет	черный
Растаможен в Казахстане?	Да

Первый хозяин в Казахстане. В идеальном состоянии. За наличный расчет. Обмен не интересует. Срочно!



Offer

□ Is this an offer?

□ No!

КОЛЁСА
Все регионы ▾

Машины Запчасти Услуги Спецтехника Прочее На карте

Выберите ваш город. × Внедорожники / Toyota / Toyota Land Cruiser

Toyota Land Cruiser 2011 года за **45 000 \$** ▾

287 900 тг. в месяц

★ В избранное

Регион	Астана
Кузов	внедорожник
Двигатель	4.0 л (бензин)
КПП	автомат
Состояние	На ходу
Руль	слева
Привод	передний привод
Цвет	черный
Растаможен в Казахстане?	Да

Первый хозяин в Казахстане. В идеальном состоянии. За наличный расчет. Обмен не интересует. Срочно!



Offer

- Advertisements and other proposals which are addressed to an indefinite circle of persons shall be considered as an invitation to make an offer.



Formation of the Contract

▣ **Public Offer** - proposal which contains all the essential terms of the agreement, from which the intent of the person who is making the proposal is understandable, to conclude the agreement on the terms specified in the proposal with anyone who responds, shall be recognized as an offer.



Public Offer



Public Offer

▣ Article 447

- ▣ Exhibition of goods, demonstration of their samples or giving information about the sold goods (descriptions, catalogs, photos, etc.) **at the place of sale** is a public offer, regardless of whether the price and other terms of the contract of sale are specified.



Offer

▣ Article 447

- ▣ Exhibition of goods, demonstration of their samples or giving information about the sold goods (descriptions, catalogs, photos, etc.) at the place of sale is a public offer, regardless of whether the price and other terms of the contract of sale are specified, except in the case where the seller is clearly demonstrates that the goods are not intended for sale.



Formation of the Contract

- What if I announce orally that first student who will climb on top of the roof of Kazakhstan Hotel gets an +A for the course.



Formation of the Contract

- Week later students sends me this photo.
- Is this a Contract?
- Do I have to fulfill my obligations?



Formation of the Contract

❑ NO

- ❑ When the offer is made orally without any indication of the period for its acceptance, the agreement shall be deemed to be concluded, if the other party immediately declares its acceptance.



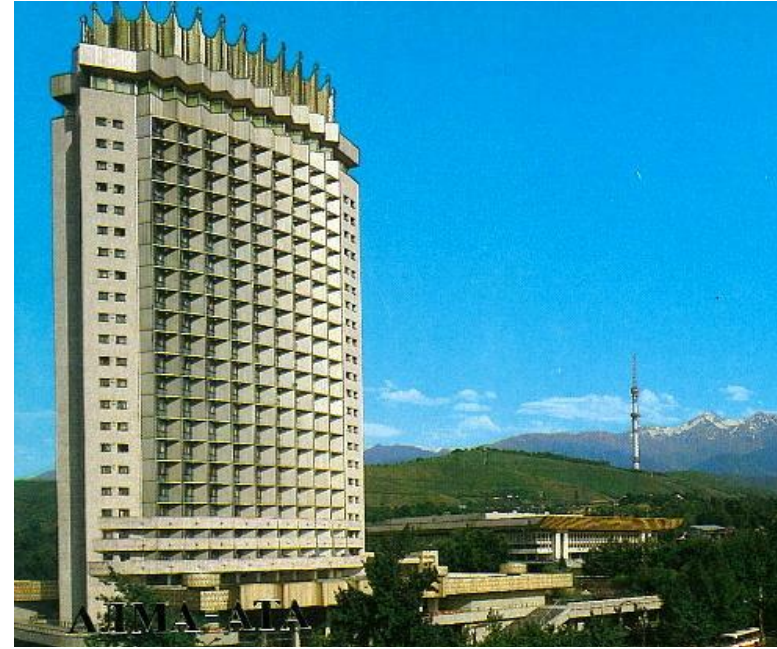
Formation of the Contract

- What if I say that first person who will climb on top of the roof of Kazakhstan Hotel by the end of the week gets an +A for the course.



Formation of the Contract

- Later, I have changed my mind since its to dangerous and illegal. So I announced that I'm revoking an offer. The problem is that a student who should be attending the class that day was absent. Later that day he sends me this photo.



Formation of the Contract

- Is this a Contract?
- Do I have to fulfill my obligations?



Formation of the Contract

- Is this a Contract?
- Do I have to fulfill my obligations?
- **YES**
- **Article 395**



Formation of the Contract

□ Article 395

- 2. An offer shall bind the person who sends it from the moment of its receipt by the addressee.
- If the notice on revocation of offer was sent earlier or simultaneously with the offer, there is no offer.



Freedom of the Contract

- Article 380
- Parties can conclude the contract which is not provided by the legislation (EPC Contracts).



Unilateral Termination

- Article 404. Unilateral Termination of the Contract
- 1. Party can unilaterally terminate the contract in the following cases:
 - 1. Impossibility to perform the obligations;
 - 2. Bankruptcy of the party to the contract;
 - 3. If the contract does not specify the period for its execution.



Penalty (Неустойка)

▣ Article 293. Penalty

- ▣ Penalty (fine, damage) shall be recognized as a monetary amount defined by legislation or agreement, which must be paid by a debtor to the creditor in the case of failure to execute, or improper execution of an obligation, in particular, in the case of a delay in execution.



Penalty (Неустойка)

▣ Article 294. Written form of Penalty

- ▣ Failure to comply with the written form requirement shall entail invalidity of the agreement of penalty.



Penalty (Неустойка)

▣ Article 293. Penalty

- ▣ Upon the claim to pay the damages, the creditor shall not be obliged to prove losses caused to him.



Objects of the Civil Rights

- According to the Civil Code, the **property** and **personal non-property privileges** (блага) and rights are objects of civil rights.



Intellectual Property Rights

- Chapter 49. General Provisions

- Articles: 961-966, 968;

- Chapter 50. Copyrights

- Articles: 971-974;

- Chapter 51. Related Rights

- Articles: 985-986.



Intellectual Property Rights

- Chapter 56. Means of Individualization
 - Articles: 1020-25, 1029-30; 1033-34.



Objects of IP

Intellectual Creative Activity

Works of science and literature;

Performance, phonogram broadcasting;

Inventions/utility models/industrial designs;

Breeding or selection achievements;

Integrated circuits topographies;

Undisclosed information, trade secrets (know-how);

Means of Individualization

Trade Names;

Trademarks Marks;

**Appellations of origin
of the goods;**



Intellectual Property Rights

□ Author of the IP has:

1. Property Rights (Exclusive Rights);
2. Personal Non-Property Rights.



Intellectual Property Rights

□ Article 964. Exclusive Rights

- 1. The property right of the owner of the object of IP are recognized as an **exclusive rights** to use the object of IP by any means at its discretion.
- Using the object of exclusive rights by other persons shall be with the consent of the holder.



Intellectual Property Rights

- The personal non-property rights of the author (right of authorship) shall remain regardless of the property rights of an author.



Intellectual Property Rights

▣ Art.965. Transfer of Exclusive Rights

- ▣ Exclusive Rights can be transferred by their owners whole or partly on the basis of:
 1. Contract (licensing contract);
 2. Universal succession by inheritance;
 3. As a result of reorganization of legal entity-owner.



Intellectual Property Rights

□ Means of Individualization includes:

1. Trade (brand) names;
2. Trademarks (service marks);
3. Appellations of origin (indications of origin) of the goods;



Trade Name

ҚазМұнайГаз

KIMEP UNIVERSITY

Kcell



Trademark

- Trademark (service mark) is a registered:
 - a) word;
 - b) figurative, three-dimensional, and other signs
- serving to distinguish the goods or services of one entity from the others.



Appellations of Origin



BORJOMI®



Intellectual Property Rights

- The results of Intellectual Creative Activity are:
1. works of science, literature and art;
 2. performance, the phonogram and the transmission of broadcasting and cable broadcasting;
 3. inventions, utility models, industrial designs;
 4. breeding or selection achievements;
 5. integrated circuits topographies;
 6. undisclosed information, including trade secrets (know-how);

