

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

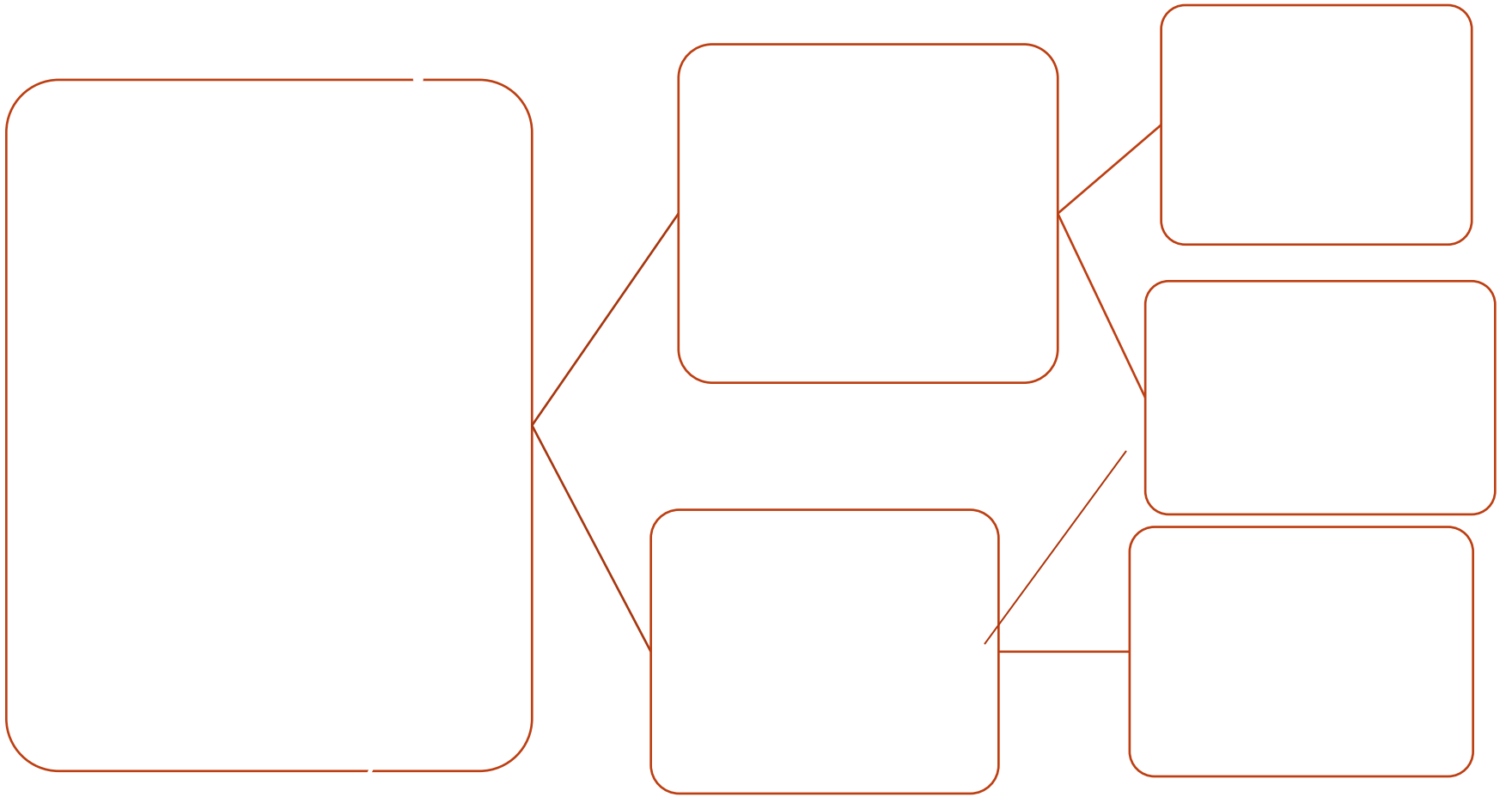
1. Confidentiality (the attorney – client privilege)

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

(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 settling 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!

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.



